



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

November 2009 through August 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
FINAL INDEX Volume 25		October 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 (Tuesday)	December 7, 2009
INDEX 1 Volume 26		January 2010
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 (Tuesday)	January 4, 2010
26:10	December 29, 2009 (Tuesday)	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
26:14	February 24, 2010	March 15, 2010
INDEX 2 Volume 26		April 2010
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010
26:18	April 21, 2010	May 10, 2010
26:19	May 5, 2010	May 24, 2010
26:20	May 19, 2010	June 7, 2010
INDEX 3 Volume 26		July 2010
26:21	June 2, 2010	June 21, 2010
26:22	June 16, 2010	July 5, 2010
26:23	June 30, 2010	July 19, 2010
26:24	July 14, 2010	August 2, 2010
26:25	July 28, 2010	August 16, 2010
26:26	August 11, 2010	August 30, 2010

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Agency Decision

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

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

Name of Petitioner: C. Lee Lintecum, County Administrator.

Nature of Petitioner's Request: Amend the Water Quality Management Planning Regulation, 9VAC25-720-120 C, to include total nitrogen and total phosphorus waste load allocations for Louisa County's Zion Crossroads wastewater facility (VPDES Permit No. 0090743). The discharge permit, reissued March 28, 2002 (expires March 28, 2007), contains flow tiers of 0.10 and 0.70 million gallons per day (MGD). The plant currently operates at 0.10 MGD and the county plans to expand the design flow to the higher tier. The county claims that the expansion to 0.70 MGD will be completed and a Certificate to Operate will be issued by the first quarter of 2009.

Agency Decision: Request denied.

Statement of Reasons for Decision: The petition was denied, based on the following:

1. Louisa County did not pursue the increased WLAs due to a plant expansion under the original rulemaking adopted by the board in 2005. Further increases should be avoided when possible to aid in meeting and maintaining water quality standards. In addition, the county has the capability to meet its TN WLA by operating available nutrient reduction technology (state of the art treatment, TN = 3.0 mg/l annual average) up to a flow of 0.62 MGD. At a design flow of 0.7 MGD, the county would need to acquire 700 lbs/yr of TN offsets under the Nutrient Credit Exchange Program. The TN offset could also be achieved through reclamation/reuse, thus reducing the surface water discharge. The TP WLA can be achieved at 0.7 MGD design flow through operation at 0.29 mg/l annual average, which is possible using available technology.

2. Louisa County has not provided a reasonable assurance that the CTO for the expanded plant will be secured by December 31, 2010. Design documents were not submitted by the date shown on the county's revised schedule (due three months ago), and the project does not have an approved Preliminary Engineering Report (the PER is a precursor to design plans and specifications). The Zion Crossroads upgrade/expansion project PER was submitted September 10, 2007, revised February 26, 2008, commented on by DEQ March 27, 2008, and returned to

the county November 13, 2008. Current review status is "inactive."

As a result of the decision to deny the petition, the regulatory action initiated by publication of a NOIRA on February 4, 2009, is being withdrawn.

Agency Contact: John M. Kennedy, Chesapeake Bay Program Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, or email jmkenney@deq.virginia.gov.

VA.R. Doc. No. R07-210; Filed November 4, 2009, 11:21 a.m.

Agency Decision

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

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

Name of Petitioner: Christopher D. Hively, PE, Environmental Services Director.

Nature of Petitioner's Request: Amend the Water Quality Management Planning Regulation (9VAC25-720-70 C, Rappahannock River Basin), to increase total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) for the Town of Culpeper wastewater plant (VPDES Permit No. 0061590). Current nutrient WLAs are TN = 54,820 lb/yr; TP = 4,112 lb/yr, based on a design flow of 4.5 million gallons per day (MGD). The town is expanding the plant to 6 MGD and installing state-of-the-art nutrient reduction technology. Construction is underway, with work expected to be completed and the facility certified for operation by December 31, 2010. Culpeper requests the WLAs be amended to TN = 73,058 lbs/yr (an 18,238 lb/yr increase) and TP = 5,479 lbs/yr (a 1,367 lb/yr increase), to reflect the 6 MGD design flow.

Agency Decision: Request denied.

Statement of Reasons for Decision: The petition was denied since the town's request for the increased WLAs due to a plant expansion to 6.0 MGD under the original rulemaking in 2005 was not recommended by the staff, and the board adopted conditional WLAs for the town based on a design flow of 4.5 MGD. The town has the capability to meet its TN WLA by operating the upgraded nutrient reduction technology, now being installed, at its design intent up to a flow of 6.0 MGD. The TP WLA can be achieved at 6.0 MGD design flow through operation at 0.22 mg/l annual average, which is possible using available technology. Given Culpeper County's 1.5 MGD design flow WLAs, at a minimum, for Mountain Run STP and their stated intention to build a 2.5 MGD plant (P&S approved, Certificate to Construct issued but project not yet bid), granting an additional 1.5 MGD capacity and associated WLA to the town may be excessive for the area and the Rappahannock basin.

Petitions for Rulemaking

Further, there appears to be an opportunity for a shared, regional approach to address the capacity needs of the town and the county for future service areas that has not been fully explored. A Memorandum of Understanding has been signed and discussions have taken place between the localities on this and other issues facing the region, but no final solution has been agreed upon yet. Conditions are essentially the same as when the board adopted the original "footnoted" WLAs for the town based on 4.5 MGD, in terms of justifying additional design flow.

Agency Contact: John M. Kennedy, Chesapeake Bay Program Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, TTY 1-800-592-5482, or email jmkennedy@deq.virginia.gov.

VA.R. Doc. No. R09-30; November 4, 2009, 11:21 a.m.

◆ ————— ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Agency Decision

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology.**

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

Name of Petitioner: Mary E. Olbrisch, Ph.D.

Nature of Petitioner's Request: To amend regulations for a residency to allow residents to count the hours of experience obtained while securing necessary documentation for the application and awaiting board approval.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board has initiated regulatory action to change the residency requirements in order to accept certain pre-internship hours in approved educational programs. Additionally, there are already procedures in place to compensate for any delays in receiving transcripts, and reviews of documentation occur regularly and do not require board action at a scheduled meeting.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R10-03; Filed October 28, 2009, 10:03 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 1. ADMINISTRATION

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Human Resource Management intends to consider amending the following regulations: **1VAC55-20, Commonwealth of Virginia Health Benefits Program**. Currently only employees whose spouses are recognized as legal in Virginia and incapacitated children who are incapable of self support and have reached the limiting age are the only adults covered by the plan. The intent of this amendment is to assist employees in providing health coverage to other adult individuals who reside in their home but are not eligible for the Health Benefits Plan for State Employees.

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

Statutory Authority: § 2.2-2818 of the Code of Virginia.

Public Comment Deadline: December 23, 2009.

Agency Contact: Charles Reed, Associate Director, Department of Human Resource Management, 101 North 14th Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-0231, or email charles.reed@dhrm.virginia.gov.

VA.R. Doc. No. R10-2223; Filed November 4, 2009, 12:00 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **9VAC25-720, Water Quality Management Planning Regulation** that was published in 24:11 VA.R. 1341 February 4, 2008.

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, or email jmkennedy@deq.virginia.gov.

VA.R. Doc. No. R07-210; Filed November 3, 2009, 4:51 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services; 12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care; and 12VAC30-120, Waivered Services**. The purpose of the proposed action is to create a new recognized class of Part C providers to ensure that those providing early intervention services through the Part C program bill Medicaid first, if appropriate, before billing the Part C program.

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

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Comment Deadline: December 23, 2009.

Agency Contact: Molly Carpenter, Child and Maternal Health Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmas.virginia.gov.

VA.R. Doc. No. R10-2080; Filed October 29, 2009, 3:05 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-120, Waivered Services**. The purpose of the proposed action is to conform the MR Waiver regulations to the recently federally approved MR Waiver Application with updates to nomenclature and procedures.

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

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Comment Deadline: December 23, 2009.

Agency Contact: Helen Leonard, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-2149, FAX (804) 786-1680, or email helen.leonard@dmas.virginia.gov.

VA.R. Doc. No. R10-2056; Filed October 29, 2009, 3:06 p.m.

Notices of Intended Regulatory Action

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL 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 Behavioral Health and Developmental Services intends to consider promulgating the following regulations: **12VAC35-220, Certification Requirements for Early Intervention Professionals and Early Intervention Specialists.** The purpose of the proposed action is to promulgate specific requirements for certification of practitioners as early intervention professionals and early intervention specialists under Virginia's early intervention services system.

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

Statutory Authority: § 2.2-5304 of the Code of Virginia.

Public Comment Deadline: December 23, 2009.

Agency Contact: Karen Durst, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-9844, FAX (804) 371-7959, or email karen.durst@dbhds.virginia.gov.

VA.R. Doc. No. R10-1928; Filed November 3, 2009, 10:49 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending the following regulations: **18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to comply with the budget bills of the 2009 Acts of Assembly by establishing criteria for the registration and operation of portable dental operations or mobile dental clinics.

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

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

Public Comment Deadline: December 23, 2009.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R10-1945; Filed November 4, 2009, 2:42 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Forms

NOTICE: The following forms have been filed by the Virginia Department of Agriculture and Consumer Services. The forms are available for public inspection at the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services, 102 Governor Street, Richmond, VA 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Richard D. Saunders, Deputy Director, Division of Animal and Food Industry Services, Virginia Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, (804) 692-0601 or doug.saunders@vdacs.virginia.gov.

Title of Regulation: **2VAC5-110. Rules and Regulations Pertaining to a Pound or Enclosure to Be Maintained by Each County or City.**

Agency Contact: Richard D. Saunders, Deputy Director, Division of Animal and Food Industry Services, Virginia Department of Agriculture and Consumer Services, 102 Governor Street, Room 321, Richmond, VA 23219, telephone (804) 692-0601, or email doug.saunders@vdacs.virginia.gov.

FORMS (2VAC5-110)

~~Pound and Shelter Inspection Form, VDACS PS 1 (eff. 7/07).~~

Animal Facility Inspection Form, VDACS AC-10 (eff. 07/09).

Animal Facility Inspection Form – Pound Regulations, VDACS AC-10-A (eff. 07/09).

Animal Facility Inspection Form – Animal Care, VDACS AC-10-B (eff. 07/09).

Animal Facility Inspection Form – Operations, VDACS AC-10-C (eff. 07/09).

Regulations

 VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES	DIVISION OF ANIMAL & FOOD INDUSTRY SERVICES OFFICE OF ANIMAL CARE AND HEALTH POLICY P.O. BOX 1163 RICHMOND, VA 23218 804-786-2483	
	ANIMAL FACILITY INSPECTION FORM	
Facility Name/ID: Physical Address:		Inspection Date: Unannounced <input type="checkbox"/> Scheduled <input type="checkbox"/>
Type of Facility: <input type="checkbox"/> Animal Shelter <input type="checkbox"/> Pound <input type="checkbox"/> Other:		
Owned By: <input type="checkbox"/> Humane Society <input type="checkbox"/> City () <input type="checkbox"/> County () <input type="checkbox"/> Other:		
Operated By: <input type="checkbox"/> Humane Society <input type="checkbox"/> City () <input type="checkbox"/> County () <input type="checkbox"/> Other:		
Other Facility Details (inc. contractual arrangements):		
Hours of Operation:		
Facility Supervisor:		
Facility Mailing Address:		Facility Telephone Number:
		Facility Fax Number:
		Facility Email:
Responsible Party – Governing Body/Board		Directions to Facility

Animal Control Officer Information (Pound Facilities Only)

Animal Control Officer: Deputy Animal Control Officers:	Animal Control Officer Mailing Address: Telephone Number:
ACO Reports To: <input type="checkbox"/> Sheriff <input type="checkbox"/> Police Department <input type="checkbox"/> Local Government Administration/Management	

- Attachments:**
- ANIMAL FACILITY INSPECTION FORM – POUND REGULATIONS
 - ANIMAL FACILITY INSPECTION FORM – ANIMAL CARE
 - ANIMAL FACILITY INSPECTION FORM – OPERATIONS
 - ANIMAL FACILITY INSPECTION FORM – ANIMAL TRANSPORT

Inspected By	
Name:	Signature:
Title:	

VDACS AC-10 (eff. 07/09)

 <p>VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</p>	<p>DIVISION OF ANIMAL & FOOD INDUSTRY SERVICES OFFICE OF ANIMAL CARE AND HEALTH POLICY P.O. BOX 1163 RICHMOND, VA 23218 804-786-2483</p>		
	<p>ANIMAL FACILITY INSPECTION FORM – POUND REGULATIONS</p>		
<p>Facility Name/ID: _____</p>		<p>Date: _____ Time: _____</p>	
		<p>Inspector Initials: _____</p>	
REQUIREMENT	NSF	F	COMMENTS
<p>2 VAC 5-110-10, 2 VAC 5-110-20 Drinking Water Water for drinking shall originate from a potable source. Durable, non-toxic water receptacles provided and secured in a fixed position or are of a non-tip design.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-40 Animal Housing—Temperature/Ventilation All kennel buildings and enclosures protect against weather extremes. Building maintained at a temperature comfortable for each animal. Each building and enclosure provides adequate ventilation for each animal.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-40 Animal Housing—Maintenance and Sanitation Floors and walls of enclosures, buildings, and runs are of a surface material that permits proper cleaning and disinfecting. Each kennel building and enclosure is clean, dry, and sanitary.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-40 Animal Housing—Suitability Animals are maintained in quarters that prevent escape, protect them from injury, and safeguard them from being stolen. Provisions are made for the separation of animals according to species, sex, age, and temperament.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-50 Cage Construction Cages are constructed of stainless steel, fiberglass, heavy galvanized metal, galvanized wire, or equivalent. Cages have solid bottoms.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-50 Cage Size Enclosures are constructed and maintained to provide sufficient space for each animal to turn freely, and easily stand, sit, and lie in a comfortable position.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-60 Sanitation Process There are faucet and hose connections at convenient locations for washing and cleaning the animal housing areas. Disinfectants or germicidal agents are used to clean the housing/confinement area.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-70 Food Preparation Food preparation/storage area adequately equipped. Equipment and utensils are made of easily cleanable, non-corrosive, and nontoxic materials. A sink with hot and cold water is provided for cleaning equipment and utensils.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-70 Food Storage Bins used to store food provide protection against insects and rodents. Food is stored on shelves or pallets a minimum of 12 inches above the floor, or in bins on rollable castors.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-90 Disposal Dead animals are disposed of by burial, incineration, or other approved method. Dead animals are disposed of within 24 hours, or refrigerated.</p>			Critical <input type="checkbox"/>
<p>2 VAC 5-110-100 Isolation Area There is a designated and marked isolation area for incoming animals which are ill or suspected of being ill. Ill and suspected ill animals are confined separately in this area for a minimum of 48 hours before being placed in the main housing area.</p>			Critical <input type="checkbox"/>
<p>NSF = No Significant Findings F = Findings Critical findings are those which cause animal death, serious injury, or egregious suffering.</p>			

REVIEWED WITH: **Signature** _____ **Date** _____

Name _____ **Title** _____

VDACS AC-10-A (eff. 0709)

Regulations

 <p>VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</p>	<p>DIVISION OF ANIMAL & FOOD INDUSTRY SERVICES OFFICE OF ANIMAL CARE AND HEALTH POLICY P.O. BOX 1163 RICHMOND, VA 23218 804-786-2483</p>		
	<p>ANIMAL FACILITY INSPECTION FORM – ANIMAL CARE</p>		
<p>Facility Name/ID: _____</p>		<p>Date: _____ Time: _____</p>	
		<p>Inspector Initials: _____</p>	
REQUIREMENT	NSF	F	COMMENTS
<p>§3.2-6503 Adequate Feed Each animal provided adequate feed as defined in §3.2-6500 (sufficient, nutritive, accessible, easily consumed, provided in a sanitary manner at suitable intervals, at least daily).</p>			Critical <input type="checkbox"/>
<p>§3.2-6503 Adequate Water Each animal provided adequate water as defined in §3.2-6500 (clean, fresh, potable, drinkable temperature, sufficient volume, at suitable intervals to maintain normal hydration).</p>			Critical <input type="checkbox"/>
<p>§3.2-6503 Adequate Shelter Each animal provided adequate shelter as defined in §3.2-6500 (suitable, safe, protects from weather extremes, properly lighted, properly cleaned, enables animal to be clean and dry, provides a solid resting surface).</p>			Critical <input type="checkbox"/>
<p>§3.2-6503 Adequate Space Each animal provided adequate space as defined in §3.2-6500 (allows each animal to stand, sit, lie, turn about, make all normal body movements in a comfortable, normal position, and interact safely with other animals).</p>			Critical <input type="checkbox"/>
<p>§3.2-6503 Adequate Exercise Each animal provided adequate exercise as defined in §3.2-6500 (opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal).</p>			Critical <input type="checkbox"/>
<p>§3.2-6503 Adequate Care, Treatment, and Transportation Each animal provided adequate care as defined in §3.2-6500 (good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transport, veterinary care, and euthanasia when necessary).</p>			Critical <input type="checkbox"/>
<p>§3.2-6503 Veterinary Care Each animal provided veterinary care as defined in §3.2-6500 when needed to prevent suffering, impairment of health, disease progression, or disease transmission.</p>			Critical <input type="checkbox"/>
<p>Number of Dogs on Site: _____</p>	<p>Number of Cats on Site: _____</p>		<p>Number of Other Companion Animals on Site: _____</p>
<p>Number of Runs: _____</p>	<p>Number of Cages: _____</p>		<p>Number of Animal Caretakers: _____ F/T _____ P/T</p>
<p>COMMENTS:</p> 			
<p>NSF = No Significant Findings F = Findings Critical findings are those which cause animal death, serious injury, or egregious suffering.</p>			

REVIEWED WITH: **Signature** _____ **Date** _____

Name _____ **Title** _____

VDACS AC-10-B (eff. 07/09)

Regulations

Forms

NOTICE: The following forms have been filed by the Virginia Department of Agriculture and Consumer Services. The forms are available for public inspection at the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services, 102 Governor Street, Richmond, VA 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Richard D. Saunders, Deputy Director, Division of Animal and Food Industry Services, Virginia Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, (804) 692-0601 or doug.saunders@vdacs.virginia.gov.

Title of Regulation: 2VAC5-150. Rules and Regulations Governing the Transportation of Companion Animals.

Agency Contact: Richard D. Saunders, Deputy Director, Division of Animal and Food Industry Services, Virginia Department of Agriculture and Consumer Services, 102 Governor Street, Room 321, Richmond, VA 23219, telephone (804) 692-0601, or email doug.saunders@vdacs.virginia.gov.

FORMS (2VAC5-150)

~~Animal Control Vehicle Review, Form VDACS 03132-2.~~

Animal Facility Inspection Form, VDACS AC-10 (eff. 07/09).

Animal Facility Inspection Form – Animal Transport, VDACS AC-10-1 (eff. 07/09).

 <p><i>VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</i></p>	DIVISION OF ANIMAL & FOOD INDUSTRY SERVICES OFFICE OF ANIMAL CARE AND HEALTH POLICY P.O. BOX 1163 RICHMOND, VA 23218 804-786-2483	
	ANIMAL FACILITY INSPECTION FORM	
Facility Name/ID: Physical Address:		Inspection Date: Unannounced <input type="checkbox"/> Scheduled <input type="checkbox"/>
Type of Facility: <input type="checkbox"/> Animal Shelter <input type="checkbox"/> Pound <input type="checkbox"/> Other:		
Owned By: <input type="checkbox"/> Humane Society <input type="checkbox"/> City () <input type="checkbox"/> County () <input type="checkbox"/> Other:		
Operated By: <input type="checkbox"/> Humane Society <input type="checkbox"/> City () <input type="checkbox"/> County () <input type="checkbox"/> Other:		
Other Facility Details (inc. contractual arrangements):		
Hours of Operation:		
Facility Supervisor:		
Facility Mailing Address:		Facility Telephone Number:
		Facility Fax Number:
		Facility Email:
Responsible Party – Governing Body/Board		Directions to Facility

Animal Control Officer Information (Pound Facilities Only)

Animal Control Officer: Deputy Animal Control Officers:	Animal Control Officer Mailing Address: Telephone Number:
ACO Reports To: <input type="checkbox"/> Sheriff <input type="checkbox"/> Police Department <input type="checkbox"/> Local Government Administration/Management	

- Attachments:**
- ANIMAL FACILITY INSPECTION FORM – POUND REGULATIONS
 - ANIMAL FACILITY INSPECTION FORM – ANIMAL CARE
 - ANIMAL FACILITY INSPECTION FORM – OPERATIONS
 - ANIMAL FACILITY INSPECTION FORM – ANIMAL TRANSPORT

Inspected By	
Name:	Signature:
Title:	

VDACS AC-10 (eff. 07/09)

Regulations

 VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES	DIVISION OF ANIMAL & FOOD INDUSTRY SERVICES OFFICE OF ANIMAL CARE AND HEALTH POLICY P.O. BOX 1163 RICHMOND, VA 23218 804-786-2483		
ANIMAL FACILITY INSPECTION FORM – ANIMAL TRANSPORT			
Facility Name/ID:	Date: _____ Time: _____		
Vehicle Owned/Operated By: <input type="checkbox"/> City/County <input type="checkbox"/> Animal Control Officer <input type="checkbox"/> Pound <input type="checkbox"/> Humane Society	Inspector Initials: _____		
Jurisdiction/Affiliation:	Vehicle ID: _____		
	Vehicle License #: _____		
REQUIREMENT	NSF	F	COMMENTS
2 VAC 5-150-120 Primary Enclosure Companion animals are transported in a primary enclosure. The primary enclosure is used to contain only companion animals.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Enclosure Strength The structural strength of the enclosures is sufficient to contain the animals and to withstand the normal rigors of transporting, and the interior of the enclosure is free from any protrusions that can be injurious to the animal, and have solid bottoms.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Enclosure Size The primary enclosure is large enough to ensure that each animal has sufficient space. The openings of such enclosures are easily accessible at all times for emergency removal of the animal.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Enclosure Ventilation Apertures are sufficient to provide proper ventilation and normal breathing. Projecting rims prevent obstruction of ventilation openings and provide minimum air circulation space of 3/4" OR the front surface is at least 90% open and covered with bars/mesh.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Enclosure Sanitation Enclosures are cleaned to remove all organic debris after each use.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Conveyance Environment Conveyance cargo space is constructed to ensure safety and comfort, protect health, and prevent ingress of fumes and gases. The cargo space is clean, free of injurious materials or substances, and has a supply of air sufficient for normal breathing.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Conveyance Cover and Ventilation Vehicle is enclosed so that all sides and top are covered, screens or ventilation systems assure adequate ventilation, and protection from weather extremes is provided by insulation or automatic heating/cooling.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Conveyance Identification Vehicle jurisdiction is identified on the outside.			Critical <input type="checkbox"/>
2 VAC 5-150-120 Conveyance Equipment Vehicle is equipped with a working flashlight, a pair of safety gloves, proper restraint equipment, a first aid kit, at least one gallon of potable water, and a blanket. Suitable bedding material is available for puppies and kittens.			Critical <input type="checkbox"/>
NSF = No Significant Findings F = Findings Critical findings are those which cause animal death, serious injury, or egregious suffering.			

REVIEWED WITH: **Signature** _____ **Date** _____

Name _____ **Title** _____

VDACS AC-10-1 (eff. 07/09)

VA.R. Doc. No. R10-2202; Filed October 27, 2009, 2:32 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Department of Conservation and Recreation is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Department of Conservation and Recreation will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **4VAC5-36. Standard Fees for Use of Department of Conservation and Recreation Facilities, Programs, and Services (amending 4VAC5-36-40, 4VAC5-36-50, 4VAC5-36-60, 4VAC5-36-80, 4VAC5-36-90, 4VAC5-36-100, 4VAC5-36-110, 4VAC5-36-115, 4VAC5-36-120, 4VAC5-36-130, 4VAC5-36-140, 4VAC5-36-150, 4VAC5-36-160, 4VAC5-36-170, 4VAC5-36-190, 4VAC5-36-200, 4VAC5-36-210).**

Statutory Authority: § 10.1-104 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

The amendments include general conditions and criteria concerning the establishment, revision, and revocation of fees (4VAC5-36-40); parking and launch fees (4VAC5-36-50); admission fees (4VAC5-36-60); commercial and nonprofit user fees (4VAC5-36-80); camping fees; (4VAC5-36-90); cabin fees (4VAC5-36-100); picnic shelter fees (4VAC5-36-110); horse arena fees (4VAC5-36-115); amphitheater and gazebo fees (4VAC5-36-120); boat storage fees (4VAC5-36-130); interpretive canoe, boat, and paddleboat fees (4VAC5-36-140); interpretive and educational tours and program fees (4VAC5-36-150); outdoor skill program fees (4VAC5-36-160); hunting fees (4VAC5-36-170); environmental education center fees (4VAC5-36-190); miscellaneous rental fees (4VAC5-36-200); and conference center and meeting facility fees (4VAC5-36-210).

Increases to these rates and prices represent (i) changes to maintain fair market value, (ii) the addition of new facilities and offerings, (iii) updates to ensure consistency with the private sector, and (iv) revisions to reflect private concessionaires' new seasonal prices. Language has been added to 4VAC5-36-40 (General conditions and criteria concerning the establishment, revision, and revocation of fees) allowing the electronic submission of documents and payments where available, including the use of electronic mail, the Reservation Center and the ReserveAmerica system, completing any forms provided online, or any other manner specified by the department.

4VAC5-36-40. General conditions and criteria concerning the establishment, revision, and revocation of fees.

A. The director may establish, revise, or revoke standard or nonstandard fees for facility rentals, programs, festivals, special events, concerts, and services as the need arises according to reasonable and accepted business practices, negotiation with third party providers, and local market conditions. Such fees and prices shall be in effect immediately upon the reasonable availability of information allowing the public to be aware of the most current fee or price. The agency shall publish new, revised or revoked standard fees in accordance with the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia).

B. In the event a nonstandard fee becomes a continuing offering, the director shall publish the fee in accordance with the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia).

C. The submission of the required documents and payments set out in this chapter may be accomplished where available by electronic means, including but not limited to electronic mail and the use of the Reservation Center or ReserveAmerica system, completing any forms provided online, or any other manner specified by the department.

4VAC5-36-50. Parking and launch fees.

PARKING FEES (NONTAXABLE)

	WEEKDAYS	WEEKENDS
Daily Parking for Passenger Vehicles: Applies to cars, trucks, vans (up to 15 passenger), and motorcycles.		
All parks unless listed below.	\$2.00	\$3.00
Parks under construction and having only limited facilities	\$2.00	\$2.00

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and services.		
Fairy Stone, Raymond R. "Andy" Guest Jr. Shenandoah River, Smith Mountain Lake, Claytor Lake, Kiptopeke, Westmoreland, Mason Neck, Sky Meadows, Chippokes	\$3.00	\$4.00
Leesylvania, First Landing, Lake Anna, Pocahontas	\$4.00	\$5.00
York River Croaker Landing/Pier Area (also requires boat launch fee for all vehicles)	\$3.00	\$3.00
Horse Trailer Parking Fee (also requires vehicle parking fee.) All parks unless listed below.	\$3.00 per trailer	\$3.00 per trailer
Lake Anna	\$4.00 per trailer	\$4.00 per trailer
Surcharge for additional horse in same trailer.	\$2.00 per horse	\$2.00 per horse
Other Trailer Parking Fee: Applies to other trailers not covered by camping, horse trailer and boat launch fee. (Add to daily parking fee.)	\$2.00 per trailer	\$2.00 per trailer
Daily Bus Parking: All Seasons. Applies to vehicles with 16 or more passenger capacity.		
All parks unless listed below.	\$10	\$10

Claytor Lake, Hungry Mother, Leesylvania, Mason Neck, New River Trail	\$12	\$12
First Landing, Kiptopeke, Lake Anna, Pocahontas, Westmoreland	\$15	\$15
Natural Area Preserve Parking Fees for any Vehicle: The department may charge these fees at any Natural Area Preserve.	\$2.00	\$2.00
<p>Boat Launch Fees: Required to use park boat ramps on bodies of water where motorboats are permitted. Required for all vehicles using York River Croaker Landing/Pier Area. May not apply to small "car-top" launch facilities (facilities at which boats may only be launched by hand carrying them to the water). The fee is normally added to the parking fee to create a combined park/launch payment.</p>		
<p>Daily Launch Fees: All Seasons</p>		
All parks unless listed below.	\$3.00	\$3.00
Claytor Lake	\$2.00	\$2.00
First Landing, Kiptopeke (with Marine Fishing License), Lake Anna	\$4.00	\$4.00
Kiptopeke (without Marine Fishing License), Leesylvania	\$8.00	\$8.00

Regulations

Surcharge for second boat on same trailer: jet ski	\$2.00	\$2.00	Naturally Yours Parking Passport: 12-month from date of purchase admission and parking pass to park of purchase.	\$36
Overnight parking at boat launch: where available	\$10	\$10	Senior Naturally Yours Passport Plus: See Naturally Yours Passport Plus above.	\$33
Camper's Boat Launch Fee Kiptopeke: Does not apply if camper parks trailer at campsite.	\$3.00	\$3.00	Senior Naturally Yours Parking Passport: See Naturally Yours Parking Passport above.	\$22
Boat Tournament Fee for Fishing Tournaments: Registration fee is based on the number of boats registered and is nonrefundable regardless of number that actually participates. This fee is in addition to the applicable daily launch fee.	No charge	\$2.00 per boat	Golden Disability Pass: Available to persons with disabilities as verified by U.S. Social Security Administration's (SSA) "Benefit Verification Letter." Pass remains in effect unless SSA withdraws eligibility.	No Charge
			<u>Disabled Veterans Passport</u> <u>Admission, parking, and launch pass to all state parks, plus 50% discount on camping fees, swimming fees, shelter rentals, and department equipment rentals when provided by the department. Where equipment rentals are provided by private concessionaires, this passport does not apply.</u> <u>The passport shall be issued upon request to a veteran of the armed forces of the United States with a letter from the U.S. Department of Veterans Affairs, or from the military service that discharged the veteran, certifying that such veteran has a service-connected disability rating of 100%. This passport coverage shall be valid for as long as that determination by the U.S. Department of Veterans Affairs remains in effect.</u>	<u>No Charge</u>

	FEE		
Annual and Lifetime Parking Fees:			
Lifetime Naturally Yours Passport Plus: Lifetime admission and parking pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.			
Age up to 40	\$303	Annual Horse Trailer-Vehicle Pass: 12-months from date of purchase admission and park pass, including horse trailer, good at all parks.	\$79
Age 41-45	\$273	Annual Horse Trailer-Vehicle Pass: Pocahontas and New River Trail Only. Valid only in combination with purchase of \$30 horse arena annual pass.	\$70
Age 46-50	\$242	Annual Horse Trailer-Vehicle Pass: Occoneechee and Staunton River Only	\$50
Age 51-55	\$212	Annual and Lifetime Park/Launch Fees:	
Age 56-61	\$182	Lifetime Naturally Yours Passport Plus for Boaters: Lifetime admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	
Senior Lifetime Naturally Yours Passport Plus (Age 62 or older): See Lifetime Naturally Yours Passport Plus above.	\$110		
Naturally Yours Passport Plus: 12-month from date of purchase admission and parking pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	\$61		

Regulations

Age up to 40	\$606	Leesylvania Annual Overnight Boating/Parking Pass.	\$67
Age 41-45	\$545	Disabled Visitor Annual Boat Launch Pass (in addition to disabled tags).	\$44
Age 46-50	\$485	Parks and Trails Passport:	
Age 51-55	\$424	In conjunction with the purchase of an annual parking pass	\$11
Age 56-61	\$364	Without the purchase of an annual parking pass	\$17
Senior Lifetime Naturally Yours Passport Plus for Boaters (Age 62 or older): See Lifetime Naturally Yours Passport Plus for Boaters above.	\$314		
Naturally Yours Passport Plus for Boaters: 12-month from date of purchase admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	\$152		
Park/Launch Passport:		Special Event Fees:	EVENT FEE
12-month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania.	\$128	Standard Special Event Parking Fee: Applies to all parks and events that utilize parking fees unless noted below.	\$10 per vehicle
12-month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase.	\$97	Community Event Fee: May be used by any park as a condition of a Special Use Permit for a community event provided by a nonprofit group or organization or government agency or entity.	\$1.00 per vehicle
12-month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna.	\$79	James River: James River Raft Race	\$5.00 per vehicle
Senior Naturally Yours Passport Plus for Boaters: Annual permit for all parks including Leesylvania.	\$121	Sky Meadows: Strawberry Festival.	
Senior Park/Launch Passport:		Advance payment	\$15 per vehicle
12-month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania.	\$109	Day of Event	\$20 per vehicle
12-month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase.	\$79	Sky Meadows: Virginia Scottish Games	
12-month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna.	\$66	Vehicle Parking	\$5.00 per vehicle
Buggs Island Lake Special Annual Pass: Good only at Occoneechee and Staunton River State Parks.	\$50	Per Person Admission	\$15 per person \$5.00 per person, active military and active military family members \$5.00 per child 6-12 years Children under 6 free
		New River Trail: Wythe County Heritage Day. Grayson Highlands Fall Festival. Hungry Mother Arts and Crafts Festival.	\$6.00 per vehicle

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Claytor Lake Arts and Crafts Festival: Free parking with canned food donation on designated day.	\$5.00 per vehicle <u>with canned food donation on designated day</u> \$9.00 per two-day pass \$12 per three-day pass \$10 per vehicle	York River Estuaries Day.	\$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)
Kiptopeke: Eastern Shore Birding Festival.	Parking Fee waived to registered festival guests; otherwise standard fees apply	Natural Tunnel Special Event Parking Fee.	\$2.00 per person \$6.00 per vehicle
Smith Mountain Lake: special park/launch rate for boaters participating in fishing tournaments if the tournament sponsor has also rented the Tournament Headquarters Building.	\$5.00 per vehicle/boat combination	Occoneechee Pow Wow	\$5.00 per person <u>(13 years and older)</u> <u>\$3.00 per child, 3 through 12 years</u> <u>\$3.00</u> Seniors (62 and over) free Children under 4 <u>3</u> free
Standard Special Event Per Person Entrance Fee: Applies to all parks and events that utilize per person admission fees unless noted below.	\$4.00 per adult \$3.00 per child, 6 through 12 years Children under 6 free	Occoneechee Pow Wow School Groups	\$4.00 per student Teachers and Chaperones free
Sailor's Creek Battlefield: Battle of Sailor's Creek Reenactment.	\$5.00 per person Children under 6 free \$10 maximum per vehicle \$50 per bus (16 passenger +)	Notes on parking fees:	
Chippokes Plantation Steam and Gas Engine Show.	\$5.00 per person Children under 12 free	1. Weekend rates apply on Memorial Day, Fourth of July, and Labor Day holidays.	
Chippokes Plantation Christmas.	\$5.00 per person	2. No parking fee is required for up to two vehicles per campsite and per cabin <u>at any state park during the period of overnight stay</u> . Vehicles in excess of two shall pay the prevailing daily parking fee for each day that the vehicle is parked in the park.	
Chippokes Gospel Explosion	\$10 per person \$7.00 for advance ticket purchase Children under 12 free	3. Except as otherwise noted, boat launching shall be free for up to one boat per vehicle per campsite or cabin.	
Chippokes Pork, Peanut & Pine Festival	\$5 per person Children under 40 <u>13</u> free	4. Parking fees are waived for any vehicle displaying disabled license plates or temporary disabled parking identification issued by any state or the federal government. However, the fee for any additional types of trailers, the boat launch fee or the portion of any combined parking-launching fee that applies to boat launching shall be collected from such vehicles. Additionally, the price for annual passes and lifetime passes that include boat launching for qualified disabled individuals shall be calculated by subtracting the applicable parking pass fee from the park/launch pass fee.	
Grayson Highlands Wayne C. Henderson Music Festival.	\$10 per person Children under 12 free	5. Parking fees are waived for any vehicle occupied solely by students and/or teachers and/or assisting personnel participating in an official activity of a bona fide school, home school, or institution of higher learning. Parks may require that individuals in vehicles other than those marked as a school bus verify their official activity by letter from the school or approved field trip form, or in the case of home school groups, proof of home school status such as current ID card from a state or national home school organization (HEAV, HSLDA, etc.) or a copy of the letter	

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from the school district that acknowledges "Notice of Intent" to home school for that school year.

6. Parking fees are waived for official vehicles of federal, state, and local governments while on official business; vehicles making deliveries to the park; contractor and business vehicles performing work in the park; and emergency vehicles while conducting official business, including training.

7. Parking fees are waived for park employees during time of employment, including family and household members of staff occupying staff residences, visitors to staff residences, and park volunteers entering the park to perform volunteer duties.

8. Parking fees may be waived for vehicles conducting research or collecting activities provided such waiver is included in the language of the Research and Collection Permit as required in 4VAC5-30-50.

9. The period covered by a daily parking fee shall be midnight to midnight. Park guests utilizing overnight parking when and where available (e.g., backpackers, overnight fishermen, etc.) will be required to pay the applicable daily parking fee for each calendar day that their vehicle is in the parking lot (partial days included).

10. Annual permits shall be valid for 12 months from the date of purchase, unless otherwise noted.

11. Parking fees are waived for visitors entering the park for the sole purpose of dining at the park restaurant at Douthat and Hungry Mother State Parks.

12. Parking fees are waived at state parks for participants in Walk for Parks, Fall River Renaissance, Envirothons, March for Parks, Operation Spruce-Up Day, Stewardship Virginia, National Trails Day, and other park-sanctioned public service events as approved by the director.

13. Daily parking fees are reduced to \$1.00 for vehicles occupied by participants in fund-raising events sponsored by nonprofit organizations (Walk-A-Thons, etc.) provided the sponsor has obtained a special use permit from the park that contains provisions for the identification of participants in the event.

14. Parking fees shall be waived for persons using park roads to gain legal access to their private residence and guests to such residences; and for vehicles passing through, but not stopping in, a park on a public roadway.

15. Revenue collected from special event parking and/or admission fees may be divided between the park and the event sponsor if so designated and approved in the special event permit following a determination made by the director that the revenue split is in the benefit of the Commonwealth.

16. Annual Park/Launch pass also covers the park entrance or parking fee for horse trailers or other allowable trailers. Annual and Lifetime parking-only passes do not include trailers.

17. Parking fees are waived for service vehicles such as tow trucks when entering the park to service a visitor vehicle.

18. Parking fees are waived for visitors entering the park to attend a performance by a U.S. military band if this is a required condition for the band's performance.

19. Parking fees are included in the rental fees for meeting facilities, up to the capacity of the facility and provided that this waiver of fee is included in the rental agreement for the facility.

20. Parking fees are waived for a period of up to 15 minutes for persons entering the park to deposit materials in community recycling collection containers.

21. Parking fees are waived for vehicles occupied entirely by persons attending fee interpretive programs.

22. Annual parking passes that do not include boat launch require payment of daily launch fee if launching a boat at any park or for all vehicles using Croaker Landing/Pier Area at York River State Park.

23. Annual parking pass holders are not guaranteed the parking privileges of the pass should parking places be unavailable.

24. Parking fees are waived at Mason Neck during the park's annual Elizabeth Hartwell Eagle Festival.

25. The payment of a parking fee at one park shall be applied to parking at any state park on the same day provided that the visitor supplies evidence of the paid parking fee.

4VAC5-36-60. Admission fees.

ADMISSION FEES (NONTAXABLE)

	DAILY ADMISSION PER PERSON (Weekdays and Weekends unless otherwise noted.)	ANNUAL PASS (Good for 12 months from date of purchase.)
Shot Tower	Free	NA
Southwest VA Museum	\$1.50 (Groups of 10 or more any age) (Groups of 10 or <u>more: age 6 through 12</u>) \$3.00 (Groups of 10 or more: age 13 and <u>up</u>)	\$3.00 (age 6 through 12) per year <u>NA</u>

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	\$2.00 (Ages 6 through 12)	\$5.00 (age 13 and over) per year <u>\$5.00 (age 6 through 12) per year</u>	Daily Pass (Good for unlimited trips on date of issue, good for one person only)	\$6.00
	\$3.00 <u>\$4.00</u> (Age 13 and up)	\$15 (family: up to 2 adults and 2 children) per year <u>\$10 (age 13 and over) per year</u>	Archery Range: All parks where available; per person user fee	\$2.00 per day (over 15) (over 12) \$1.00 per day (under 15) (age 3 through 12) \$15 per year (any age)
	NA	\$15 (family: up to 2 adults and 2 children) per year <u>\$15 (family: up to 2 adults and 2 children) per year</u>	<u>Bear Creek Lake</u>	<u>\$5.00 per day (over 12)</u> <u>\$3.00 per day (age 3 through 12)</u> <u>\$45 per year (any age)</u> <u>\$3.00 per person, per day group fee (minimum of 10 participants)</u>
Kiptopeke Fishing Pier Fishing Fee	\$1.00 (Age 6 through 12) \$3.00 (Age 13 and over)	NA	James River: River Raft Race Registration	\$15 per person
Kiptopeke Fishing Pier Fishing Fee: Coupon book good for 10 visits	\$20 per 10 Passes	NA	Pocahontas & New River Trail Horse Show Admission	\$5.00 per person Children 12 & under free
Annual Night Fishing: All parks where available (also requires parking fee)	\$15 per person per year		Park Sponsored Special Event Vendor Fees. All parks where available unless otherwise noted.	\$125 per merchandise vendor \$150 per food vendor
Late Night Fishing: All parks where available (also requires parking fee)	\$3.00 per person per night		<u>Occoneechee Pow Wow</u>	\$150 per merchandise vendor \$175 per food vendor
			ADMISSION	
Natural Tunnel Chairlift:				
Children under age 6	Free			
Round trip per person	\$3.00		<u>Mason Neck Harvest Festival Fall Special Event-</u>	
One-way per person	\$2.00		<u>Caledon Art & Wine Festival</u>	
Group Rate Round Trip per person (10 or more)	\$2.00		<u>\$50 per artist vendor</u> <u>\$100 per winery vendor</u>	
Season Pass	\$20			

Regulations

<u>New River Trail</u>	<u>\$25 per merchandise vendor</u> <u>\$25 per food vendor</u>
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on the management of the park. Licensed commercial fishermen are not required to pay this fee, but are required to pay the applicable public user fee for the use of state park boat launches.

Notes on admission/entrance fees:

1. Fees are waived at Natural Tunnel for use of the chairlift on one designated "Customer Appreciation Day" per year.
2. Museum entrance fees are waived at the Southwest Virginia Museum during the "Festival of Trees" event for members of groups who submitted trees for the display.
3. For park museums and historic features that charge an entrance fee, visitors participating in the Time Travelers program of the Virginia Association of Museums shall be charged the existing per person group rate for that facility.

4VAC5-36-80. Commercial and nonprofit user fees.

COMMERCIAL AND NONPROFIT ORGANIZATIONAL USERS FEES (NONTAXABLE)

PERMIT TYPE:	DAILY FEE	ANNUAL FEE
Commercial Parking and State Park Use Permit Fees: Required for for-profit companies and businesses that use the lands and/or facilities of a state park to deliver services to the public for a fee, and when such use is similar or the same as the general public use, unless permitted by other means. May not be used to establish exclusive or continuous concession-type services. Activities of this type include but are not limited to canoe, horse, bicycle, or hiking trip outfitters and rental agencies (if they deliver equipment or services on park property), caterers, and for-profit day care centers (note that some day care centers are government or nonprofit). The agency reserves the right to withhold this or any other permit or license for commercial use of parks when such use is deemed to be not in keeping with the mission or intended purpose of the park, conflicts or interferes with other use of the park, or creates an unreasonable burden		

For 1 or 2 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) or one bus and one passenger vehicle	\$10	NA
For 1 to 6 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) or two buses and two passenger vehicles	NA	\$200 \$250

Commercial Parking/Launching/Horse Riding Fees: Required for for-profit companies and businesses that use the lands and/or facilities of a state park to deliver services to the public for a fee, and when such use is similar or the same as the general public use, unless permitted by other means. May not be used to establish exclusive or continuous concession-type services.

For 1 or 2 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) and/or passenger vehicle with trailer combinations; or one bus and one passenger vehicle and/or passenger vehicle with trailer combination	\$14	NA
For 1 to 6 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) and/or passenger vehicle with trailer combinations; or two buses and two	NA	\$250 \$300

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passenger vehicles and/or passenger vehicle with trailer combinations			4VAC5-36-90. Camping fees. CAMPING FEES (TAXABLE, Price here does not include tax)																						
Nonprofit Organization Parking Fees: These fees may be utilized only by nonprofit organizations engaged in the activities or purposes of the organization.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%; padding: 5px;">Camping fees include free use of dump station and free swimming and boat launching for members of the camping party during their stay at the property, when and where available, except that at Kiptopeke State Park guest is subject to applicable launch fee unless the trailer is returned to the campsite immediately after launching. The number of campers per campsite is limited to six individuals except when all campers are members of the same household.</td> <td style="width: 20%; padding: 5px; text-align: center;">ALL SEASONS (Per site fees)</td> </tr> <tr> <td colspan="2" style="padding: 5px;">Standard Sites: No hookup; access to bathhouse and restrooms.</td> </tr> <tr> <td style="padding: 5px;">All parks with standard sites unless noted below.</td> <td style="padding: 5px; text-align: center;">\$16 per night</td> </tr> <tr> <td style="padding: 5px;">Hungry Mother, Grayson Highlands, Staunton River, Westmoreland, Occoneechee (nonwaterfront), Claytor Lake, Raymond R. "Andy" Guest, Jr. Shenandoah River, Smith Mountain Lake.</td> <td style="padding: 5px; text-align: center;">\$20 per night</td> </tr> <tr> <td style="padding: 5px;">Occoneechee Waterfront Sites</td> <td style="padding: 5px; text-align: center;">\$23 per night</td> </tr> <tr> <td style="padding: 5px;">Douthat, Kiptopeke, First Landing, Lake Anna.</td> <td style="padding: 5px; text-align: center;">\$24 per night</td> </tr> <tr> <td colspan="2" style="padding: 5px;">Water and Electric Sites: Access to water and electric hookups; access to bathhouse and restrooms.</td> </tr> <tr> <td style="padding: 5px;">All parks where available unless noted below.</td> <td style="padding: 5px; text-align: center;">\$22 per night</td> </tr> <tr> <td style="padding: 5px;">Chippokes Plantation, Claytor Lake, Douthat, Fairy Stone, Grayson Highlands, Hungry Mother, Occoneechee (nonwaterfront), Staunton River, Westmoreland, Pocahontas, Smith Mountain Lake, Belle Isle, James River.</td> <td style="padding: 5px; text-align: center;">\$25 per night</td> </tr> <tr> <td style="padding: 5px;">Occoneechee Waterfront Sites</td> <td style="padding: 5px; text-align: center;">\$28 per night</td> </tr> <tr> <td style="padding: 5px;">Kiptopeke, First Landing, Lake Anna, <u>Shenandoah</u>.</td> <td style="padding: 5px; text-align: center;">\$30 per night</td> </tr> </table>	Camping fees include free use of dump station and free swimming and boat launching for members of the camping party during their stay at the property, when and where available, except that at Kiptopeke State Park guest is subject to applicable launch fee unless the trailer is returned to the campsite immediately after launching. The number of campers per campsite is limited to six individuals except when all campers are members of the same household.	ALL SEASONS (Per site fees)	Standard Sites: No hookup; access to bathhouse and restrooms.		All parks with standard sites unless noted below.	\$16 per night	Hungry Mother, Grayson Highlands, Staunton River, Westmoreland, Occoneechee (nonwaterfront), Claytor Lake, Raymond R. "Andy" Guest, Jr. Shenandoah River, Smith Mountain Lake.	\$20 per night	Occoneechee Waterfront Sites	\$23 per night	Douthat, Kiptopeke, First Landing, Lake Anna.	\$24 per night	Water and Electric Sites: Access to water and electric hookups; access to bathhouse and restrooms.		All parks where available unless noted below.	\$22 per night	Chippokes Plantation, Claytor Lake, Douthat, Fairy Stone, Grayson Highlands, Hungry Mother, Occoneechee (nonwaterfront), Staunton River, Westmoreland, Pocahontas, Smith Mountain Lake, Belle Isle, James River.	\$25 per night	Occoneechee Waterfront Sites	\$28 per night	Kiptopeke, First Landing, Lake Anna, <u>Shenandoah</u> .	\$30 per night
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For 1 or 2 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) or one bus and one passenger vehicle	\$4.00	\$30																							
For 1 to 6 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) or two buses and two passenger vehicles	\$9.00	\$70																							
Nonprofit Organization Parking/Launching Fees: These fees may be utilized only by nonprofit organizations engaged in the activities or purposes of the organization.																									
For 1 or 2 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) and/or passenger vehicle with trailer combinations; or one bus and one passenger vehicle and/or passenger vehicle with trailer combination	\$6.00	\$65																							
For 1 to 6 passenger vehicles (up to 15-passenger vans) (passenger vehicles up to 15-passenger vans) and/or passenger vehicle with trailer combinations; or two buses and two passenger vehicles and/or passenger vehicle with trailer combinations	\$10	\$130																							

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Water, Electric, and Sewage Sites: Access to water, electric, and sewage hookups; access to bathhouse and restrooms.		Special Group Camping Areas:	
Kiptopeke	\$35 per night	Fairy Stone Group Campsites.	\$20 per site per night
Hungry Mother	\$28 per night	Twin Lakes, Cedar Crest Group Camping Area.	\$210 for entire area per night
Primitive Camping Sites: primitive restrooms; no showers.		Chippokes Plantation: All 4 Sites; Group Rate; 24 persons maximum. Natural Tunnel Group Area. Grayson Highlands Group Area. James River Group Area. Shenandoah Group Area.	\$67 per night (only available as entire group area)
All parks where available unless noted below.	\$11 per night	Westmoreland Group Area.	\$122 per night
James River, Sky Meadows.	\$13 per night	Standard Buddy Sites: All parks where available unless noted below.	\$78 per night
Grayson Highlands: Sites with electricity (November, March and April when bathhouses are closed)	\$15 per night	Douthat Buddy Sites.	\$97 per night
<u>Occoneechee (persons renting the entire equestrian campground will receive a 10% discount on the combined price for sites and stalls, including transaction fees).</u>	<u>\$15 per night</u>	James River Equestrian Group Area (persons renting the entire equestrian campground will receive a 10% discount on the combined price for sites and stalls, including transaction fees).	\$91 \$216 per night
New River Trail Primitive camping sites at Foster Falls and Cliffview	\$15 per night	Camping – Other Fees	
New River Trail Water Trail Camping (no potable water)	\$12 per night	Camping Site Transaction Fee: Applies to each purchase transaction of a camping visit to a campsite (i.e., one transaction fee per camping visit per site no matter how many nights). Applies to Internet, reservation center, and walk up visits.	\$5.00
Horse Camping		Pet Fees (this fee does not apply to service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia).	\$5.00 per pet per night
Horse Stall Fee	\$7.00 per night (Outside Stalls) \$9.00 per night (Inside Stall)	Dump Station Fee: Free to state park campers during stay.	\$5.00 per use
Standard Rates		Camping Reservation Cancellation Fee Individual Site.	\$10 per reservation
Primitive Group Camp Rental (camping in special primitive group areas) All parks where available.		Camping Reservation Cancellation Fee Group Sites.	\$30 per reservation
Up to 20 campers.	\$61 for entire area per night	Hiker or noncamper Shower Fee at Virginia State Parks.	\$5.00 per person
Up to 30 campers.	\$91 for entire area per night		
31 or more campers, up to maximum capacity of group camp area.	\$122 for entire area per night		
Grayson Highlands: Primitive camping is available in the stable area November, March, and April.	\$15 per site per night		

Notes on camping:

1. Check-out time is 3 p.m. and check-in time is 4 p.m.
2. Camping Transfer/Cancellation/Early Departure Policy.
 - a. Any fees to be refunded are calculated less the applicable cancellation fee(s).
 - b. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.
 - c. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.
 - d. A customer may move a camping reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to 4 p.m. on the scheduled date of arrival. If the reservation center will not be open again prior to the start date of the reservation, transferring is not an option. There is no fee to transfer.
 - e. A camping reservation may be canceled until 4 p.m. on the scheduled date of arrival but campers will be charged the cancellation fee. This cancellation fee applies to each separate reservation made.
 - f. Once the 4 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure.
 - g. After the check-in time is reached, the first night is considered used whether the site is occupied or not.
 - h. There is a one-night penalty, deducted from any amount available for refund, for early departure.
3. Campers are allowed two vehicles per campsite per day without charge of a parking fee. Additional vehicles, beyond two, must pay the prevailing parking fee in effect at the park for each day that the vehicle(s) is parked in the park. The number of vehicles allowed to park on the campsite varies according to site design and size of other camping equipment. No vehicles shall park on a campsite in other than the designated area for this purpose. Camper vehicles that do not fit on the site, whether or not they require the special camper vehicle fee, must park in the designated overflow parking area.
4. Each member of the camping party, except in primitive group areas, up to the maximum allowable per site, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of camping. Passes only issued during days and seasons of operation of the swimming facility and only good during the member's registered stay.
5. Damage to campsites, not considered normal wear and tear, will be billed to the person registered for the campsite on an itemized cost basis.

6. At honor collection sites, the stated camping fees on this list shall be considered as having tax included. Honor collection is defined as the payment of the camping fee on-site at the park at a nonelectronic collection point at which the payment is placed in a box or safe provided for that purpose.

7. Horse stalls may only be rented in conjunction with the rental of a campsite in the equestrian campground and a person must occupy the campsite. All horses brought to the park by overnight guests must be kept in rental stalls except in primitive equestrian areas at New River Trail and James River State Parks.

4VAC5-36-100. Cabin fees.

CABIN RENTALS (TAXABLE, Price here does not include tax)

	BASE RATE		VIRGINIA RESIDENTS	
PRIME SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	\$84	\$502	\$75	\$450
One Bedroom, Standard	\$98	\$589	\$88	\$529
One Bedroom, Waterfront or Water View	\$108	\$652	\$97	\$582
One Bedroom, Chippokes Plantation	\$113	\$686	\$104	\$617
Two Bedroom, Standard, all parks where available unless noted below	\$112	\$680	\$102	\$613
Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, <u>Shenandoah</u>	\$118	\$713	\$106	\$643
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	\$125	\$749	\$112	\$674

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Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna	\$130	\$784	\$118	\$706
Two Bedroom, First Landing, Chippokes Plantation	\$132	\$791	\$119	\$712
Three Bedroom, Standard, all parks where available unless noted below	\$129	\$771	\$116	\$692
Three Bedroom, Chippokes Plantation, Bel Air Guest House	\$149	\$898	\$134	\$809
Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, <u>Shenandoah</u>	\$149	\$888	\$130	\$798
Hill Lodge (Twin Lakes)	\$167	\$1,002	\$150	\$902
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	\$301	\$1,802	\$270	\$1,622
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	\$354	\$2,124	\$318	\$1,913
6-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, <u>Shenandoah</u>	\$371	\$2,226	\$334	\$2,004
MID-SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee

Efficiency	\$74	\$446	\$67	\$401
One Bedroom, Standard	\$87	\$523	\$80	\$470
One Bedroom, Waterfront or Water View	\$96	\$574	\$86	\$519
One Bedroom, Chippokes Plantation	\$101	\$611	\$93	\$549
Two Bedroom, Standard, all parks where available unless noted below	\$101	\$605	\$91	\$545
Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, <u>Shenandoah</u>	\$105	\$634	\$96	\$570
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	\$111	\$666	\$100	\$599
Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna	\$117	\$697	\$104	\$627
Two Bedroom, First Landing, Chippokes Plantation	\$117	\$704	\$106	\$634
Three Bedroom, Standard, all parks where available unless noted below	\$113	\$686	\$104	\$617
Three Bedroom, Chippokes Plantation, Bel Air Guest House	\$133	\$799	\$119	\$720
Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, <u>Shenandoah</u>	\$133	\$790	\$116	\$710
Hill Lodge (Twin Lakes)	\$149	\$891	\$133	\$802

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Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	\$267	\$1,603	\$240	\$1,442
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	\$315	\$1,892	\$284	\$1,702
6-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, <u>Shenandoah</u>	\$331	\$1,982	\$297	\$1,783
OFF-SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	\$62	\$372	\$57	\$335
One Bedroom, Standard	\$72	\$436	\$65	\$392
One Bedroom, Waterfront or Water View	\$81	\$478	\$71	\$432
One Bedroom, Chippokes Plantation	\$84	\$508	\$77	\$457
Two Bedroom, Standard, all parks where available unless noted below	\$84	\$504	\$75	\$454
Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, <u>Shenandoah</u>	\$88	\$528	\$79	\$475
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	\$92	\$554	\$83	\$499

Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna	\$97	\$581	\$87	\$522
Two Bedroom, First Landing, Chippokes Plantation	\$98	\$585	\$88	\$527
Three Bedroom, Standard, all parks where available unless noted below	\$95	\$570	\$85	\$512
Three Bedroom, Chippokes Plantation, Bel Air Guest House	\$110	\$664	\$99	\$597
Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, <u>Shenandoah</u>	\$110	\$657	\$96	\$591
Hill Lodge (Twin Lakes)	\$124	\$741	\$111	\$667
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	\$222	\$1,332	\$201	\$1,199
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland))	\$263	\$1,573	\$237	\$1,415
6-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, <u>Shenandoah</u>	\$275	\$1,649	\$249	\$1,483

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CAMPING CABINS, CAMPING LODGES, YURTS, AND TRAVEL TRAILERS (camping cabins, camping lodges, yurts, and travel trailers located in campgrounds and operated in conjunction with the campground)	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Camping Cabin rental rate: (2-night minimum rental required)	\$49	NA	\$45	NA
Yurt rental: Standard fee	\$98	\$589	\$88	\$529
Travel Trailers: 25-30' Standard fee	\$98	\$589	\$88	\$529
Camping Lodges: Standard fee	\$98	\$589	\$88	\$529
Additional Cabin Fees:				
<u>Cabin Transaction Fee: Applies to each purchase transaction of a visit to a cabin (i.e., one transaction fee per cabin visit per site no matter how many nights). Applies to Internet, reservation center, and walk up visits.</u>	\$5.00			
Additional Bed Rentals	\$3.00 per rental night			
Additional linens at all parks unless otherwise noted. One set of linens is 1 sheet set (1 fitted sheet, 1 flat sheet, and 1 pillowcase) or 1 towel set (1 bath towel, 1 hand towel, and 1 washcloth or 2 bath towels and 1 washcloth)	\$2.00 per sheet set \$2.00 per towel set			

Cabin Cancellation Fee: Applies to all lodging in this section except as described below in "Lodge Cancellation Fee"	\$20 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy.	
Lodge Cancellation Fee: Applies to Fairy Stone Lodge, Douthat Lodge, Hungry Mother Lodge, Potomac River Retreat, and all 6-bedroom park lodges	\$50 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy	
Pet Fee (<u>this fee does not apply to service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia</u>).	\$10 per pet per night	
Pocahontas Group Cabins	DAY	WEEK
Algonquian Ecology Camp Dining Hall: 8 a.m. to 10 p.m. for day use, 24-hour use when rented with cabins	\$236	\$1,181
Swift Creek Dining Hall: 8 a.m. to 10 p.m. for day use, 24-hour use when rented with cabins	\$275	\$1,375
Dining Hall: fee for partial day rental when associated with full day rental as noted above	\$140	NA
Cabin Units: per unit, per night	\$112	\$560
Complete Algonquian Ecology Camp (4 units: 112 capacity) with Dining Hall	\$460	\$2,300

Complete Swift Creek Camp (2 units: 56 capacity) with Dining Hall	\$375	\$1,875
Refundable security deposit charged for all reservations	\$100 per reservation	

Claytor Lake Douthat Fairy Stone Hungry Mother James River Smith Mountain Lake <u>Shenandoah</u>	Friday night prior to Memorial Day through the Sunday night prior to Labor Day, and October 1 through October 31	April 1 through the Thursday night prior to Memorial Day, and Labor Day through September 30, and November 1 through November 30	December 1 through March 31
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Notes on Pocahontas Group Cabins:

Pocahontas Group Cabins: Reservations of \$200 or more require a 25% prepayment, due within 14 days of making the reservation. Balance of fees is due 60 days prior to the reservation start date. Reservations of less than \$200 require payment in full to confirm the reservation, due within 14 days of making the reservation. Cancellations made 30 days or more prior to the first day of the reservation shall receive a refund less a \$30 per unit cancellation fee. Cancellations made less than 30 days prior to the first date of the reservation receive no refund unless the units are subsequently rented, in which case the refund shall be full price minus \$30 per unit.

Notes on cabins:

1. Seasonal cabin rates shall be in effect according to the following schedule, except for camping cabins, camping lodges, yurts, and travel trailers, which operate on the same schedule and season as the campground at that particular park. In the event that a weekly rental period includes two seasonal rates, the higher rate will apply for the entire weekly rental period.

PARK	PRIME SEASON	MID-SEASON	OFF-SEASON
Bear Creek Lake Belle Isle Chippokes Plantation First Landing Kiptopeke Lake Anna Occoneechee Southwest Virginia Museum Staunton River Twin Lakes Westmoreland	Friday night prior to Memorial Day through the Sunday night prior to Labor Day	April 1 through the Thursday night prior to Memorial Day, and Labor Day through November 30	December 1 through March 31

2. All dates refer to the night of the stay; checkout time is 10 a.m. and check-in time is 3 p.m.

3. The following holiday periods are charged prime season weekend rates: the Wednesday, Thursday, Friday, and Saturday period that includes Thanksgiving Day; and Christmas Eve and Christmas Day; and New Year's Eve and New Year's Day.

4. Cabin guests are allowed two vehicles per cabin per day without charge of parking fee. Additional vehicles must pay the prevailing parking fee for each day that the vehicle is parked in the park. The number of vehicles allowed to park at the cabin varies according to site design and other factors. All vehicles must park in designated parking areas, either at the cabin or in the designated overflow parking area.

5. Lodge guests are allowed six vehicles per lodge per day without charge of parking fee. Additional vehicles must pay the prevailing vehicle parking fee for each day the vehicle is parked in the park. The number of vehicles allowed to park at the lodge varies according to site design and other factors. All vehicles must park in designated parking areas, either at the lodge or in the designated overflow parking area.

6. Damage to cabins, not considered normal wear and tear, may be billed to the person registered for the cabin on an itemized cost basis.

7. Each member of the cabin rental party, up to the maximum allowable for the rented unit, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of rental. Passes are only issued during days and seasons of operation of the swimming facility and are only good during the member's registered stay.

8. Employees of DCR and the members of committees and boards of DCR shall receive a discount of 50% on applicable cabin rates for any season, when the rental of

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such cabins is in connection with the official business of DCR or its committees or boards.

Notes on cabin transfer/cancellation/early departure policy:

1. Any fees to be refunded are calculated less the applicable cancellation fees listed below.
2. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.
3. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.
4. A customer may move a cabin reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to 5 p.m. on the Monday before the scheduled date of arrival. After 5 p.m. on the Monday before the scheduled date of arrival, cancellation is the only option (see note 5 below) except that transfers to a different cabin for the same rental nights shall be allowed, subject to availability, up to the check in time for the original reservation.
5. Once the reservation is paid for, a customer may cancel in full with payment of the required cancellation fee if there are more than 30 days before the scheduled arrival date. As long as the reservation is not during the one-week minimum stay requirement period, the length of stay may be reduced without a fee as long as there are more than 30 days before the scheduled arrival. However, the length of stay cannot be less than two nights. During the 30 days prior to the scheduled arrival date, the cancellation fee is charged for each night cancelled or reduced from the stay. Once the official check-in time on the scheduled arrival date is reached, the cancellation policy is no longer in effect and the early departure policy applies.
6. Once the 3 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure. There is a two night minimum charge associated with all cabin stays. Reducing the total nights stayed will incur a \$20 per night fee. If the original reservation was for a week, the weekly discount will no longer be valid and the fee will be adjusted to the nightly rate before any refunds are calculated.

4VAC5-36-110. Picnic shelters fees.

PICNIC SHELTERS (TAXABLE)

The shelter rental periods shall be from park opening until park closing, unless otherwise specified.	DAY
Standard Small Picnic Shelter Rental Fee: Bear Creek Lake, Belle Isle, Caledon, Chippokes Plantation, Claytor Lake (including gazebo), Douthat, Holliday Lake, Hungry Mother (half shelter), Lake Anna,	\$53

Natural Tunnel, New River Trail, Occoneechee, Pocahontas, Smith Mountain Lake, Twin Lakes, Westmoreland, York River, and all other small park picnic shelters.	
Standard Large Picnic Shelter Rental Fee: Belle Isle, Chippokes Plantation, Claytor Lake, Douthat Fairy Stone, First Landing, Grayson Highlands, Hungry Mother (full shelter), James River, Kiptopeke, Lake Anna, Natural Tunnel, Occoneechee, Pocahontas, Shenandoah, Smith Mountain Lake (Pavilion), Staunton River, Staunton River Battlefield, Twin Lakes, Westmoreland, York River, and all other large park picnic shelters.	\$84
Shenandoah Large Group Shelter	\$95
Leesylvania Shelter Rental	\$126
Leesylvania: Lee's Landing Picnic Area Rental	\$58
Leesylvania: Lee's Landing Picnic Shelter	\$315
With 15 tables and 100 chairs	\$735
Mason Neck Picnic Area Rental	
Without tent shelter	\$58
With tent shelter (seasonably available)	\$126
Chippokes Plantation Conference Shelter (with kitchen)	\$105 per function
Chippokes Plantation Conference Shelter (without kitchen)	\$63 per function
Mini-Shelter: All parks where available unless otherwise noted.	\$21
Event Tent Rental: Full day in-park rental only. Price includes set up and take down.	
Standard fee: All parks where available unless otherwise noted.	\$0.38 per square foot
Chippokes Plantation, Douthat, Kiptopeke, Lake Anna, Pocahontas, Shenandoah River, Sky Meadows, Smith Mountain Lake, York River.	\$0.45 per square foot
False Cape, First Landing, Leesylvania, Mason Neck.	\$0.50 per square foot
Standard 10' x 10' event tent	\$25 per day
Westmoreland, Caledon Natural Area: 20' x 40' tent with tables and chairs	\$400 per day

White String Lights for Tent	\$0.80 per foot
Side Panels for Tent	\$1.50 per foot
Standard Shelter Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within 14 days prior to date. Shelter reservation may be transferred without penalty if the change is made through the reservations center prior to scheduled use.	\$10

4VAC5-36-115. Horse arena fees.

HORSE ARENAS (TAXABLE)

	HALF-DAY	DAY
Group Rental of Entire Horse Arena Facility		
New River Trail (includes lights)	\$250	\$400 <u>\$450</u>
Pocahontas (8 a.m. until dark, no lights available)	\$180	\$300
	WEEKDAYS	WEEKENDS
Individual Horse Arena Facility Use Daily Pass (does not include parking fee)		
New River Trail and Pocahontas	\$5.00 per person	\$6.00 per person
Individual Horse Arena Facility Use Annual Pass (does not include parking fee) New River Trail and Pocahontas	\$30 per person	

4VAC5-36-120. Amphitheater and gazebo fees.

AMPHITHEATERS AND GAZEBOS (TAXABLE, Price here does not include tax)

Amphitheater or Gazebo Rental Fee: The amphitheater or gazebo rental periods shall be from park opening until park closing unless otherwise specified.	DAY
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Leesylvania, Fairy Stone, Staunton River, Kiptopeke and all other amphitheaters and gazebos unless noted below.	\$32
Hungry Mother, Occoneechee, Westmoreland, New River Trail, Shenandoah River (overlook).	\$53
Smith Mountain Lake, Natural Tunnel (gazebo at Cove Ridge), James River, First Landing (gazebo at Chesapeake Bay Center).	\$74
Claytor Lake (gazebo)	\$84
York River and Douthat	\$105
<u>Shenandoah Overlook Rental</u>	<u>\$16 per half-day</u> <u>\$32 per full day</u>
Natural Tunnel and First Landing Amphitheaters: Private group or company rate:	\$315
Natural Tunnel and First Landing Amphitheaters: Educational group.	\$158
Natural Tunnel Amphitheater Wedding Package: Three consecutive half-day rental periods.	\$420 per package
First Landing: Courtyard at Chesapeake Bay Center; includes amphitheater and gazebo.	\$788
First Landing: Additional hourly charge for hours beyond 10 p.m. for gazebo.	\$11 per hour
First Landing: Additional hourly charge for hours beyond 10 p.m. for Courtyard.	\$53 per hour
Fishing Tournament Staging. All parks where available.	\$26
Pocahontas Amphitheater Area: Without Heritage Center. Includes Amphitheater, Exhibit Area, Restrooms and use of sound system.	\$630
Pocahontas Amphitheater Area Plus Heritage Center	\$840
Parking Attendant (per attendant).	\$11 per hour

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Law Enforcement Officer (per officer).	\$26 per hour
Natural Tunnel: Rental of Observation Deck at mouth of tunnel for dinner parties. Includes use of chairlift for transportation of guests and supplies and set-up/take-down of tables and chairs.	\$300 per 4 hours
Natural Tunnel Amphitheater Concession Building	\$42
Natural Tunnel: Sound System Rental	\$32
Stage Cover Rental:	
Öeeöneechee	\$26
Standard Amphitheater/Gazebo Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within fourteen days prior to date.	\$11
All parks unless listed below.	\$11
Pocahontas Amphitheater or First Landing Courtyard	\$105

4VAC5-36-130. Boat storage fees.

BOAT STORAGE (TAXABLE, Price here does not include tax)

Boat Storage Fees	FEE
Standard Annual Boat Storage Fee: Bear Creek Lake, Douthat, Hungry Mother, and all other parks where available unless noted below.	\$35
Leesylvania Boat Storage Fees: Annual Fee (Dec. 1 – Nov. 30). Fee prorated for partial year on a months-remaining basis. Fee includes one park/launch pass per storage rental space to coincide with the rental period.	
Boat Length Up To 16'	\$755
Boat Length Up To 17'	\$800
Boat Length Up To 18'	\$850
Boat Length Up To 19'	\$895
Boat Length Up To 20'	\$945
Boat Length Up To 21'	\$990

Boat Length Up To 22'	\$1,035
Boat Length Up To 23'	\$1,085
Boat Length Up To 24'	\$1,155
Boat Length Up To 25'	\$1,210
Leesylvania Canoe/Kayak Storage: Renter must possess an annual parking pass	\$10 per month
Staunton River Boat Shed Fees: Does not include parking or launching fee, if applicable	
Nightly Storage	\$4.00
Monthly Storage	\$15
Six-Month Storage	\$70
One-year boat storage	\$120 without annual park/launch pass \$150 with Buggs Island Special pass
Claytor Lake: Boat Dock Slips:	FEE PER RENTAL SEASON FEE PER RENTAL NIGHT
7' wide and under	\$360 <u>\$425</u> \$9.00 <u>\$10</u>
9' wide and under	\$560 <u>\$650</u> \$18 <u>\$20</u>
14' wide and under	\$715 <u>\$825</u> \$18 <u>\$20</u>
Extended length slips	\$605 <u>\$700</u>

4VAC5-36-140. Interpretive canoe, boat, and paddleboat fees.

INTERPRETIVE CANOE, BOAT, AND PADDLEBOAT PROGRAMS (NONTAXABLE)

Interpretive Canoe, Boat, and Paddleboat Tours:	FEE
Environmental Education Group Canoe Tour: Available only to bona fide educational groups. Requires previous reservation and arrangements. Minimum 4 <u>10</u> persons. Mason Neck and all other parks where available unless otherwise noted.	\$3.00 per person

Regulations

Standard Canoe Interpretive Tour Fee for Individuals: Applies to canoe, rowboat, or paddleboat tours. Child riding as third passenger, where allowed, is free.		Moonlight/Night Canoe Interpretive Tour Fee for Individuals: Mason Neck.	\$20 per person
Individuals at all parks unless noted below.	\$5.00 per person	Sunset, Moonlight, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: Applies to canoe, rowboat, or paddleboat tours. Minimum four paying customers.	
Individuals at Leesylvania, York River, Pocahontas, Kiptopeke.	\$9.00 per person	All parks where offered unless otherwise noted.	\$5.00 per person
Individuals at Mason Neck.	\$15 per person	Sunset, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: Leesylvania, York River. Requires 4 or more paying customers.	\$7.00 per person
Individuals at Natural Tunnel.	\$12 per person	Sunset, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: New River Trail, Mason Neck.	\$11 per person
Individuals at False Cape: Back Bay Interpretive Tour.	\$16 per person	Moonlight/Night Canoe Interpretive Tour Fee for Family Groups: Leesylvania, York River. Requires 4 or more paying customers.	\$8.00 per person
Family Groups at all parks unless noted below. Minimum 4 paying customers.	\$4.00 per person	Extended Canoe Interpretive Tour Fee for Family Groups: Grayson Highlands.	\$25 per person
Family Groups at Leesylvania, Pocahontas, York River, Kiptopeke. Minimum 4 paying customers.	\$6.00 per person	Overnight Canoe Tour: Mason Neck/Leesylvania/Widewater (includes tents and dinner).	\$145 per person
Family Groups at Mason Neck.	\$9.00 per person	Bear Creek Lake: Willis River Interpretive Canoe Tour	
Group rate at Natural Tunnel (minimum & 10 paying customers).	\$10 \$12 per person	Short Trip.	\$8.00 per person
Sunset, Moonlight, Dawn, or Extended Canoe Interpretive Tour Fee for Individuals: Applies to canoe, rowboat, or paddleboat tours.		Long Trip.	\$10 per person
All parks where offered unless noted below.	\$6.00 per person	Natural Tunnel Clinch River:	
Sunset, Dawn, Extended Canoe Interpretive Tour Fee for Individuals: Leesylvania, York River.	\$11 per person	Half-Day Trip Group Rate. Requires & 10 or more paying customers.	\$12 per person
Sunset, Dawn, Extended Canoe Interpretive Tour Fee for Individuals: New River Trail, Mason Neck.	\$15 per person	Full-Day Trip. Group Rate. Requires & 10 or more paying customers.	\$20 per person
Extended Canoe Interpretive Tour Fee for Individuals: Grayson Highlands.	\$25 per person	Half-Day Trip. Individuals.	\$15 per person
Moonlight/Night Canoe Interpretive Tour Fee for Individuals: Leesylvania, York River.	\$13 per person	Full-Day Trip. Individuals.	\$25 per person

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4VAC5-36-150. Interpretive and educational tours and program fees.

INTERPRETIVE AND EDUCATIONAL TOURS AND PROGRAMS (NONTAXABLE)

Interpretive and Educational Tours and Programs		
PARK	PROGRAM	FEE
All parks unless otherwise noted:	Standard Interpretive Program: (Fee does not apply to informational programs such as campfire programs or roving interpretation).	\$2.00 per person \$6.00 per family
	Standard Night Hike or Evening Program	\$3.00 per person \$8.00 per family
	Standard Workshop Fee	\$5.00 per child (Age 12 and under) \$15 per adult (Age 13 and over)
	Standard Wagon Ride Program	\$3.00 per person \$8.00 per family \$25 exclusive group
	Extended or Special Event Wagon Ride Program	\$4.00 per person \$10 per family \$75 exclusive group booking
	Park Outreach Program: Price per park staff member conducting program	\$10 for under 2 hours \$25 for 2 to 3 hours \$50 for 4 hours plus

Overnight Trip. Individuals.	\$45 per person
Short Trip. Clinchport to Copper Creek	\$7.00 per person
Interpretive Kayak Tour, Solo Kayak: All parks where available unless otherwise noted.	\$16 per person
Interpretive Kayak Tour, Solo Kayak: Westmoreland	\$19 per person
Interpretive Kayak Tour, Tandem Kayak: All parks where available unless otherwise noted.	\$22 per kayak
Interpretive Kayak Tour, Tandem Kayak: Westmoreland	\$25 per kayak
Interpretive Pontoon Boat Tour: All parks where available.	\$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)
<u>Interpretive Tube Tour: all parks where available unless otherwise noted.</u>	<u>\$6.00 per person</u>
Lake Excursion and Ecology Tour: All parks where available unless otherwise noted (limit 6 people per tour)	\$10 per person
Claytor Lake	\$10 (Age 13 and over) \$7.00 (Age 3 through 12)
Rental of Entire Boat (Exclusive Use): All parks where available	\$60 per tour

Notes on Interpretive Canoe, Boat, and Paddleboat Programs:

1. Cancellation Policy for group reservations: Guest must cancel four days prior to the tour date in order to receive a refund. Any guest canceling less than four days before the start of the reservation will not be eligible for a refund. A one-time \$10 cancellation fee will apply per reservation regardless of number of boats reserved. In the event of inclement weather where the park must cancel, the guest will be offered either a complete refund or reservation transfer to another date.

2. Additional costs for supplies and materials may apply.

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	Standard Junior Ranger Program: 4-day program. All parks unless noted below.	\$10 full program \$3.00 per day		Make Your Own Hiking Stick Program	\$3.00 per person
	Haunted Hike	\$1.00 (Age 3 through 12) \$3.00 (Age 13 and over)		2-Day Photography Class	\$35 per person
	Geo Caching Interpretive Program.	\$3.00 per person \$8.00 per family \$25 per group		Individual interpretive program pass: (Allows admission for one person to 4 interpretive programs valued at \$3.00 or less)	\$6.00 per pass
	Nature-Themed Birthday Party: Includes a nature talk, hike, games, songs, and time in the Nature Center for gifts and cakes. At least one staff member is present to conduct activities.	\$96 per hour plus materials cost for 12 children \$8.00 per additional child		Family interpretive program pass: (Allows admission for members of the same family to 4 interpretive programs valued at \$8.00 or less)	\$18 per pass
	<u>Standard Orienteering Program</u>	<u>\$3.00 per person</u> <u>\$25 per group (20 maximum)</u>			
	<u>Standard Women's Wellness Weekend Program</u>	<u>\$149 per person</u>			
<u>Chippokes</u>	<u>Photography Class</u>	<u>\$45 per person</u>			
Grayson Highlands	Junior Ranger Program	\$5.00 per person per day			
	Hayrides	\$2.00 per child \$3.00 per adult			
	Adventure Rangers Interpretive Program	\$10 per person per day			
	Make a Birdhouse Program	\$5.00 per person			
			<u>Occoneechee, Caledon, Sky Meadows</u>		
			Pocahontas	Nature Camps	\$100 per child per program plus materials cost \$30 per child plus materials cost for Jr. Assistant. The Jr. Assistant helps the park staff in conducting camp programs.
				Curious Kids	\$3.00 per program
				Nature and Discovery Programs (School/Groups Outreach)	\$50 per program at school or park (maximum 35 participants) <u>\$4.00 per child</u> <u>\$80 minimum</u> \$15 additional if program is outside of Chesterfield County

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Sky Meadows	<u>Music Program</u>	\$5.00 per person	Southwest Virginia Museum	How Our Ancestors Lived (9 -week children's series)	\$10 \$5.00 per person for entire series \$2.00 per person for individual program
	<u>A Day in Wildflower Woods</u>	\$8.00 per person		<u>Special Themed Interpretive Program</u>	\$10 per person
	<u>Interpretive Program Series: 6-program series</u>	\$15 per person per program \$54 \$45 per person per 4 programs \$72 \$60 per person per 6 programs		<u>Music or Literary Event</u>	\$5.00 per person
				Workshop (Adult)	\$10 per person
	<u>Nature and Discovery Programs (School/Groups Outreach)</u>	\$2.00 per child <u>\$50</u> minimum <u>\$15</u> additional if program is outside of the following counties: Fauquier, Frederick, Clark, and Loudoun		Workshop (Children)	\$5.00 per person
<u>House and Grounds Tour</u>	\$3.00 per person age 13 and older \$2.00 per child age 6 through 12 \$8.00 per family	<u>Nature and Discovery Programs (School/Groups Outreach)</u>	\$25 for under 2 hours <u>\$50</u> from 2 hours to under 4 hours <u>\$75</u> for 4 or more hours		
<u>Smith Mountain Lake</u>	<u>Nature and Discovery Programs (School/Groups Outreach)</u>	\$10 per school visit	<u>Guided Tour or Activity</u>	<u>School Groups:</u> \$1.50 per person <u>Public Groups:</u> \$2.50 per person	
			<u>Step-On Tour Guide Service</u>	\$7.00 per person	
			Caledon	Caledon Eagle Tours	\$6.00 per person \$50 Flat Rate (minimum: 10; maximum: 20)
				All Group Programs up to 2 hours long	\$5.00 per person

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	Haunted Hay Ride	\$12 \$5.00 per person (age 7 and over) <u>Children under 7 free</u>	Field Trips		Per program charge with use of center; chairlift passes, if required for program, included in cost
	Caledon Junior Ranger Program	\$15 per person			
	Special Program Bus Fee: Programs involving transportation within the natural area.	\$3.00 per person			
	Workshop (Adult)	\$15 per person			
	Workshop (Children)	\$5.00 per person			
Natural Tunnel: Cove Ridge	Guided Programs	\$25 per program (Maximum 30 participants) \$25 facility fee (If applicable)	Kiptopeke	Birding Program (Hawk observatory/bird banding station)	\$4.00 per person
	Environmental Education (Children's Activities)	\$25 per program (Maximum 30 participants) \$25 facility fee (If applicable)		Birding Program (Group Rates)	\$35 (Corporate) \$25 (Nonprofit)
	3 or More Activities	\$15 per program \$25 facility fee (If applicable)	York River	Guided Adventure Programs	\$4.00 per person \$40 per group (Minimum 12 persons)
	Environmental Education (Adult Facilitation)	\$15 per person		York River Children's Programs	\$2.00 per person, single program \$10 unlimited participation throughout Interpretive Season
			"Nature Party": Nature Themed Birthday Party for Children	\$10 per person	
			Westmoreland	Guided Program Fee	\$25 per person

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Natural Tunnel	Junior Ranger Program (Includes T-Shirt)	\$35 per person	Down A Lazy River Guided Canoe Trip	\$6.00 per child \$8.00 per adult	
	Standard Wagon Ride Program	\$50 Exclusive Education Group Reservation Booking		Hayride	\$1.00 per person
	Ranger Led Programs – Groups	\$3.00 per person	First Landing	Junior Ranger Program	\$25 per person
	Hay Wagon and Hot Dog Roast	\$10 per person		Kritter Kids	\$25 per person
	Bike Tours - 2 hours	\$10 per person	Bear Creek Lake	Interpretive bike tours Junior Ranger Program	\$3.00 per person \$20 per person
	Extended Bike Tours - 4 hours	\$15 per person		Leesylvania	Junior Ranger Program
	Canoe and Bike Tour - 4 hours	\$20 per person	Halloween Haunted Hike		\$2.00 per person \$6.00 per group (4 person maximum)
	Halloween Haunted House/Hay Wagon Ride	\$3.00 (Age 3 through 12) \$5.00 (Age 13 and over)	Interpretive Programs		\$2.00 per person
	Canoe/Hay Wagon Ride	\$12 (Age 3 through 12) \$15 (Age 13 and over)	Kids Fishing Tournament		\$2.00 per child
	Mason Neck	Junior Ranger Program	\$50 per person	Natural Tunnel	Pannel Cave Tour
Holliday Lake	Field Archaeology Workshop	\$25 per person	Bolling Cave Tours		\$15 per person \$12 per person (Family-Group; 8-person minimum)
	Junior Ranger Program (3 half-day workshop) (Ages 6 to 13)	\$25 per child	Stock Creek Tunnel Tour		\$5.00 per person
False Cape	Wildlife Watch Tour – Per Person	\$8.00 per person	Westmoreland	Orienteering Program	\$3.00 per person \$25 per group (20 maximum)
	Astronomy Program	\$10 per person			
Staunton River	Junior Ranger Program	\$4.00 per session			
	Interpretive Craft	\$2.00 per person			

New River Trail	New River Trail Seniors Van Tour Full Day	\$25 per person
	New River Trail Seniors Van Tour Half Day	\$15 per person
	Bertha Cave Tour	\$10 per person
James River	Haunted Wagon Ride	\$5.00 per person (Age 7 and over) Children 6 and under free
Belle Isle	Triple Treat Program: Hayride/Canoe/Campfire	\$10 per person
	<u>Junior Ranger 3-day program</u>	<u>\$5.00 per class</u>
	<u>Bike Tour: visitors can supply their own bike or rent separately</u>	<u>\$2.00 per person</u> <u>\$6.00 per family</u>

	Photography Workshop, no meals, no lodging	\$225 per person
	Nonparticipant Lodging and Food	\$235 per person
	Nonparticipant Meals only	\$125 per person
Sky Meadows	Getting Started in Nature Photography	\$60 per person
Lake Anna	Prospecting for Gold Workshop	\$50 per person
Hungry Mother	Mountain Empire Fly Fishing School	\$225 per person
Grayson Highlands	Guided Fly Fishing Trip: Half-day	\$50 per person
	Guided Fly Fishing Trip: Full-day	\$75 per person

4VAC5-36-170. Hunting fees.

HUNTING (NONTAXABLE)

Hunting: All parks where available unless otherwise noted. (Does not apply to open hunting areas at Fairy Stone, Hungry Mother, Grayson Highlands, Occoneechee, and Pocahontas)	FEE
Standard Daily Hunting Fee for reservation-type managed hunts (No separate application fee required).	\$15 per hunter per day
Standard Daily Hunting Fee for lottery-type managed hunts (Paid in addition to any applicable application fee).	\$10 per hunter per day
Lottery Hunt Application Fee	\$5.00 per application
Chippokes Plantation: Southern Heritage Deer Hunt	\$325 per adult, or youth 16 through 17 with a separate stand \$200 per youth ages 12 through 17, requires shared stand with a paying adult \$50 per nonhunting companion

Notes on interpretive and educational tours and programs:

Additional costs for supplies and materials may apply.

4VAC5-36-160. Outdoor skill program fees.

OUTDOOR SKILL PROGRAMS (NONTAXABLE)

Outdoor Skill Programs	FEE	
Grayson Highlands	Outdoor Survival Skills and Backpacking	\$95 per person
	Basic Map and Compass	\$25 per person
	Beginning Rock Climbing and Backpacking	\$95 per person
	Advanced Map and Compass Skills	\$25 per person
Westmoreland, Douthat, Hungry Mother, False Cape	Photography Workshop, with meals and lodging	\$325 per person
	Photography Workshop, with meals, no lodging	\$295 per person

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<u>Waterfowl Hunt at Crow's Nest Natural Area Preserve Permit (maximum of 3 per person per season)</u>	<u>\$100 each</u>
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Notes on hunting fees:

At parks where there is a "standby" process, no additional daily fee for that hunting season shall be charged if the hunter has already paid at least one previous daily hunting fee for that park's hunting season.

4VAC5-36-190. Environmental education center fees.

ENVIRONMENTAL EDUCATION SERVICES AND FACILITIES FEES
(TAXABLE unless otherwise noted)

PARK	SERVICE OR FACILITY	FEE
Caledon	Rental of Environmental Education Center	\$60 per day \$40 per half-day
Claytor Lake	Rental of Discovery Center, Small Conference Room	\$15 per hour \$50 per 4 hours \$75 per 8 hours
First Landing	Chesapeake Bay Center Exhibit Area. Fee required after 5 p.m. or after regular operating hours	\$25 per hour
False Cape State Park	Wash Woods Environmental Education Center - Use by educational group	\$200 per night \$60 day use
	Wash Woods Environmental Education Center - Use by noneducational group	\$300 per night \$100 day use
	Deposit to accompany reservation application	\$40
	Environmental Education Programs (Nontaxable)	\$75
	Bus transportation for educational group (Nontaxable)	\$36 round trip \$18 one way

Bus transportation for noneducational group (Nontaxable)	\$48 round trip \$24 one way	
Bus transportation within the park (Nontaxable)	\$18 per hour	
Beach vehicle transportation for educational group (10 person minimum)	\$100 round trip	
Beach vehicle transportation for noneducational group (10 person minimum)	\$160 round trip	
Beach vehicle transportation, individual rate on regularly scheduled dates	\$8.00 round trip per person	
Transportation, Additional Park Vehicle (Nontaxable)	\$36 round trip	
Transportation for nonemergency but unplanned trips out of park:		
Transportation for Camper	\$18 per trip	
Transportation for Camper with Canoe or Kayak	\$24 per trip	
Kayak/Canoe Trailer Transportation for Campers	\$100 per trip	
After hours transportation surcharge	\$8.00 per trip	
Equipment Rental	\$25	
Mason Neck	Hartwell Environmental Education Center (Includes wet lab and equipment)	\$50 per half-day \$80 per full-day
	Environmental Education Equipment only: Excludes center and wet lab – outdoor activity only	\$25 per half-day \$40 per full-day
Leesylvania	Discovery Room	
	Teacher-Led Programs Up to 4 hours (Nontaxable)	\$50

	Ranger-Led Programs Up to 4 hours (Nontaxable)	\$85	Standard Canoe Rental:	
	Menu Programs: Picked by instructor – led by ranger; 1-hour 15-minute minimum (Nontaxable)	\$30	All parks where available unless otherwise noted.	\$8.00 per hour \$15 per half-day \$25 per full-day \$40 for 24 hours \$100 per week
	Equipment Rental: For use outside of Visitor Center; 4 hour maximum	\$20	Smith Mountain Lake	\$8.00 per half-hour \$12 per one hour \$60 for 24 hours \$30 additional for each day after first day

Note on Environmental Education Center Fees:

Environmental Education Center Cancellation Policy: For day-use E.E.C. cancellation policy, Picnic Shelter cancellation policy shall apply. For overnight-use E.E.C. cancellation policy, cabin cancellation policy shall apply.

4VAC5-36-200. Miscellaneous rental fees.

RENTALS (TAXABLE; Price here does not include tax)

Bike Rentals (includes helmet)	FEE
All parks where available unless otherwise noted	\$3.00 per hour \$8.00 per half-day \$15 per full-day
Claytor Lake	\$4.00 per hour \$25 per day
New River Trail, James River, Mason Neck	\$5.00 per hour \$12 per half-day \$18 per day
First Landing	\$5.00 per hour \$16 per day
Bike Helmet without bike rental	\$1.00
Child Cart for bike	\$5.00
Boat Rentals	
Standard Paddle Boat Rental:	
All parks where available unless otherwise noted	\$4.00 per half-hour \$6.00 per hour
Fairy Stone, Westmoreland, <u>Hungry Mother</u>	\$5.00 per half-hour \$8.00 per hour
Smith Mountain Lake	\$10 per half-hour \$15 per one hour \$80 for 24 hours \$30 additional for each day after first day

Claytor Lake	\$10 per hour \$35 per half-day \$50 per day
Leesylvania, Mason Neck	\$7.00 per half-hour \$12 per hour \$35 per half-day \$50 per day \$60 per 24 hours
James River	\$10 per hour (does not include shuttle) \$40 per day (does not include shuttle) \$120 per week (does not include shuttle) \$12 per half hour past return time
Standard Float Trips:	
Shenandoah River	\$5.00 per person
James River	
Bent Creek to Canoe Landing:	
Canoe	\$45 Max 3 people
Single Kayak	\$35 per kayak
Double Kayak	\$45 per kayak
Canoe Landing to Dixon Landing:	
Tubes	\$10 \$12 per tube
Group of four or more	\$8.00 \$10 per tube
Canoe	\$15 per canoe
Single Kayak	\$15 per kayak
Double Kayak	\$15 per kayak

Regulations

Bent Creek to Dixon Landing:		Kayak Rental (includes shuttle)	
Canoe	\$50 per canoe	Trip A: Austinville to Foster Falls	\$25 per kayak
Single Kayak	\$40 per kayak	Trip B: Ivanhoe to Austinville	\$35 per kayak
Double Kayak	\$50 per kayak	Trip C: Ivanhoe to Foster Falls	\$40 per kayak
Shuttle Service Only:		Trip D: Foster Falls to Route 100	\$35 per kayak
Bent Creek Shuttle (Scheduled)	\$5.00 per boat (canoe/kayak) \$5.00 per person	Trip E: Route 100 to Allisonia	\$40 per kayak
Bent Creek Shuttle (Unscheduled)	\$15 per boat (canoe/kayak) \$15 per person	Trip F: Foster Falls to Allisonia	\$45 per kayak
Tubes	\$5.00 per person/Bent Creek Shuttle \$2.00 between landings in park	Standard Rowboat Rental, without motor:	
Late Rental Fee	\$12 \$15 per half hour past return time	All parks where available unless otherwise noted	\$6.00 per hour \$12 per half-day \$22 per full-day \$36 per 24 hours \$80 per week
New River Trail	\$7.00 per hour \$20 per half-day \$30 per day \$35 per half-day, includes canoe rental and shuttle \$50 per full day, includes canoe rental and shuttle	Hungry Mother: Rowboats	\$4.00 per hour \$15 per day \$40 per week
Canoe Rental (includes shuttle)		New River Trail: Rafts and flat-bottom boats	\$7.00 per hour \$20 per half-day \$30 per day
Trip A: Austinville to Foster Falls	\$35 per canoe	Standard Rowboat Rental with electric motor and battery: All parks where available unless otherwise noted	\$10 per hour \$20 per 4 hours \$36 per day \$100 per 4 days \$150 per week
Trip B: Ivanhoe to Austinville	\$45 per canoe	Standard Motorboat Rental, 16-foot console steering, 25-45 horsepower outboard. All parks where available.	\$18 per hour \$90 per day
Trip C: Ivanhoe to Foster Falls	\$50 per canoe	Standard Fishing Boat Rental with gasoline motor and one tank of fuel: All parks where available.	\$10 per hour (2-hour minimum) \$50 per day
Trip D: Foster Falls to Route 100	\$45 per canoe	Pedal Craft Rental: (Hydro-Bike, Surf-Bike, etc.) All parks where available unless otherwise noted.	
Trip E: Route 100 to Allisonia	\$50 per canoe	One person.	\$8.00 per hour
Trip F: Foster Falls to Allisonia	\$55 per canoe	Two person.	\$10 per hour

Regulations

<p>Smith Mountain Lake: Hydro Bike</p> <p style="text-align: right;">\$8.00 per half hour \$12 per hour \$4.00 additional per hour after first hour \$60 per 24 hours \$30 additional per day after first day</p>	<p style="text-align: center;"><u>Claytor Lake</u></p> <p style="text-align: right;"><u>\$10 per hour</u> <u>\$35 per half-day</u> <u>\$50 per day</u></p>
<p>Barracuda Boat. All parks where available</p> <p style="text-align: right;">\$10 per hour</p>	<p>Westmoreland</p> <p style="text-align: right;">\$12 per hour \$22 per half-day \$36 per day</p>
Solo Kayak Rental:	
<p>All parks where available unless otherwise noted</p> <p style="text-align: right;">\$8.00 per hour \$20 per half-day \$30 per day \$40 for 24 hours \$100 per week</p>	<p>Smith Mountain Lake</p> <p style="text-align: right;">\$10 per half-hour \$15 per hour \$80 for 24 hours \$30 additional for each day after first day</p>
<p>Westmoreland</p> <p style="text-align: right;">\$9.00 per hour \$17 per half-day \$30 per day</p>	<p>James River</p> <p style="text-align: right;">\$10 per hour (does not include shuttle) \$35 per day (does not include shuttle) \$120 per week (does not include shuttle) \$12 per half hour past return time</p>
<p>Smith Mountain Lake</p> <p style="text-align: right;">\$8.00 per half hour \$12 per hour \$60 per 24 hours \$30 additional per day after first day</p>	<p>Mason Neck</p> <p style="text-align: right;">\$8.00 per half-hour \$15 per hour \$45 per 4 hours \$60 per day</p>
<p>Mason Neck</p> <p style="text-align: right;">\$6.00 per half-hour \$10 per hour \$35 per half-day \$50 per day \$60 per 24 hours</p>	<p>Smith Mountain Lake: 14-foot fishing boat with 5 hp (3 person capacity). Rental does not include fuel and oil. Damage deposit of \$200 required.</p> <p style="text-align: right;">\$50 for 3 hours \$10 additional per hour after first 3 hours \$150 for 24 hours \$30 additional per day after first day</p>
<p>James River</p> <p style="text-align: right;">\$7.00 per hour (does not include shuttle) \$20 per day (does not include shuttle) \$80 per week (does not include shuttle) \$12 per half hour past return time</p>	<p>Claytor Lake: 14 foot Jon boat with 8 hp motor. Damage deposit of 50% required</p> <p style="text-align: right;">\$15 per hour \$45 per half day \$65 per day</p>
<p>Claytor Lake</p> <p style="text-align: right;">\$8.00 per hour \$25 per half-day \$40 per day</p>	<p>Claytor Lake: 14.5 foot fishing boat with 9.9 hp motor. Damage deposit of 50% required</p> <p style="text-align: right;">\$17 per hour \$50 per half day \$75 per day</p>
Tandem Kayak Rental:	
<p>All parks where available unless otherwise noted.</p> <p style="text-align: right;">\$10 per hour \$20 per half-day \$30 per full-day \$45 for 24 hours \$120 per week</p>	<p>Claytor Lake: 14-foot v-hull boat with 25 hp motor. Damage deposit of 50% required</p> <p style="text-align: right;">\$25 per hour \$65 per half-day \$100 per day</p>
	<p>Claytor Lake: 17 foot v hull with 140 hp motor. Damage deposit of 50% required</p> <p style="text-align: right;">\$60 per hour \$135 per half day \$210 per day</p>
	<p>Claytor Lake: 21 foot pontoon boat with 50 hp motor. Damage deposit of 50% required</p> <p style="text-align: right;">\$60 per hour \$135 per half day \$210 per day</p>

Regulations

Claytor Lake: 17-foot bowrider with 135 hp motor. Damage deposit of 50% required	\$40 per hour \$115 per half day \$180 per day	Smith Mountain Lake: 18-20-foot Runabout with 190 hp (8 person capacity). Rental does not include fuel and oil. Damage deposit of \$200 required.	\$165 for 3 hours \$20 additional per hour after first 3 hours \$255 per 8 hours \$320 for 24 hours \$100 additional per day after first day
Claytor Lake: 20-foot pontoon boat with 90 hp motor. Damage deposit of 50% required	\$40 per hour \$110 per half-day \$175 per day		
Claytor Lake: 24-foot pontoon boat with 75 hp motor. Damage deposit of 50% required	\$45 per hour \$125 per half-day \$200 per day	Claytor Lake: 18-foot pontoon boat (7 person capacity) or 21-foot pontoon boat (9 person capacity). Damage deposit of 50% required	\$35 per hour \$95 per 4 hours \$160 per 8 hours \$192 per 24 hours \$100 per half-day \$165 per day
Claytor Lake: 30-foot pontoon boat with 115 hp motor. Damage deposit of 50% required	\$60 per hour \$160 per half-day \$250 per day		
Claytor Lake: 18-foot bowrider with 190 hp motor. Damage deposit of 50% required	\$45 per hour \$125 per half-day \$200 per day	Claytor Lake: Jet Ski 15.5 hp (for use with rental of pontoon boat only).	\$125 per half-day \$200 per day
<u>Claytor Lake: 19-foot bowrider with 220 hp motor. Damage deposit of 50% required.</u>	<u>\$50 per hour</u> <u>\$135 per half-day</u> <u>\$220 per day</u>	Smith Mountain Lake: 24-foot pontoon boat with 40 hp (10-12 person capacity). Damage deposit of \$200 required.	\$90 for 3 hours \$20 additional per hour after first 3 hours \$165 per 8 hours \$215 for 24 hours \$80 additional each day after first day
Occoneechee: 17-1/2-foot fishing boat. Rental includes 30 gallons of fuel. Damage deposit of \$200 required	\$85 per hour \$20 additional per hour after first hour \$175 per 8 hours \$875 per 7 day week	Smith Mountain Lake: Personal Watercraft (Waverunner 700). Rental does not include fuel and oil. Damage deposit of \$500 required.	\$180 for 3 hours \$20 additional per hour after first 3 hours \$270 per 8 hours \$335 for 24 hours \$130 additional per day after first day
Occoneechee: 20-foot pontoon boat with motor (8 person capacity) Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$85 per hour \$20 additional per hour after first hour \$175 per 8 hours \$875 per 7 day week	Belle Isle: Motorboat less than 25 horsepower (3 gallons of fuel included, 2 hour minimum)	\$15 per hour \$60 per half-day \$100 per day
Occoneechee: 22-foot pontoon boat with motor (10 person capacity) Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$95 per hour \$20 additional per hour after first hour \$185 per 8 hours \$925 per 7 day week	Belle Isle: Motorboat 25-49 horsepower (11 gallons of fuel included, 2 hour minimum)	\$22 per hour \$70 per half-day \$110 per day
<u>Occoneechee: 25-foot pontoon boat with motor (14 person capacity) Rental includes 30 gallons of fuel. Damage deposit of \$200 required.</u>	<u>\$110 per hour</u> <u>\$25 additional per hour after first hour</u> <u>\$230 per 8 hours</u> <u>\$1,150 per 7 day week</u>	Standard Damage/Replacement Fees: All parks where available unless otherwise noted. Not required for damage due to normal wear and tear.	
		Paddle	\$20
		Anchor/Rope	\$40
		Fuel Tank/Hose	\$60

Regulations

Fire Extinguisher	\$25	Smith Mountain Lake: Tow tube; Water Skis; Knee Board	\$15 per day with boat rental \$5.00 per additional day \$25 per day without boat rental
Throw Cushion	\$10		
Propeller (small)	\$100		
Propeller (large)	\$135		
Personal Flotation Device (PFD): replacement fee for lost/damaged PFD	\$25 each		
Other Rentals:		Smith Mountain Lake: Wake Board	\$25 per day with boat rental \$10 per additional day \$30 per day without boat rental
Personal Flotation Device (PFD): When separate from boat rental.	\$1.00 per day	Mobile Pig Cooker: All parks where available unless otherwise noted.	\$40 per day
Smith Mountain Lake, James River: Personal Flotation Device, type II.	\$5.00 for first day \$1.00 additional days	GPS Units	\$6.00 per unit per half-day \$10 per unit per day
Smith Mountain Lake: Personal Flotation Device, type III	\$7.00 for first day \$2.00 additional days	Volleyball Net and Ball Rental: All parks where available.	\$10
Canoe/Kayak Paddles: All parks where available unless otherwise noted.	\$5.00 per day	Binocular Rentals (2 hours): All parks where available.	\$2.00
New River Trail: Float Tubes	\$5.00 per hour \$12 per half-day \$18 per day	Beach Floats: All parks where available.	\$1.00 per hour \$3.00 for 4-hours \$5.00 for full-day
James River:		Surf Lounge Floating Chair Rental. All parks where available.	\$2.00 per hour, single chair \$5.00 per half-day, single chair \$7.00 per full day, single chair \$3.00 per hour, double chair \$7.00 per half-day, double chair \$10 per full day, double chair
Cooler Tubes	\$3.00 per day	Body Board: First Landing	\$6.00 per day
Seat Backs (kayaks)	\$3.00 per day	Beach Umbrella: All parks where available unless otherwise noted.	\$3.00 per hour \$8.00 for 4 hours \$15 for full-day
Tubes	\$8.00 per hour (does not include shuttle) \$20 per day (does not include shuttle) \$12 per half hour past return time	First Landing	\$6.00 per day
Claytor Lake: 2-person tow tube and towrope (with rental of boat only)	\$20 per 2 hours \$25 per half-day \$30 per day	Kiptopeke	\$5.00 per 4 hours \$8.00 per 8 hours
Claytor Lake: Water skis and towrope (with rental of boat only)	\$20 per 2 hours \$25 per half-day \$30 per day	Beach Chair: All parks where available	\$5.00 per day
Claytor Lake: Kneeboard and towrope (with rental of boat only)	\$15 per 2 hours \$20 per half-day \$25 per day	First Landing	\$6.00 per day

Regulations

Fishing Rods: All parks where available unless otherwise noted.	\$5.00 per half-day
First Landing	\$6.00 per day \$3.00 per rod per fishing program
Tents with a group camp reservation. All parks where available.	
2-person tent	\$12 per day
3-person tent	\$20 per day
4-person tent	\$25 per day
5-person tent	\$30 per day
<u>Coleman Camp Stove Rental, includes fuel</u>	<u>\$10 per day</u>
<u>Tabletop Propane Grill, includes fuel</u>	<u>\$15 per day</u>
Coin-Operated Washing Machine: All parks where available unless otherwise noted.	\$1.25 per load, tax included
First Landing	\$1.50 per load, tax included
Coin Operated Dryer: All parks where available unless otherwise noted.	\$1.25 per load, tax included
First Landing	\$1.50 per load, tax included
6-Foot Table (Includes 6 chairs) Additional chairs: <u>All parks where available unless otherwise noted.</u>	\$20 per rental period \$3.00 each per rental period
<u>Caledon</u>	<u>\$8.00 per 6' round table</u> <u>\$1.50 per white padded seat chair</u>
Pump Out: All parks where available unless otherwise noted.	\$5.00
Horse Rentals:	
All parks where available unless otherwise noted.	\$20 per one-hour ride \$40 per two-hour ride \$100 per full day ride

Sky Meadows	\$30 per one-hour ride \$55 per two-hour ride \$45 per 1.5-hour theme ride \$10 pony rides, includes photo \$250 per week, day camp (10% family discount)
Pony Rides: All parks where available unless otherwise noted.	\$5.00 per 15 minutes
Horseback Riding Lessons: All parks where available unless otherwise noted.	\$25 per lesson on group basis \$30 per lesson for individual
Horseback Summer Day Camp: All parks where available unless otherwise noted.	\$180 per person per week
Horseshoe or Croquet Rental for Campers. All parks where available.	\$1.00 per hour \$5.00 per day \$20 deposit

4VAC5-36-210. Conference center and meeting facility fees.

CONFERENCE CENTERS (TAXABLE)

Prices may be discounted and/or waived by the director when necessary to create competitive bids for group sales.	FEE
Hemlock Haven Conference Center at Hungry Mother	
Main Hall (Capacity: 375)	\$263 <u>\$275</u> per day
Upper Level (Capacity: 50)	\$158 <u>\$175</u> per day
Redbud Room: (Capacity 35)	\$53 <u>\$75</u> per day
Laurel Room (Capacity: 20)	\$37 <u>\$40</u> per day
Entire Meeting Room Complex	\$420 per day

Regulations

Day Use Recreational Package (Includes all outside recreational facilities)	
0 – 250 Persons	\$263 <u>\$300</u> per half-day \$525 <u>\$600</u> per full-day
250 – 500 Persons	\$394 <u>\$425</u> per half-day \$788 <u>\$850</u> per full-day
500 + persons	\$525 <u>\$575</u> per half-day \$1,050 <u>\$1,200</u> per full-day
Cedar Crest Conference Center at Twin Lakes	
Complex: Doswell Hall with deck, grounds, volleyball, horseshoes; Kitchen, Latham and Hurt Rooms NOT included.	\$229 per 4 hours \$459 per day \$53 each extra hour
Doswell Meeting Room: Meeting Room Only; no kitchen or dining room.	\$164 per room per 4 hours \$328 per room per day \$37 each extra hour
Small breakout rooms with main room: Latham and Hurt.	\$65 per room per 4 hours \$131 per room per day \$21 each extra hour
Small breakout rooms without main room.	\$98 per room per 4 hours \$196 per room per day \$37 each extra hour
Picnic Shelter or Gazebo at Cedar Crest.	\$68 per 4 hours \$131 per day \$11 each extra hour
Kitchen rental Only available with complex rental.	\$105 per event
Kitchen Cleaning Fee: Deposit.	\$150 per event
Chippokes Plantation Meeting, Conference, and Special Use Facilities	
Mansion Conference Room.	\$26 per hour
Mansion or Historic Area Grounds (Includes parking for party rental).	\$525 per 4 hours

Mansion Board Room	\$105 per 4 hours	
Chippokes Plantation Conference Shelter (Available on reservation basis only).	\$105 per 4 hours	
Wedding Package (includes historic area grounds, gardens, tent set up and take down, 10 60-inch round tables, 10 standard size rectangle tables, 100 folding chairs, Wedding Coordinator, changing room for bride and groom, Mansion kitchen area, boardroom, no fee for wedding rehearsal).	\$1,412 per 4 hours \$2,073 per 8 hours \$50 nonrefundable reservation fee	
Southwest Virginia Museum – Victorian Parlor Room Rental (Based on 4-hour rental)	DAY	EVENING
Option #1: Victorian Parlor – Basic Room Package (Includes tables with linen and chairs)		
Up to 22 <u>23</u> People (6 <u>8</u> tables – 22 <u>30</u> chairs)	\$ 31 <u>42</u>	\$ 57 <u>68</u>

Regulations

<p>Option #2: Victorian Parlor— Executive Room Package (Includes tables with linen and chairs, water pitcher with glasses, coffee pot with cups (coffee not included), AV equipment, and presentation aids)</p>		
Up to 22 People (6 tables— 22 chairs)	\$52	\$78
23 to 30 People (8 tables— 30 chairs) OR Up to 50 people (50 chairs and head table)	\$68	\$94
<p>Option #3: Additional meeting rooms: Victorian Parlor must be rented in order to rent additional rooms.</p>		
Hallway (downstairs) (Includes two <u>three</u> existing tables with linens)	\$11	\$11
Each Additional Table with Linens	\$11	\$11
Small Parlor: AV room or Big Stone Gap Photo room (Includes 1 table with linens and 6-8 chairs)	\$31	\$31
Big Stone Gap Development Room (Includes 1 table with linens and 6-8 chairs)	\$41	\$41

Additional Hours	\$5.00 \$10 per hour	\$5.00 \$10 per hour
<u>Exceeding approved hours</u>	<u>\$20 per hour</u>	<u>\$20 per hour</u>
Wedding Portraits	\$52 per 2 hours	\$78 per 2 hours
Wilderness Road (Mansion and Ground Rental)		
Mansion or Lawn: separately	\$63 for 4 hours	
Mansion and Lawn: combined	\$105 for 4 hours	
Additional hours beyond scheduled operating hours	\$11 per hour	
Cove Ridge Center at Natural Tunnel:	PRIVATE FEE	EDUCATIONAL FEE
Cove Ridge Center Annual Membership: Membership entitles organization to a 25% discount on facility rental fees and group rates on all programming offered through the center.	\$1,050 per year	\$525 per year
Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for two consecutive half- day rental periods, and parking passes.	\$315	\$210
Overnight Use of one dorm: Includes Day Use Package plus one dorm rooms for one night and swimming (in season).	\$683	\$498
Overnight Use of both dorms: Includes Day Use Package plus two dorm rooms for one night and swimming (in season).	\$892	\$656

Regulations

Wedding Package Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for three consecutive half-day rental periods, and parking passes.	\$525	NA	Both Dorms: Overnight lodging for up to 60, includes swimming (in season) and parking passes.	\$630 per night April 1-October 31 \$567 per night November 1-March 31	\$472 per night April 1-October 31 \$425 per night November 1-March 31
Wedding Package Overnight: Includes Day Use Package plus one dorm for one night and swimming (in season).	\$919	NA	Per Person Student Rate for Overnight Dorm Use	\$13 per person	\$13 per person
Wedding Package Overnight: Includes Day Use Package plus both dorms for one night and swimming (in season).	\$1,102	NA	Kitchen Use (when not included in package)	\$50 per event	\$50 per event
Wedding Package with Amphitheater: Rental of the park amphitheater in conjunction with any of the above wedding packages.	\$236 for the rental period	NA	Heritage Center at Pocahontas: All reservations require 50% down at time of reservation (Nonrefundable within 14 days of event)	PRIVATE FEE	EDUCATIONAL FEE
Removal of furniture from great room (only available with exclusive use of the center).	\$42	\$42	Large Room (Capacity: seated at tables 50; reception style 125, auditorium 80: includes tables, chairs, and warming kitchen)	\$131 per 4 hours \$236 per full-day \$26 each extra hour	\$78 per 4 hours \$141 per full-day \$15 each extra hour
Additional seating on deck (only available with exclusive use of the center).	\$42	\$0	Westmoreland	FEE	
Auditorium	\$126 per half day \$231 per full day	\$99 per half day \$183 per full day	Tayloe and Helen Murphy Hall Meeting Facility: Includes Main Meeting Room, Kitchen, and Grounds	\$400 \$500 (8 a.m. to 10 p.m.) \$315 \$350 additional rental days after first day \$25 \$75 per hour for usage beyond reservation period	
Classroom – Library (half-day)	\$63	\$47	Potomac Overlook Rental	\$55 per day	
One dorm: Overnight lodging for up to 30, includes swimming (in season) and parking passes.	\$420 per night April 1-October 31 \$378 per night November 1-March 31	\$315 per night April 1-October 31 \$283 per night November 1-March 31	Breakout Meeting Room (May be rented separately from main meeting room only within 45 days of event).	\$75 (8 a.m. to 10 p.m.)	
			Kitchen Clean Up Fee: (Waived if renter cleans facility)	\$250 per event	
			Wedding Package - Includes half-day rental for wedding rehearsal, and a full-day rental for wedding/reception	\$300	

Regulations

Potomac River Retreat: Table and Chair Set-up	\$40
Fairy Stone	
Fayerdale Hall Meeting Facility <u>Weekend Rental. Includes Friday, Saturday, and Sunday.</u>	<u>\$236 (8 a.m. to 10 p.m.)</u>
<u>One Day Rental</u>	<u>\$236 (8 a.m. to 10 p.m.)</u>
<u>Two Consecutive Days Rental</u>	<u>\$315</u>
<u>Three Consecutive Days Rental</u>	<u>\$366</u>
Wedding Package – Includes full day rental for wedding rehearsal, and a full day rental for wedding/reception. Fayerdale Hall Meeting Facility Weekday Rental. Includes Monday through Thursday only.	<u>\$315</u>
<u>One Day Rental</u>	<u>\$75 (8 a.m. to 10 p.m.)</u>
<u>Two Consecutive Days Rental</u>	<u>\$125</u>
<u>Three Consecutive Days Rental</u>	<u>\$174</u>
<u>Four Consecutive Days Rental</u>	<u>\$225</u>
Douthat	
Restaurant (includes table set-up)	\$236
Allegheny Room: Up to 30 persons.	\$158 per day
Wedding Package: Conference room and amphitheater (see "amphitheater section") on day of wedding, plus an extra half-day amphitheater for rehearsal.	\$289

First Landing	
Trail Center Conference Room (Capacity: 45)	\$42 per half-day \$63 per full-day
Lake Anna	
Visitor Center	\$32 per half-day \$53 per full day
Concessions Building Rental	\$100 per day
Bear Creek Lake	
Meeting facility	\$236 per day \$25 each extra hour
Wedding Package	\$315 per day
Claytor Lake	
Marina Meeting Facility: Includes facility, chairs, and tables.	\$550 per day \$825 per two days
Wedding Package: Includes rental of facility, chairs, tables, gazebo, and special use permit (\$10 permit fee is waived with package).	\$625 per day package \$995 per two-day package
Leesylvania Wedding/Function Package: Includes Rental of: Lee's Landing Picnic Shelter, 100 Chairs, 15 Tables, and Parking for up to 50 vehicles	\$840 per half-day \$945 per full-day
Mason Neck	
Wedding Package: 20 foot by 40 foot tent, 100 chairs, parking for up to 50 cars	\$788 per event
Parking Attendant	\$53 per 4 hours
Smith Mountain Lake	
Meeting room at Visitor Center	\$158 per day
Exceeding approved hours. All parks unless otherwise noted below.	\$25 per hour

Sky Meadows	
Timberlake House Meeting Room <u>Capacity 15 people</u>	\$50 per half day <u>day 8 a.m. to 5 p.m.</u> \$75 per day <u>evening beyond 5 p.m.</u>
Timberlake House Kitchen (in conjunction with rental of meeting room)	\$25 per day or part of day
Equipment and Services Associated with Meetings and Rentals:	
Microphone/Podium Rental	\$15 per day
Linen Rentals:	
Table cloth only Place settings	\$3.00 per table \$2.00 each
Twin Lakes	
Overlay	\$1.25 per table
Napkins	\$0.40 per napkin
Fax	First 2 pages free \$2.00 each extra page
Copies	Single copy free \$0.15 each extra copy
Lost Key Fee	\$10
Easels	\$5.00 per day
Overhead Projector	\$10 per day
TV with VCR	\$10
Second TV	\$10
Overhead Projector with Screen	\$10
Slide Projector with Screen	\$10
Flip Chart	\$10
Event Clean Up Fees	
Park labor to clean up after special events and facility rentals if not done in accordance with rental agreement or use permit	\$50 per hour

Notes on conference and meeting facilities fees:

Conference and meeting facilities require a 30% prepayment due 10 days after making reservation, and

payment of the full balance prior to or on the first day of the reservation. Cancellations made 14 or more days prior to the first day of the reservation shall be charged the lesser of 10% of the total fee or \$100. Cancellations made less than 14 days prior to the first date of the reservation shall be charged 30% of the total fee.

VA.R. Doc. No. R10-2196; Filed November 4, 2009, 9:47 a.m.

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: **4VAC20-20. Pertaining to the Licensing of Fixed Fishing Devices (amending 4VAC20-20-20, 4VAC20-20-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: November 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment requires any fixed fishing device license holder fishing in Virginia tidal waters located east of the Chesapeake Bay Bridge Tunnel to use a modified leader; and makes it the responsibility of the licensee of any fixed fishing device to contact the Virginia Marine Police and the National Marine Fisheries Service at least 72 hours before any modified leader is to be deployed for an inspection of the leader design.

4VAC20-20-20. Definitions.

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

"Fixed fishing device" means any fishing device used for the purpose of catching fish and requiring the use of more than two poles or stakes which have been pushed or pumped into the bottom.

"Fyke net" means a round stationary net distended by a series of hoops or frames, covered by web netting or wire mesh and having one or more internal funnel-shaped throats whose tapered ends are directed away from the mouth of the net. The net, leader or runner is held in place by stakes or poles which have been pushed or pumped into the bottom and

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has one or two wings and a leader or runner to help guide the fish into the net.

"Modified leader" means a fixed fishing device leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (i) the mesh size is equal to or less than eight inches stretched mesh; (ii) at any particular point along the leader, the height of the mesh, from sea floor to the top of the mesh, is no more than one-third the depth of the water at mean low water directly above that particular point; (iii) the mesh is held in place by vertical lines that extend from the top of the mesh up to the top of the line, which is a line that forms the uppermost part of the fixed fishing device leader; (iv) the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at least every two feet; and (v) the vertical lines are hard lay lines with a vertical stiffness equivalent to the stiffness of a 5/16 diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

"Officer" means the marine police officer in charge of the district within which the fixed fishing device is located.

"Pound net" means a stationary fishing device supported by stakes or poles that have been pushed or pumped into the bottom consisting of an enclosure identified as the head or pocket with a netting floor, a heart, and a straight wall, leader or runner to help guide the fish into the net.

"Staked gill net" means a fixed fishing device consisting of an upright fence of netting fastened to poles or stakes that have been pushed or pumped into the bottom.

4VAC20-20-30. Location and measurements, and modified pound net leader requirements.

A. A fixed fishing device shall be perpendicular to the shoreline insofar as possible.

B. In determining compliance with the requirements prescribing minimum distances between fixed fishing devices, measurement shall be made from the center line of each device.

C. An applicant shall state the desired length of the fixed fishing device, which shall not exceed the maximum limit prescribed by law. Such length shall be stated on any license issued by the officer. A licensee may apply for a new license to include a greater length provided such additional length does not make the device exceed the maximum legal length or the legal requirement of a minimum distance between successive fishing structures in the same row. In the event a licensee fishes a length less than that stated on the license, the unfished length shall be subject to the provisions of 4VAC20-20-50 B of this chapter.

D. Any fixed fishing device, including but not limited to pound net and fyke net gear, licensed and fished in Virginia

tidal waters located east of the Chesapeake Bay Bridge and Tunnel, shall be equipped with a modified leader as defined in 4VAC20-20-20. In addition, it shall be the responsibility of the licensee of any fixed fishing device licensed in Virginia tidal waters located east of the Chesapeake Bay Bridge and Tunnel to contact the Virginia Marine Police and the National Marine Fisheries Service at least 72 hours before any modified leader is to be deployed for an inspection of the fixed fishing device's leader design, prior to any initial or subsequent deployment of that fixed fishing device within any year.

VA.R. Doc. No. R10-2212; Filed October 30, 2009, 1:56 p.m.

Final Regulation

Title of Regulation: 4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-20, 4VAC20-490-41; adding 4VAC20-490-44).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: November 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments (i) define "movable gill net"; (ii) establish seasonal at sea processing requirements for smooth dogfish; and (iii) establish a limited entry commercial fishery for spiny dogfish.

4VAC20-490-20. Definitions.

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

"Carcass length" means that length measured in a straight line from the anterior edge of the first dorsal fin to the posterior end of the shark carcass.

"COLREGS Line" means the COLREGS Demarcation lines, as specified in Coastal Pilot, 35th and 36th editions by Lighthouse Press.

"Commercial shark fishermen" means any commercially permitted fisherman who has landed and sold one pound of shark or more (excludes spiny dogfish) in that calendar year (January 1 through December 31).

"Commercially permitted nonsandbar large coastal shark species" means any of the following species:

Blacktip, *Carcharhinus limbatus*

Bull, *Carcharhinus leucas*

Great hammerhead, *Sphyrna mokarran*

Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Silky, *Carcharhinus falciformis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvier*

"Commercially permitted pelagic species" means any of the following species:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*

"Commercially permitted small coastal shark species" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

"Commercially prohibited species" means any of the following species:

Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*

Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

"Control rule" means a time-certain date, past, present or future, used to establish participation in a limited entry fishery and may or may not include specific past harvest amounts.

"Dressed weight" means the result from processing a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Fork length" means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

"Movable gill net" means any gill net other than a staked gill net.

"Large mesh gill net" means any gill net having a stretched mesh equal to or greater than five inches.

"Longline" means any fishing gear that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, greater than 1,000 feet in length, with multiple leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

"Permitted commercial gear" means rod and reel, handlines, shark shortlines, small mesh gill nets, large mesh gill nets, pound nets, and weirs.

"Recreational shore angler" means a person not fishing from a vessel nor transported to or from a fishing location by a vessel.

"Recreational vessel angler" means a person fishing from a vessel or transported to or from a fishing location by a vessel.

"Recreationally permitted species" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Blacktip, *Carcharhinus limbatus*
Blue, *Prionace glauca*
Bonnethead, *Sphyrna tiburo*
Bull, *Carcharhinus leucas*
Finetooth, *Carcharhinus isodon*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*

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Nurse, *Ginglymostoma cirratum*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Scalloped hammerhead, *Sphyrna lewini*
Shortfin mako, *Isurus oxyrinchus*
Smooth dogfish, *Mustelus canis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Thresher, *Alopias vulpinus*
Tiger, *Galeocerdo cuvier*

"Recreationally prohibited species" means any of the following species:

Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*
Sandbar, *Carcharhinus plumbeus*
Sevengill, *Heptanchias perlo*
Silky, *Carcharhinus falciformis*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

"Research only species" means any of the following species:

Sandbar, *Carcharhinus plumbeus*

"Shark shortline" means a fish trotline that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, 1,000 feet in

length or less, with multiple leaders (gangions) and no more than 50 corrodible circle hooks, whether retrieved by hand or mechanical means.

"Small mesh gill net" means any gill net having a stretched mesh less than five inches.

"Smooth dogfish" means any shark of the species *Mustelus canis*.

"Spiny dogfish" means any shark of the species *Squalus acanthias*.

4VAC20-490-41. Commercial catch limitations.

A. It shall be unlawful for any person to possess on board a vessel or to land in Virginia more than 33 commercially permitted nonsandbar large coastal sharks in one 24-hour period. The person who owns or operates the vessel is responsible for compliance with the provisions of this subsection.

B. It shall be unlawful for any person to fillet a shark, ~~except smooth dogfish,~~ at sea, ~~except smooth dogfish as provided in subsection C of this section.~~ A licensed commercial fisherman may eviscerate and remove the head of any shark, but the tail and all fins of any shark, except smooth dogfish as provided in subsection C of this section, shall remain naturally attached to the carcass through landing. The fins of any shark, except smooth dogfish, may be partially cut but some portion of the fin shall remain attached, until the shark is landed.

C. From July 1 through the end of February, commercial fishermen may process smooth dogfish at sea, except the first dorsal fin shall remain attached naturally to the carcass until landed. From March 1 through June 30, commercial fishermen may completely process smooth dogfish at sea prior to landing.

D. It shall be unlawful to possess, on board a vessel, or to land in Virginia any species of shark, after NOAA Fisheries has closed the fishery for that species in federal waters.

~~D.~~ E. There are no commercial trip limits or possession limits for smooth dogfish or sharks on the lists of commercially permitted pelagic species or commercially permitted small coastal species.

~~E.~~ F. Except as described in this section, it shall be unlawful for any person to take, harvest, land, or possess, in Virginia, any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, silky, smooth hammerhead, spinner or tiger shark from May 15 through July 15. These sharks may be transported by vessel, in Virginia waters, during the closed season provided the sharks were caught in a legal manner consistent with federal regulations outside Virginia waters and:

1. The vessel does not engage in fishing, in Virginia waters, while possessing the above species; and

2. All fishing gear aboard the vessel is stowed and not available for immediate use.

~~F. G.~~ It shall be unlawful for any person to retain, possess or purchase any shark described in the commercially prohibited species list.

~~G. H.~~ All sharks harvested from state waters or federal waters, for commercial purposes, shall be sold to a federally permitted shark dealer.

~~H. I.~~ The commissioner may grant exemptions from the seasonal closure, quota, possession limit, size limit, gear restrictions and prohibited species restrictions. Exemptions shall only be granted for display or research purposes. The exempted fishermen or owner of the fishing vessel shall report the species, weight, location caught and gear used for each shark collected for research or display within 30 days.

4VAC20-490-44. Spiny dogfish limited entry permit and permit transfers.

A. It shall be unlawful for any person to take, catch, possess, or land any spiny dogfish without first having obtained a spiny dogfish limited entry permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee who shall keep a copy of that permit in his possession while fishing for or selling spiny dogfish. Permits shall only be issued to Virginia registered commercial fishermen meeting either of the following criteria:

1. Shall have documented on Virginia mandatory harvest reporting forms harvest from a legally licensed, movable gill net for an average of at least 60 days from 2006 through 2008, and a minimum harvest of one pound of spiny dogfish at any time from 2006 through 2008.

2. Shall have documented on Virginia mandatory reporting forms harvests that total greater than 10,000 pounds of spiny dogfish in any one year from 2006 through 2008.

B. A spiny dogfish limited entry permittee may only transfer that permit to another Virginia registered commercial fisherman. The transferor and the transferee shall have documented any prior fishing activity on Virginia mandatory reporting forms and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation. Transfers must be approved by the commissioner, or his designee, and are permanent. The permanent transfer authorizes the transferee to possess a spiny dogfish limited entry permit, and the transferor shall lose his eligibility for that spiny dogfish limited entry permit.

VA.R. Doc. No. R10-2213; Filed October 30, 2009, 2:09 p.m.

Final Regulation

Title of Regulation: 4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-30).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: November 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This amendment prohibits harvesters who have had violations resulting in the loss of their fishing permit from serving as an agent for another harvester.

4VAC20-610-30. Commercial Fisherman Registration License; exceptions and requirements of authorized agents.

A. In accordance with § 28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their harvest, or give their harvest to another, in order that it may be sold, traded, or bartered. Only these licensees may sell their harvests from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling harvest are authorized for the following persons or firms only:

1. Persons taking menhaden under the authority of licenses issued pursuant to § 28.2-402 of the Code of Virginia.
2. Persons independently harvesting and selling, trading, or bartering no more than three gallons of minnows per day who are not part of, hired by, or engaged in a continuing business enterprise.
 - a. Only minnow pots, a cast net or a minnow seine less than 25 feet in length may be used by persons independently harvesting minnows.
 - b. All other marine species taken during the process of harvesting minnows shall be returned to the water immediately.

B. Requirements of authorized agents.

1. No person whose Commercial Fisherman Registration License ~~or~~ fishing gear license, or fishing permit is currently revoked or rescinded by the Marine Resources Commission pursuant to § 28.2-232 of the Code of Virginia is authorized to possess the ~~registration license~~ Commercial Fisherman Registration License, fishing gear license, or fishing permit of a ~~any other registered~~ commercial fisherman in order to serve as an agent for fishing the commercial fisherman's gear ~~and~~ or selling the harvest.
2. No registered commercial fisherman shall use more than one person as an agent at any time.
3. Any person serving as an agent shall possess the ~~registration license~~ Commercial Fisherman Registration

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License and gear license of the commercial fisherman while fishing.

4. When transporting or selling a registered commercial fisherman's harvest, the agent shall possess either the ~~registration license~~ Commercial Fisherman Registration License of that commercial fisherman or a bill of lading indicating that fisherman's name, address, Commercial Fisherman Registration License number, date and amount of product to be sold.

5. Any person licensed to harvest blue crabs commercially shall not be eligible to also serve as an agent.

6. Any person serving as an agent to harvest blue crabs for another licensed fisherman shall be limited to the use of only one registered commercial fisherman's crab license; however, an agent may fish multiple crab traps licensed and owned by the same person.

7. There shall be no more than one person, per vessel, serving as an agent for a commercial crab licensee.

8. Prior to using an agent in any crab fishery, the licensee shall register that person, with the commission, and shall receive approval for use of that agent, prior to the commencement of any harvesting activity.

9. Failure to abide by any of the provisions of this section shall constitute a violation of this regulation.

C. In accordance with § 28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to § 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

2. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

D. Exceptions to the two-year delay may be granted by the commissioner if he finds any of the following:

1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by

unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.

2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.

3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.

Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at their March, June, September, and December meetings.

Under no circumstances will an exception be granted solely on the basis of economic hardship.

VA.R. Doc. No. R10-2214; Filed October 30, 2009, 2:06 p.m.

Final Regulation

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-48).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: November 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This amendment requires that any hardship exception quota granted by the commission prior to October 27, 2009, shall be converted to a percentage of the directed fishery quota based on the year in which that hardship exception quota was originally granted.

4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. Except as provided in subsection F of this section, a person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee

shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. It shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, in any one day, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, provided the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel. When it is projected and announced that 75% of the bycatch fishery quota has been taken, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, more than 100 pounds of black sea bass.

D. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

E. ~~The commission sets aside 10,000 pounds of the annual commercial fishery black sea bass quota for distribution to all qualified applicants granted an exception by the commission from the requirements of 4VAC20-950-46 B based upon medical conditions, or other hardship, which limited the applicant's ability to fish for black sea bass during the qualifying period. In granting an exception, the commission will give preference to those applicants who can demonstrate the greater levels of participation in the black sea bass fishery during and after the qualifying period or document an apprenticeship or helper status in the black sea bass fishery.~~

~~Any applicant who is granted an exception by the commission shall receive a portion of the 10,000 pounds; however, no portion shall exceed the lowest individual fishery quota, in pounds, at the beginning of the season. There shall~~ Any hardship exception quota granted by the commission prior to October 27, 2009, shall be converted to a percentage of the directed fishery quota based on the year in which that hardship exception quota was originally granted. The hardship exception quota shall not be no transfer of quota received by applicants to the exception process transferred for a period of five years after receipt of that quota. Any portion of the 10,000 pounds not allotted by the commission to the qualified applicants as of November 1 shall be added to the annual bycatch quota described in 4VAC20-950-47 B from the date the commission granted that hardship exception quota.

F. An individual fishery quota, as described in subsection A of this section, shall be equal to an individual's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A. As of May 1, 2009, should the remaining amount of black sea bass bycatch fishery quota exceed 10,000 pounds, that excess quota shall be allocated to commercial black sea bass directed fishery permit holders who have landed at least 500 pounds of black sea bass in at least two of three years, starting in 2005 and ending in 2007. The basis for that allocation shall be the same as used to determine an individual directed fishery quota as described in subsection A of this section.

VA.R. Doc. No. R10-2215; Filed October 30, 2009, 2:02 p.m.

Final Regulation

Title of Regulation: **4VAC20-1190. Pertaining to Gill Net Control Date (amending 4VAC20-1190-10; adding 4VAC20-1190-15, 4VAC20-1190-30, 4VAC20-1190-40, 4VAC20-1190-50, 4VAC20-1190-60).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: December 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments (i) define "gill net" as all gill nets up to 600 feet, or all gill nets over 600 feet and up to 1,200 feet, except any stake gill net of 1,200 feet in length or under with a fixed location, and (ii) require a harvester to have either a Class A resident gill net permit, Class A nonresident gill net permit, or Class B gill net permit before purchasing a gill net license.

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Sections are added defining qualifications for the Class A resident gill net permit, Class A nonresident gill net permit, and Class B gill net permit as follows:

1. A commercial fisherman is considered qualified for the Class A resident gill net permit if he is a resident of the Commonwealth of Virginia, possesses a valid Virginia Commercial Fisherman Registration License, and satisfies one of the following conditions:

- a. Possessed a valid Virginia gill net license prior to December 31, 2005;
- b. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 100 days in any one year from 2006 through 2008;
- c. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 60 days in any two years from 2006 through 2008.

2. A commercial fisherman is considered qualified for the Class A nonresident gill net permit if he is not a resident of the Commonwealth of Virginia, possesses a valid Virginia Commercial Fisherman Registration License, and satisfies one of the following conditions:

- a. Possessed a valid Virginia gill net license prior to December 31, 2005;
- b. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 100 days in any one year from 2006 through 2008;
- c. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 60 days in any two years from 2006 through 2008.

3. A harvester is considered qualified for the Class B gill net permit if he does not satisfy the requirements for a Class A resident or Class A nonresident gill net permit.

CHAPTER 1190 PERTAINING TO GILL NET CONTROL DATE, LIMITED ENTRY AND TRANSFERS

4VAC20-1190-10. Purpose.

The purpose of this chapter is to establish a control date for conservation and management of the gill net fishery through limited entry.

4VAC20-1190-15. Definitions.

The following term when used in this chapter shall have the following meaning unless the context indicates otherwise:

"Gill net" means all gill nets up to 600 feet, or all gill nets over 600 feet and up to 1,200 feet, except any stake gill net of 1,200 feet in length or under with a fixed location.

4VAC20-1190-30. Limited entry and permits.

A. Either a Class A resident gill net permit, a Class A nonresident gill net permit, or a Class B gill net permit shall be required for a harvester before purchasing a gill net license.

B. A commercial fisherman is considered qualified for the Class A resident gill net permit if he is a resident of the Commonwealth of Virginia, possesses a valid Virginia Commercial Fisherman Registration License, and satisfies one of the following conditions:

1. Possessed a valid Virginia gill net license prior to December 31, 2005;
2. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 100 days in any one year from 2006 through 2008;
3. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 60 days in any two years from 2006 through 2008.

C. A commercial fisherman is considered qualified for the Class A nonresident gill net permit if he is not a resident of the Commonwealth of Virginia, possesses a valid Virginia Commercial Fisherman Registration License, and satisfies one of the following conditions:

1. Possessed a valid Virginia gill net license prior to December 31, 2005;
2. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 100 days in any one year from 2006 through 2008;
3. Possessed a valid Virginia gill net license and documented on Virginia mandatory reporting forms harvest from legally licensed gill nets for at least 60 days in any two years from 2006 through 2008.

D. A harvester is considered qualified for the Class B gill net permit if he does not satisfy the requirements described in subsection B or C of this section.

4VAC20-1190-40. Permit limitations.

A. Class A resident gill net permittees or Class A nonresident gill net permittees shall be authorized to purchase any number of gill net licenses provided the maximum footage associated with all purchased gill net licenses does not exceed 12,000 feet.

B. Class B gill net permittees shall be authorized to purchase any number of gill net licenses provided the maximum footage associated with all purchased gill net licenses does not exceed 6,000 feet.

C. A person who does not qualify for either a Class A resident gill net permit, Class A nonresident gill net permit or Class B gill net permit shall not be authorized to purchase any gill net license.

4VAC20-1190-50. Permit transfers.

A. Class A resident gill net permittees may only transfer that permit to another registered commercial fisherman who is a resident of the Commonwealth of Virginia. The transferor and the transferee shall have documented all prior fishing activity on Virginia mandatory reporting forms and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation. Transfers must be approved by the commissioner, or his designee, and are permanent. The permanent transfer authorizes the transferee to possess a Class A resident permit and the transferor shall lose his eligibility for that Class A resident gill net permit.

B. Class A nonresident gill net permittees may only transfer that permit to another commercial fisherman who is not a resident of the Commonwealth of Virginia. The transferor and the transferee shall have documented all prior fishing activity on Virginia mandatory reporting forms and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation. Transfers must be approved by the commissioner, or his designee, and are permanent. The permanent transfer authorizes the transferee to possess a Class A nonresident permit and the transferor shall lose his eligibility for that Class A nonresident gill net permit.

4VAC20-1190-60. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R10-2216; Filed October 30, 2009, 3:10 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the

requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-71. Regulations Governing the Discharge of Sewage and Other Wastes from Boats (amending 9VAC25-71-70).

Statutory Authority: § 62.1-44.33 of the Code of Virginia; 33 USC § 1322.

Effective Date: December 23, 2009.

Agency Contact: David Lazarus, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email david.lazarus@deq.virginia.gov.

Summary:

The amendment adds a newly designated boating No Discharge Zone in the Broad Creek, Fishing Bay, and Jackson Creek Watersheds in Middlesex County in order to conform to the EPA's federal designation of those areas as No Discharge Zones.

9VAC25-71-70. Listing of designated no discharge zones in the Commonwealth of Virginia.

The following are designated no discharge zones:

1. Smith Mountain Lake in the counties of Bedford, Franklin and Pittsylvania, Virginia, from Smith Mountain Dam (Gap of Smith Mountain) upstream to the 795.0 foot contour (normal pool elevation) in all tributaries, including waters to above the confluence with Back Creek in the Roanoke River arm, and to the Brooks Mill Bridge (Route 834) on the Blackwater River arm.
2. The Lynnhaven River Watershed in the City of Virginia Beach, Virginia, including all contiguous waters south of the Lesner Bridge at Lynnhaven Inlet (latitude 36°54'27.90" N and longitude 76°05'30.90" W) and north of the watershed break point at the intersection of West Neck Creek and Dam Neck Road (latitude 36°47'17.60" N and longitude 76°04'14.62" W).
3. Broad Creek, Jackson Creek, and Fishing Bay Watersheds in lower Middlesex County, Virginia: the Broad Creek Watershed No Discharge Zone is defined as all contiguous waters south of the line formed between the points formed by latitude 37°33'46.3" N and longitude -76°18'45.9" W and north to latitude 37°33'47.4" N and longitude -76°19'24.7" W. The Jackson Creek Watershed No Discharge Zone is defined as all contiguous waters west of the of the line formed between the points formed by latitude 37°32'40" N and longitude -76°19'40.6" W at Stove Point Neck and latitude 37°32'46.8" N and longitude -76°19'15.6" W at the western point of the entrance to the

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eastern prong of Jackson Creek. The Fishing Bay Watershed No Discharge Zone is defined as all contiguous waters north of the line formed between the points formed by latitude 37°32'01.9" N and longitude -76°21'43.5" W at the southernmost tip of Bland Point and latitude 37°31'29.4" N and longitude -76°19'53.6" W at the southernmost tip of Stove Point. This area includes all of Fishing Bay and encompasses Moore Creek and Porpoise Cove.

V.A.R. Doc. No. R10-2221; Filed November 4, 2009, 11:21 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.), and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (amending 9VAC25-630-10 through 9VAC25-630-60; adding 9VAC25-630-70, 9VAC25-630-80).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email bkbowles@deq.virginia.gov.

Summary:

The State Water Control Board is amending the existing Virginia Pollution Abatement (VPA) Permit Regulation for Poultry Waste Management in order to establish requirements for end-users of poultry waste to ensure that poultry waste is being used in a manner in which state waters are being protected and nutrients losses are being reduced and that these reductions can be measured. The amendments include provisions regarding transferred off-site poultry waste used for land application by another entity other than the poultry grower. These provisions will

establish end-user requirements such as land application recordkeeping, poultry waste storage, land application timing and rates, and land application buffer requirements. These provisions will also include the option of coverage under a general permit for a poultry waste end-user or poultry waste broker if noncompliance with the requirements of the proposed technical regulations found in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 is determined.

Changes made since the proposal include (i) returning the threshold that triggers recordkeeping to 10 or more tons and (ii) removing certain recordkeeping and annual reporting requirements in 9VAC25-630-50, 9VAC25-630-60, and 9VAC25-630-70.

Concerns have been expressed by the public, legislature, and executive branch that additional safeguards are necessary to ensure that poultry waste that leaves the site and control of the permitted confined poultry feeding operations for land application are managed, applied, and stored in a manner that is protective of water quality. Currently, the VPA General Permit Regulations for Poultry Waste Management (9VAC25-630) require that poultry waste applied on lands owned by the permitted owner/operator of a confined poultry feeding operation be done so in accordance with a nutrient management plan written by a planner certified by the Virginia Department of Conservation and Recreation (DCR). Permitted operations are inspected annually to ensure that poultry waste is stored, applied, and otherwise managed according to the regulations.

However, under the current regulations, poultry waste that is transferred off-site is only required to be accompanied by waste analysis information and a fact sheet (developed by DEQ and DCR) that provides the recipient with general provisions regarding the storage, management, and application of the poultry waste. The end-user must acknowledge receipt of the fact sheet by signing a separate "Poultry Waste Transfer Records" sheet. Maintenance of records, including the date and amount of the transfer, zip code of the location receiving the off-site poultry waste, and nearest stream or waterbody, is the requirement of the owner/operator of the confined poultry feeding operation (or third-part broker if one was involved in the transaction). Records must be made available to DEQ personnel upon inspection of the confined poultry feeding operation. For off-site application of poultry waste, the present regulation does not require records of (i) the amount of waste received by a single farm, (ii) whether or not the poultry waste will be applied in accordance with a nutrient management plan, (iii) soil test levels on receiving fields, (iv) timing of applications, or (v) a description of receiving crops.

9VAC25-630-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker is an agricultural storm water discharge.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys. These numbers are established regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department, in

consultation with the Department of Conservation and Recreation.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower whose confined poultry feeding operation is, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person, other than the poultry grower, who possesses more than 10 tons of or controls poultry waste in any 365-day period that is not generated on an animal feeding operation under their operational control and who transfers some or all of the or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

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9VAC25-630-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia Pollution Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on December 1, 2000. This general permit will expire 10 years from the effective date.

9VAC25-630-30. Authorization to manage pollutants.

A. Poultry grower. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and provided that:

1. The poultry grower has not been required to obtain a Virginia Pollution Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be considered a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to ~~§ 3.1-726~~ § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The Department of Conservation and Recreation must approve a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient

management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;

5. Adjoining property notification.

a. When a poultry grower files a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall also give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete ~~the a~~ training program offered or approved by the ~~Department of Conservation and Recreation~~ department within one year of filing the registration statement for general permit coverage. All poultry growers shall complete a training program at least once every five years.

B. Poultry waste end-user, poultry waste broker. Any poultry waste end-user or poultry waste broker who receives transferred poultry waste shall comply with the requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 regarding utilization, storage, tracking, and accounting of poultry waste in his possession or under his control.

1. Any poultry waste end-user or poultry waste broker who does not comply with the requirements of 9VAC25-630-

60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

2. Any poultry waste end-user or poultry waste broker governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of poultry waste provided that the poultry waste end-user or poultry waste broker files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and provided that:

a. The poultry waste end-user or poultry waste broker has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

c. The Department of Conservation and Recreation must approve a nutrient management plan for land application sites where poultry waste will be utilized or stored and managed by the poultry waste end-user or the poultry waste broker prior to the submittal of the registration statement. The poultry waste end-user or the poultry waste broker shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry waste end-user or the poultry waste broker shall implement the approved nutrient management plan; and

d. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted end-users or permitted brokers shall complete a training program at least once every five years.

B. C. Receipt of this general permit does not relieve any poultry grower, poultry waste end-user, or poultry waste broker of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

9VAC25-630-40. Registration statement.

A. Poultry growers. In order to be covered under the general permit, the poultry grower shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry grower's name, mailing address and telephone number;
2. The location of the confined poultry feeding operation;
3. The name and telephone number of a contact person or operator other than the poultry grower, if necessary;
4. The best time of day and day of the week to contact the poultry grower or contact person;
5. If the facility has an existing VPA permit, the permit number;
6. The types of poultry and the maximum numbers of each type to be grown at the facility at any one time;
7. Identification of the method of dead bird disposal;
8. An indication of whether new poultry growing houses are under construction or planned for construction;
9. A copy of the nutrient management plan approved by the Department of Conservation and Recreation ~~and a~~;

10. A copy of the Department of Conservation and Recreation nutrient management plan approval letter certifying approval of the plan; [which that] also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

~~10.~~ 11. The following certification: "I certify that notice of the registration statement for any confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information,

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including the possibility of fine and imprisonment for knowing violations."

B. Poultry waste end-users or poultry waste brokers. In order to be covered under the general permit, the poultry waste end-user or poultry waste broker shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry waste end-user's or poultry waste broker's name, mailing address, and telephone number;

2. The location of the operation where the poultry waste will be utilized, stored, or managed;

3. The best time of day and day of the week to contact the poultry waste end-user or poultry waste broker;

4. If the facility has an existing VPA permit, the permit number;

5. If confined poultry are located at the facility, indicate the number of confined poultry;

6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

8. The following certification: "I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

B. C. The registration statement shall be signed in accordance with 9VAC25-32-50.

9VAC25-630-50. Contents of the general permit.

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: December 1, 2000

Modification Date: January 1, 2006

[Modification Date: January 1, 2010]

Expiration Date: November 30, 2010

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT AT CONFINED POULTRY FEEDING OPERATIONS

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I—Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations and Part II—Conditions Applicable to All VPA Permits and Part III—Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Waste Brokers, as set forth herein.

Part I

Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste; and
- c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a

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result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

4. Poultry waste may be transferred from a permitted poultry grower to another person ~~or broker~~ without the requirement for the identification of identifying the fields where such waste will be applied utilized in the facility's permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person ~~more than 10 [five or] more [than 10]~~ tons of poultry waste in any 365-day period, the poultry grower shall provide that person a with:

- (1) Grower name, address, and permit number;
 - (2) A copy of the most recent nutrient analysis for of the poultry waste; and a
 - (3) A fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower;
- (1) His name and address;
 - (2) Written acknowledgement of receipt of the waste;
 - (3) The nutrient analysis of the waste, and
 - (4) The fact sheet.

~~If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.~~

b. When a poultry grower transfers to another person ~~more than 10 [five or] more [than 10]~~ tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- (1) The recipient name and address;
 - (~~1~~) (2) The amount of poultry waste received by the person;
 - (~~2~~) (3) The date of the transaction;
 - (~~3~~) (4) The nutrient analysis of the waste; and
 - (4) The locality in which the recipient intends to utilize the waste (i.e. nearest town or city and zip code);
 - (5) The name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and
 - (~~6~~) (5) The signed waste transfer acknowledgement records form acknowledging the receipt of the following:
- (a) The waste;
 - (b) The nutrient analysis of the waste; and
 - (c) A fact sheet.

~~These records shall be maintained on site for three years after the transaction and shall be made available to department personnel upon request.~~

e. ~~Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.~~

c. When a poultry grower transfers to another person [five or] more [than 10] tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

- (1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code); [and]
 - (2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site [;and.]
- [(~~3~~) If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan).]

d. [Poultry growers shall submit copies of the records required by Part I B 4 a, b, and c to the department annually, on a form approved by the department. Records for the preceding calendar year shall be submitted to the department not later than February 15.] Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.

e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

5. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to ~~§ 3-1-726~~ § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

6. The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in Part I ~~subdivision~~ B 4 e shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the grower's poultry waste management activities;
- e. Calculation of waste application rates; and
- f. Waste application schedules.

7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary

to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

8. Nitrogen application rates contained in the NMP shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

9. For all NMPs developed after October 1, 2001, and on or before December 31, 2005, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation. For all NMPs developed after December 31, 2005, phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;

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c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

12. ~~Records~~ The following records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

13. Each poultry grower covered by this general permit shall complete ~~the~~ a training program offered or approved by the Department of Conservation and Recreation department within one year of filing the registration statement has been submitted for general permit coverage. All poultry growers shall complete a training program at least once every five years.

Part II

Conditions Applicable to all VPA Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless other procedures have been specified in this permit.

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

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The name of the individual(s) who performed the analyses;

e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The

permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

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

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

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

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or

upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

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

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

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II F, G and H may be made to the department's regional office. For reports outside normal working hours, leave a

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message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.
2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part II K 1;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility.

A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or

under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a

bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in paragraphs U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the department were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private and have access to records required by this permit;
2. Have access to, inspect and copy any records that must be kept as part of permit conditions;
3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and
4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law.

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For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for

transfer of permit responsibility, coverage, and liability between them; and

c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Part III

Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.

2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

SOILS MONITORING

<u>PARAMETERS</u>	<u>LIMITATIONS</u>	<u>UNITS</u>	<u>MONITORING REQUIREMENTS</u>	
			<u>Frequency</u>	<u>Sample Type</u>
<u>pH</u>	<u>NL</u>	<u>SU</u>	<u>1/3 years</u>	<u>Composite</u>
<u>Phosphorus</u>	<u>NL</u>	<u>ppm or lbs/ac</u>	<u>1/3 years</u>	<u>Composite</u>
<u>Potash</u>	<u>NL</u>	<u>ppm or lbs/ac</u>	<u>1/3 years</u>	<u>Composite</u>
<u>Calcium</u>	<u>NL</u>	<u>ppm or lbs/ac</u>	<u>1/3 years</u>	<u>Composite</u>
<u>Magnesium</u>	<u>NL</u>	<u>ppm or lbs/ac</u>	<u>1/3 years</u>	<u>Composite</u>

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

6. Analysis of soil and waste shall be according to methods specified in the permittee's approved nutrient management plan.

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Poultry waste storage facilities shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste; and

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

4. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over [~~five or~~] more [than 10] tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

- a. The end-user or broker name, address, and permit number;
- b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:

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(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site;

c. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

5. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

a. Broker name, address, and permit number;

b. The nutrient analysis of the waste; and

c. A fact sheet.

6. When a poultry waste end-user or poultry waste broker is a recipient of [~~five or~~] more [than 10] tons of transferred poultry waste in any 365-day period, the poultry waste end-user or poultry waste broker shall keep a record regarding the transferred poultry waste:

a. The following items shall be recorded regarding the source of the transferred poultry waste:

(1) The source name and address;

(2) The amount of poultry waste received from the source; and

(3) The date the poultry waste was acquired.

b. The following items shall be recorded regarding the recipient of the transferred poultry waste:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient content of the waste;

(5) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; [and]

[~~(7) If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard~~

~~rate, soil test recommendations, or a nutrient management plan); and~~

(~~8~~) (7)] The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

7. [~~End users or brokers shall submit copies of the records required by Part III B 6 to the department annually on a form approved by the department. Records for the preceding calendar year shall be submitted to the department not later than February 15.] End-users or brokers shall maintain the records required by Part III B 6 for at least three years after the transaction and make them available to department personnel upon request.~~

8. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

9. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

10. The permittee shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in Part III B 8 shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the permittee's poultry waste management activities;

- e. Calculation of waste application rates; and
- f. Waste application schedules.

11. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

12. Nitrogen application rates contained in the NMP shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

13. Phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

14. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice- or snow-covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

15. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

- e. Distance from limestone outcroppings: 50 feet; and
- f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

16. The following records shall be maintained:

- a. The identification of the land application field sites where the waste is utilized or stored;
- b. The application rate;
- c. The application dates; and
- d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

17. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All poultry waste end-users or poultry waste brokers shall complete a training program at least once every five years.

9VAC25-630-60. Tracking and accounting requirements for poultry waste brokers.

A. ~~Poultry waste brokers shall keep a record of the source of the poultry waste in their possession, the amount of poultry waste received from the source, and the date the poultry waste was acquired register with the department by providing their name and address on a form approved by the department prior to transferring poultry waste.~~

B. ~~When a poultry waste broker transfers to another person more than 10 [five or more than 10] tons of poultry waste in any 365-day period, the poultry waste broker shall provide to the recipient of the waste copies of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department that includes appropriate practices for proper storage and management of the waste. The person receiving the waste shall provide the poultry waste broker his name and address and acknowledge in writing receipt of the waste, the nutrient analysis and the fact sheet. information regarding the transfer of poultry waste to both the source and recipient of the waste.~~

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1. The broker name and address shall be provided to the source of the transferred poultry waste:

2. The following items shall be provided to the recipient of the transferred poultry waste:

a. The broker name and address;

b. The most recent nutrient analysis of the poultry waste; and

c. A fact sheet.

C. When a poultry waste broker transfers to another person more than 10 [~~five or more than 10~~] tons of poultry waste in any 365-day period, the poultry waste broker shall keep a record of the amount of poultry waste received by the person, the date of the transaction, the nutrient content of the waste, the locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code), the name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and the signed waste transfer acknowledgement records regarding the transferred poultry waste.

1. The following items shall be recorded regarding the source of the transferred poultry waste:

a. The source name and address;

b. The amount of the poultry waste received from the source; and

c. The date the poultry waste was acquired.

2. The following items shall be recorded regarding the recipient of the transferred poultry waste:

a. The recipient name and address;

b. The amount of poultry waste received by the person;

c. The date of the transaction;

d. The nutrient content of the waste;

e. The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

f. The name of the stream of waterbody if known to the recipient that is nearest to the waste utilization or storage site; [and]

[~~g. If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan); and~~

~~h. g.] The signed waste transfer records form acknowledging the receipt of the following:~~

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) A fact sheet.

D. Poultry waste brokers shall submit copies of the records required by ~~subsections A and~~ subsection C of this section, except the waste transfer acknowledgement, to the department annually using a form approved by the department. Records for the preceding calendar year shall be submitted to the department not later than February 15. Poultry waste brokers shall maintain the records required by ~~subsections A and~~ subsection C of this section for at least three years and make them available to department personnel upon request.

E. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

F. If the poultry waste broker land applies the poultry waste for the end-user then the broker shall provide the end-user with the records regarding land application as required by 9VAC25-630-70.

G. Poultry waste brokers shall complete a training program offered or approved by the department within one year of registering with the department. Poultry waste brokers shall complete a training program at least once every five years.

H. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-70. Tracking and accounting requirements for poultry waste end-users.

A. When a poultry waste end-user is the recipient of [~~five or~~] more [than 10] tons of poultry waste in any 365-day period, the end-user shall maintain records regarding the transfer and land application of poultry waste.

1. The poultry waste end-user shall provide the permitted poultry grower or poultry waste broker with the following items:

a. End-user name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city and zip code);

c. The name of the stream or waterbody if known to the end-user that is nearest to the waste utilization or storage site; [and]

[~~d. If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard~~

rate, soil test recommendations, or a nutrient management plan); and

e. d.] Written acknowledgement of receipt of:

- (1) The waste;
- (2) The nutrient analysis of the waste; and
- (3) A fact sheet.

2. The poultry waste end-user shall record the following items regarding the waste transfer:

- a. The source name, address, and permit number (if applicable);
- b. The amount of poultry waste that was received;
- c. The date of the transaction;
- d. The final use of the poultry waste;
- e. The locality in which the waste was utilized (i.e., nearest town or city and zip code); and
- f. The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

Records regarding poultry waste transfers shall be maintained on site for a period of three years after the transaction. All records shall be made available to department personnel upon request.

3. If waste is land applied, the poultry waste end-user shall keep a record of the following items regarding the land application of the waste:

- a. The nutrient analysis of the waste;
- b. Maps indicating the poultry waste land application fields and storage sites;
- c. The land application rate;
- d. The land application dates;
- e. What crops were planted;
- f. Soil test results, if obtained;
- g. NMP, if applicable; and
- h. The method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan).

Records regarding land application of poultry waste shall be maintained on site for a period of three years after the recorded application is made. All records shall be made available to department personnel upon request.

B. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or

investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-80. Utilization and storage requirements for transferred poultry waste.

A. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in this section regarding storage of poultry waste in their possession or under their control.

1. Poultry waste shall be stored in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

2. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from

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floodwaters through the construction of berms or similar best management flood control structures.

C. Land application requirements. Any poultry waste end-user or poultry waste broker who (i) receives five or more tons of poultry waste in any 365-day period and (ii) land applies poultry waste shall follow appropriate land application requirements as outlined in this section. The application of poultry waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the table below:

<u>Region</u>	<u>Soil test P (ppm) VPI & SU Soil test (Mehlich I) *</u>
<u>Eastern Shore and Lower Coastal Plain</u>	<u>135</u>
<u>Middle and Upper Coastal Plain and Piedmont</u>	<u>136</u>
<u>Ridge and Valley</u>	<u>162</u>

* If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used.

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Poultry waste may be applied to any crop at the standard rate of 1.5 tons per acre once every three years when:

(1) In the absence of current soil sample analyses and recommendations; and

(2) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of poultry waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) Provided by a laboratory whose procedures and recommendations are approved by the Department of Conservation and Recreation; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops listed on the soil test recommendation.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of poultry waste shall be appropriate for the crop, and in accordance with regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia, except that no waste may be applied to ice- or snow-covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

3. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Poultry waste end-users or poultry waste brokers shall maintain the records demonstrating compliance with the requirements of [~~Part III A through~~ subsections B and] C for at least three years and make them available to department personnel upon request.

E. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality

Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS (9VAC25-630)

Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Growers, RS ~~VPS2~~ (rev. ~~12/1/00~~) VPG2 (rev. 12/09).

Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Brokers, RS VPG2 (rev. 12/09).

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VIRGINIA DEQ REGISTRATION STATEMENT VPA GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT FOR POULTRY GROWERS

PLEASE TYPE OR PRINT ALL INFORMATION ALL PARTS OF THIS FORM MUST BE COMPLETED

1. Grower's Name: _____
Mailing Address: _____
Telephone Number: _____

2. The location of the confined poultry feeding operation:

3. Contact Person or Operator's Name (other than the poultry grower, if necessary):

Telephone Number: _____

4. The best time of day and day of the week to contact the poultry grower or contact person:
Time: _____ Day: _____

5. Does the facility have an existing VPA permit? YES _____ NO _____ Permit Number: _____

6. Provide the types of poultry and the maximum numbers of each type to be grown at the facility at any one time

POULTRY TYPE	MAXIMUM NUMBER
_____	_____
_____	_____
_____	_____
_____	_____

7. Identify the method of dead bird disposal: _____

8. Are new poultry growing houses under construction or planned for construction? YES _____ NO _____

9. Attach to the registration statement a copy of the nutrient management plan approved by the Department of Conservation and Recreation.

10. Attach to the registration statement a copy of the Department of Conservation and Recreation nutrient management plan approval letter which also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

11. **Certification:** "I certify that notice of the registration statement for any confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000 has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted.

I certify under penalty of law that all the requirements of the Board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Signature: _____ Date: _____

Print Name: _____

For DEQ Use Only: Accepted _____ Not Accepted _____ Initials _____ Date _____

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VIRGINIA DEQ REGISTRATION STATEMENT
VPA GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT FOR POULTRY WASTE
END-USERS AND BROKERS

PLEASE TYPE OR PRINT ALL INFORMATION ALL PARTS OF THIS FORM MUST BE COMPLETED

1. Poultry Waste End-User or Broker Name: _____
Mailing Address: _____
Telephone Number: _____

2. The location of the operation where the poultry waste will be utilized, stored or managed:

3. The best time of day and day of the week to contact the poultry waste end-user or broker:
Time: _____ Day: _____

4. Does the facility have an existing VPA permit? YES _____ NO _____ Permit Number: _____

5. If confined poultry are located at the facility, indicate the number of confined poultry:

POULTRY TYPE	MAXIMUM NUMBER
_____	_____
_____	_____
_____	_____

6. Attach to the registration statement a copy of the nutrient management plan approved by the Department of Conservation and Recreation.

7. Attach to the registration statement a copy of the Department of Conservation and Recreation nutrient management plan approval letter which also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

8. **Certification:** "I certify under penalty of law that all the requirements of the Board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Signature: _____ Date: _____
Print Name: _____

For DEQ Use Only: Accepted _____ Not Accepted _____ Initials _____ Date _____

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Final Regulation

Effective Date: December 23, 2009.

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

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4032, or email john.kennedy@deq.virginia.gov.

Summary:

The amendments extend the deadline for securing a Certificate to Operate (CTO) for expanded design flow and associated nutrient waste load allocations for Harrisonburg-Rockingham Regional S.A.-North River STP, Fauquier Co. W&SA-Vint Hill STP, and Onancock STP from December 31, 2010, to December 31, 2011.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-110).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

9VAC25-720-50. Potomac-Shenandoah River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR
3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR
7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/Shenandoah	B45R	Sediment	78,141.00	LB/YR
8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR

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10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR
11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum Load Development for Linville Creek: Bacteria and Benthic Impairments	Rockingham	B46R	Sediment	5.50	TONS/YR
13.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Ammonia	7,185.00	KG/YR
14.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Chlorine	27.63	KG/YR
15.	Shenandoah River	Development of Shenandoah River PCB TMDL (South Fork and Main Stem)	Warren & Clarke	B41R B55R B57R B58R	PCBs	179.38	G/YR
16.	Shenandoah River	Development of Shenandoah River PCB TMDL (North Fork)	Warren & Clarke	B51R	PCBs	0.00	G/YR
17.	Shenandoah River	Development of Shenandoah River PCB TMDL (Main Stem)	Warren & Clarke	WV	PCBs	179.38	G/YR
18.	Cockran Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	B10R	Organic Solids	1,556.00	LB/YR
19.	Lacey Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Rockingham	B47R	Organic Solids	680.00	LB/YR
20.	Orndorff Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Shenandoah	B52R	Organic Solids	103.00	LB/YR
21.	Toms Brook	Benthic TMDL for Toms Brook in Shenandoah County, Virginia	Shenandoah	B50R	Sediment	8.1	T/YR
22.	Goose Creek	Benthic TMDLs for the Goose Creek Watershed	Loudoun, Fauquier	A08R	Sediment	1,587	T/YR
23.	Little River	Benthic TMDLs for the Goose Creek Watershed	Loudoun	A08R	Sediment	105	T/YR

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24.	Christians Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B14R	Sediment	145	T/YR
25.	Moffett Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B13R	Sediment	0	T/YR
26.	Upper Middle River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B10R	Sediment	1.355	T/YR
27.	Mossy Creek	Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments	Rockingham	B19R	Sediment	0.04	T/YR
28.	Smith Creek	Total Maximum Daily Load (TMDL) Development for Smith Creek	Rockingham, Shenandoah	B47R	Sediment	353,867	LB/YR
29.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick	B09R	Sediment	478	T/YR
30.	Lower Opequon Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick, Clarke	B09R	Sediment	1,039	T/YR

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31.	Mill Creek	Mill Creek Sediment TMDL for a Benthic Impairment, Shenandoah County, Virginia	Shenandoah	B48R	Sediment	0.9	T/YR
32.	South Run	Benthic TMDL Development for South Run, Virginia	Fauquier	A19R	Phosphorus	0.038	T/YR
33.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Sediment	40	T/YR
34.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Lead	0	KG/YR
35.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	PAHs	0	KG/YR
36.	Bull Run	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Loudoun, Fairfax, and Prince William counties, and the Cities of Manassas and Manassas Park	A23R-01	Sediment	5,986.8	T/TR
37.	Popes Head Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Fairfax County and Fairfax City	A23R-02	Sediment	1,594.2	T/YR
38.	Accotink Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15R	PCBs	0.0992	G/YR
39.	Aquia Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A28E	PCBs	6.34	G/YR
40.	Belmont Bay/ Occoquan Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	0.409	G/YR

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41.	Chopawamsic Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26E	PCBs	1.35	G/YR
42.	Coan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Northumberland	A34E	PCBs	0	G/YR
43.	Dogue Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	20.2	G/YR
44.	Fourmile Run	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Arlington	A12E	PCBs	11	G/YR
45.	Gunston Cove	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15E	PCBs	0.517	G/YR
46.	Hooff Run & Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A13E	PCBs	36.8	G/YR
47.	Little Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	10.1	G/YR
48.	Monroe Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A31E	PCBs	.0177	G/YR
49.	Neabsco Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	6.63	G/YR

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50.	Occoquan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	2.86	G/YR
51.	Pohick Creek/Pohick Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A16E	PCBs	13.5	G/YR
52.	Potomac Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A29E	PCBs	0.556	G/YR
53.	Potomac River, Fairview Beach	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A29E	PCBs	0.0183	G/YR
54.	Powells Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.0675	G/YR
55.	Quantico Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.742	G/YR
56.	Upper Machodoc Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A30E	PCBs	0.0883	G/YR
57.	Difficult Creek	Benthic TMDL Development for Difficult Run, Virginia	Fairfax	A11R	Sediment	3,663.2	T/YR
58.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR
59.	Lower Opequon	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR

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B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B02R	VA0023281	Monterey STP	001	West Strait Creek	3.85	CBOD ₅	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD ₅ , JUN-NOV	207	KG/D
		AKA Winchester - Frederick Regional				CBOD ₅ , DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD ₅	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	CBOD ₅ , JAN-MAY	700	KG/D
	7.23.04	AKA Harrisonburg - Rockingham Reg. Sewer Auth.				CBOD ₅ , JUN-DEC	800	KG/D
						TKN, JUN-DEC	420	KG/D
						TKN, JAN-MAY	850	KG/D
VAV-B32R	VA0002160	INVISTA - Waynesboro Formerly Dupont - Waynesboro	001	South River	25.3	BOD ₅	272	KG/D
VAV-B32R	VA0025151	Waynesboro STP	001	South River	23.54	CBOD ₅ CBOD ₅ , JUN-OCT	227 113.6	KG/D KG/D
VAV-B32R	VA0028037	Skyline Swannanoa STP	001	South River UT	2.96	BOD ₅	8.5	KG/D
VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD ₅	75.7	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD ₅ AMMONIA, AS N	1570 645.9	KG/D KG/D
VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD ₅ , JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	CBOD ₅	24.0	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	CBOD ₅	42.6	KG/D

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
B37R	Coors Brewing Company	VA0073245	54,820	4,112
B14R	Fishersville Regional STP	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray STP	VA0062642	19,492	1,462
B35R	Massanutten PSA STP	VA0024732	18,273	1,371
B37R	Merck - Stonewall WWTP (Outfall 101)	VA0002178	14,619	1,096
B12R	Middle River Regional STP	VA0064793	82,839	6,213
B23R	North River WWTF (2)	VA0060640	253,391	19,004
B22R	VA Poultry Growers -Hinton	VA0002313	27,410	1,371
B38R	Pilgrims Pride - Alma	VA0001961	18,273	914
B31R	Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro STP	VA0025151	48,729	3,655
B23R	Weyers Cave STP	VA0022349	6,091	457
B58R	Berryville STP	VA0020532	8,528	640
B55R	Front Royal STP	VA0062812	48,729	3,655
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP (3)	VA0026441	8,528	640
B45R	New Market STP	VA0022853	6,091	457
B45R	North Fork (SIL) WWTF	VA0090263	23,390	1,754
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B50R	North Fork Regional WWTP (1)	VA0090328	9,137	685
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF (4)	VA0022802	18,273	1,371
A09R	Broad Run WRF (5)	VA0091383	134,005	3,350
A08R	Leesburg WPCF	MD0066184	121,822	9,137
A06R	Round Hill Town WWTF	VA0026212	9,137	685
A25R	DSC - Section 1 WWTF (6)	VA0024724	42,029	2,522
A25R	DSC - Section 8 WWTF (7)	VA0024678	42,029	2,522

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A25E	H L Mooney WWTF	VA0025101	219,280	13,157
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF (8)	VA0020460	8,680	868
B08R	Opequon WRF	VA0065552	102,336	7,675
B08R	Parkins Mills STP (9)	VA0075191	60,911	4,568
A13E	Alexandria SA WWTF	VA0025160	493,381	29,603
A12E	Arlington County Water PCF	VA0025143	365,467	21,928
A16R	Noman M Cole Jr PCF	VA0025364	612,158	36,729
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	Quantico WWTF	VA0028363	20,101	1,206
A28R	Aquia WWTF	VA0060968	73,093	4,386
A31E	Colonial Beach STP	VA0026409	18,273	1,827
A30E	Dahlgren WWTF	VA0026514	9,137	914
A29E	Fairview Beach	MD0056464	1,827	183
A30E	US NSWC-Dahlgren WWTF	VA0021067	6,578	658
A31R	Purkins Corner STP	VA0070106	1,096	110
	TOTALS:		5,156,169	246,635

NOTE: (1) Shenandoah Co. - North Fork Regional WWTP waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will be deleted and facility removed from Significant Discharger List.

(2) Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by December 31, ~~2010~~ 2011, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.

(3) Mount Jackson STP: waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(4) Purcellville-Basham Simms STP: waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914 lbs/yr, based on a design flow capacity of 1.0 MGD.

(5) Loudoun Co. S.A.-Broad Run WRF: waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.

(6) Dale Service Corp.-Section 1 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(7) Dale Service Corp.-Section 8 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by December 31, ~~2010~~ 2011, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(9) Parkins Mill STP: waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.

9VAC25-720-110. Chesapeake Bay -- Small Coastal -- Eastern Shore River Basin.

A. Total maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Parker Creek	Benthic Total Maximum Daily Load (TMDL) Development for Parker Creek , Virginia	Accomack	D03E	Total Phosphorus	664.2	Lbs/YR

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

Small Coastal and Chesapeake Bay-
TABLE B1—CURRENT STREAM SEGMENT CLASSIFICATION

Segment No.	Name	Current State Class
7-12A	Pocomoke Sound	EL
7-12B	Messongo Creek	EL
7-12C	Beasley Bay	EL
7-12D	Chesconessex Creek	EL
7-13	Onancock Creek	WQ
7-14	Pungoteague	WQ
7-12E	Nandua Creek	EL
7-15	Occohannock Creek	WQ
7-12F	Nassawadox Creek	EL
7-12G	Hungars Creek	EL
7-12H	Cherrystone Inlet	EL
7-12I	South Bay	EL
7-12J	Tangier Island	_____
7-11A	Chincoteague	EL
7-11B	Hog Bogue	EL
7-11C	Metomkim Bay	EL
7-11D	Machipongo River	EL
7-11E	South Ocean	EL

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Small Coastal and Chesapeake Bay
TABLE B2 - EASTERN SHORE WASTELOAD ALLOCATIONS

NAME	RECEIVING STREAM OR ESTUARY	INTERIM WASTELOAD ALLOCATIONS ⁽¹⁾			FINAL WASTELOAD ALLOCATIONS		
		(Current Permit Limits)					
		BOD ₅ (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)	BOD ₅ (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)
Commonwealth of Va. Rest Area	Pitts Cr.	4.3	4.3	--	4.3	4.3	--
Edgewood Park	Bullbegger Cr.	0.80	0.80	--	0.80	0.80	--
Holly Farms	Sandy Bottom Cr.	167 ⁽³⁾	167 ⁽³⁾	10 mg/l	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Taylor Packing Company	Messongo Cr.	7006 ⁽³⁾	13010 ⁽³⁾	--	Stream survey/model was run previously. No change in permit anticipated.		
No. Accomack E.S.	Messongo Cr.	1.8	1.4	--	1.8	1.4	--
Messick & Wessels Nelsonia	Muddy Cr.	30mg/l ⁽⁴⁾	30mg/l ⁽⁴⁾	--	Interim wasteload allocations may be changed based on BAT guidance.		
Whispering Pines Motel	Deep Cr.	4.8	4.8	--	4.8	4.8	--
Town of Onancock	Onancock Cr.	21	21	--	21	21	--
Messick & Wessels	Onancock Cr.	30mg/l ⁽⁴⁾	30mg/l ⁽⁴⁾	--	Interim wasteload allocations may be changed based on guidance.		
So. Accomack E.S.	Pungoteague Cr.	1.8	1.4	--	1.8	1.4	--
A & P Exmore	Nassawadox Cr.	0.38	0.38	--	0.38	0.38	--
Norstrom Coin Laundry	Nassawadox Cr.	60mg/l ⁽⁴⁾ max.	60mg/l ⁽⁴⁾ max.	--	Interim wasteload allocation may be changed based on BAT guidance.		
NH-Acc. Memorial Hospital	Warehouse Cr.	12.5	12.5	--	21.5	12.5	--
Machipongo E.S. & H.H. Jr. High	Trib. To Oresbus Cr.	5.2	5.2	--	5.2	5.2	--
Town of Cape Charles	Cape Charles Harbor	62.6	62.6	--	62.6	62.6	--
America House	Chesapeake Bay	5	5	--	5	5	--
U.S. Coast Guard Chesapeake Bay	Chesapeake Bay	--	--	10/mgl ⁽⁵⁾	--	--	10/mgl ⁽⁵⁾
U.S. Government Cape Charles AFB	Magothy Bay	Currently No Discharge					

Exmore Foods (Process Water)	Trib. To Parting Cr.	200	100	--	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Exmore Foods (Sanitary)	Trib. To Parting Cr.	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--
Perdue Foods (process water)	Parker Cr.	May-Oct 275 367 Nov-Apr. 612 797	--	--	Interim Permit in process. Stream survey/models were run. No substantial change in permit anticipated.		
Perdue Foods (parking lot)	Parker Cr.	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--
Accomack Nursing Home	Parker Cr.	2.7	2.6	--	2.7	2.6	--
U.S. Gov't NASA Wallops Island	Mosquito Cr.	75	75	--	75	75	--
U.S. Gov't NASA Wallops Island	Cat Cr.	1.25	1.25	--	1.25	1.25	--
F & G Laundromat	Chincoteague Channel	10	4.8	--	Interim wasteload allocations may be changed based on BAT guidance.		
U.S. Coast Guard	Chincoteague Channel	--	--	15mg/l (max.)	--	--	15mg/l (max.)
Virginia- Carolina Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5
Reginald Stubbs Seafood Co. (VA0005813)	Assateague Channel	--	20	95	--	20	95
Reginald Stubbs Seafood Co. (VA00056421)	Assateague Channel	--	20	98	--	20.4 ⁽²⁾	98
Shreaves	Chincoteague Bay	--	16 ⁽²⁾	1.4 ⁽²⁾	--	16 ⁽²⁾	1.4 ⁽²⁾
Chincoteague Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5

TABLE B3 - EXISTING OR POTENTIAL SOURCES OF WATER POLLUTION

Location No.	Name	Receiving Estuary	Stream	Flow (MGD)	CBOD (mg/l/#D)	NBOD (mg/l/#D)	Total Suspended Solids (mg/l/#D)	D.O. (mg/l)	FC (MPN/100ml)	Treatment/ Operation
1	Comm. Va. Rest Area	Pocomoke Sound	Pitts Cr.	.003	7/0.18		10/0.3	7.5	1	Extended aeration. Sec. Holding pond, CL ₂

Regulations

2	H.E. Kelley	Pocomoke Sound	Pitts Cr.							Currently no discharges. Out of business
3	Edgewood Park	Pocomoke Sound	Bullbegger Creek	.006 ⁽³⁾	16/0.8 ⁽²⁾		16/0.8 ⁽²⁾			PRI, CL ₂ . Holding Pond
4	Holly Farms	Pocomoke Sound	Sand Bottom Creek	0.18	6/40		15/100	8.0	100	Aerated Lagoons, CL ₂
5	J.W. Taylor	Messongo Creek	Trib. To Messongo	.001	60/50		150/125	8.0		Aerated Lagoons
6	No. Accomack E.S.	Messongo Creek	Trib. To Messongo	.005	22/0.9		30/1.3	9.0		Sec., Septic Tank, Sand Filter Holding Pond
7	Messick & Wessells-Nelsonia	Beasly Bay	Muddy Creek	.005	125/5.2		100/4.2			Sec., Extended Aeration
8	Willetts Laundromat	Beasly Bay	Hunting Creek							Prl., Septic Tank
9	Byrd Food	Beasly Bay								No discharge industry
10	Whispering Pines Motel	Beasly Bay	Deep Creek	.009	25/1.9		30/2.3	6.0		Sec., Extended Aeration Holding Pond, CL ₂
11	Town of Onancock	Onancock Creek	North Fork	.19	2/3.2		3/4.8	7.5	3	Primary, Primary Settling Sludge Digestion, CL ₂
12	Messick & Wessells-Onley	Onancock Creek	Joynes Branch	.005	100/4.2		150/6.3			Sec., Extended Aeration
13	So. Accomack E.S.	Pungoteague	Trib. To Pungoteague		24/1.8 ⁽²⁾		19/1.4 ⁽²⁾			Sec., Septic Tank, Grease Trap, Sand Filter, Holding Pond. No discharge in 4 yrs.
14	Great Atlantic & Pacific Tea Company	Nassawadox	Nassawadox	.001	140/1.2		150/1.3		6.5	Sec., Extended Aeration CL ₂

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15	Norstrom Coin Laundry	Nassawadox	Trib. To Nassawadox	.008						Sec., Extended Aeration, permit in process
17	N.H.-Acc. Memorial Hospital	Nassawadox	Warehouse Creek	.03	25/1.6		35/2.2	6.5	750	Secondary Aerated Lagoon, CL ₂ Holding pond Stab-Lagoon
18	Machipongo E.S. & N.H. Jr. High School	Hungars Creek	Trib. To Oresbus	0.3 ⁽¹⁾	30/5.2 ⁽²⁾		30/5.2 ⁽²⁾			Sec., Stab-Lagoon, Holding Pond no discharge in 4 yrs.
19	B & B Laundromat	Cherry Stone Inlet	Old Castle Creek							Prl. Septic Tank w/discharger
20	KMC Foods, Inc.	Cherry Stone Inlet								No-Discharge industry
21	Herbert West Laundromat	Cherry Stone Inlet	Kings Creek							Prl. Septic Tank w/Discharger
22	Town of Cape Charles	Cape Charles Harbor	Cape Charles Harbor	.165 ⁽²⁾	290/400 ⁽³⁾		139/192 ⁽³⁾			Raw Sewage, Sewage Treatment to be completed by 1982
23	American House Inn	Chesapeake Bay	Chesapeake Bay		30/5 ⁽²⁾		30/5 ⁽²⁾			
24	U.S. Coast Guard	Chesapeake Bay	Chesapeake Bay	.001 ⁽²⁾	30/			5.0 ⁽²⁾	200 ⁽²⁾	Bilgewater
25	U.S. Gov't Cape Charles AFS	Magothy	Magothy	.001 ⁽²⁾				5.0 ⁽³⁾		Sec., CL ₂ , Aerated Lagoon, currently no-discharge
27	Exmore Frozen Foods	Machipongo	Trib. To Parting Cr.	.56	29/135		18/84	6.5		Grass Bays, Screening
28	Exmore Foods (Domestic)	Machipongo	Trib. To Parting Cr.	.02	5/0.8		9/1.5			Septic Tank, Sand Filter
30	Perdue Foods	Metomkin Bay	Parker Creek	1.7	11/156		15/213	6.5	150	Sec., Aerated Lagoon, Holding Pond, CL ₂
31	Perdue Foods	Metomkin Bay	Parker Cr.	.01 ⁽⁴⁾			15/1.3			

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32	Accomack Co. Nursing Home	Metomkin Bay	Parker Cr. North Fork	.011	20/1.8		28/2.6	6.5	100	Sec., Extended Aeration, Holding Pond, CL ₂
33	U.S. Gov't NASA (Wallops Island)	Hog Creek	Cat Creek	.005	30/		30/			Sec., Stab., Pond, Holding Pond, CL ₂
34	Robo Automatic Car	Chincoteague Channel	Little Simoneaton							
35	U.S. Gov't NASA	Chincoteague Channel	Mosquito Creek	.105	10.6/9.3 ⁽³⁾	112/28	2.0/1.8			Sec., Trickling Filter
36	Trail's End Rec. Vehicle Dev.	Chincoteague Channel	Trib to Mosquito Cr.							Septic Tank and Drainfield
37	Coin-Op Laundromat	Chincoteague Channel	Chincoteague Channel							No discharge
38	F & G Laundromat	Chincoteague Channel	Chincoteague Channel	.005						
39	U.S. Coast Guard	Chincoteague Channel	Chincoteague Channel	.001 ⁽²⁾			30/0.2 ⁽²⁾		200 ⁽²⁾	Discharge-Bilgewater
40	Phillip Custis	Ramshorn Bay								Spray Irrigation, no Discharge
43	Boggs (Melfa)	Nickowampus Creek								Septic tank waste lagoons, no discharge
44	Blake (Greenbush)	Deep Creek								Septic tank waste lagoon, no discharge
45	Cherrystone Campground	Kings Creek or Cherrystone Inlet								Stab-Lagoon, Holding pond, no discharge
46	Wallops Sanitary Landfill									Solid waste disposal site, no discharge
47	Chincoteague Dumpsite									Solid waste disposal site, no discharge
48	Bob Town Sanitary Landfill									Solid waste disposal site, no discharge
49	Northampton Sanitary Landfill									Solid waste site, no discharge

52	Dorsey's Seafood Market	Chincoteague							Oysters ⁽⁵⁾
54	Va-Carolina Seafood Company, Inc.	Hog-Bogue				1152 ⁽²⁾ Clams 68 ⁽²⁾ Oysters 7.0 ⁽²⁾ Scallops			Surf Clams, Oysters, Scallops
55	Chincoteague Island Oyster Farm	Chincoteague							(Oyster-Boat Operation (grows oysters & clams from larvae) ⁽⁶⁾
	Reginald Stubbs Seafood Company	Assateague Channel		.002 ⁽⁴⁾	4.2		2.8		Oyster
58	Shreaves Bros.	Chincoteague		.002 ⁽⁴⁾	2.07		8.0		Oyster
60	Chincoteague Seafood Co.	Chincoteague		.063 ⁽⁴⁾	972		79.9		Surf-Clam
61	Ralph E. Watson Oyster Co.	Chincoteague		.003 ⁽⁴⁾	57		53		Oyster
62	McCready Bros. Inc.	Chincoteague							Oyster, no discharge
63	Wm. C. Bunting	Chincoteague		.001 ⁽⁴⁾	12		4.8		Oyster
64	Carpenters Seafood	Chincoteague		.001 ⁽⁴⁾	4.1		2.1		Oyster
64a	Burtens Seafood, Inc.	Chincoteague		.006 ⁽⁴⁾	10.3		.35		Oyster shell stock deal no discharge
69	Jones Bros. Seafood	Chincoteague	Sheepshead Cr.						Oyster & Clams
70	W.E. Jones Seafood	Chincoteague	Sheepshead Creek				46.4 ⁽²⁾		Oyster & Clams
71	Conner & McGee Seafood	Chincoteague	Sheepshead Creek						Oyster & Clams ⁽⁶⁾
72	Hills Oyster Farm	Chincoteague							Oyster & Clams ⁽⁵⁾
73	Thomas E. Reed Seafood	Chincoteague	Deep Hole Creek						Oyster & Clams ⁽⁶⁾
74	Mears & Powell	Metomkin							Oyster-Building, also used to clean fish ⁽⁵⁾

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75	Wachapreague Seafood Company	Metomkin	Finney Creek	.036 ⁽⁴⁾			144			Sea Clam
76	George D. Spence and Son	Machipongo								Crab Shedding ⁽⁶⁾
77	George D. Spence and Son	Machipongo								Crab Picking, no discharge
78	George T. Bell	Machipongo								No Discharge, Oyster
79	George D. Spence and Son	Machipongo	Upshur Bay							Oyster ⁽⁶⁾
80	Peters Seafood	Machipongo								Oyster ⁽⁶⁾
81	J.E. Hamblin	Machipongo								Oyster, No discharge
83	Nathan Bell Seafood	Machipongo								Clams, Hard ⁽⁵⁾
84	John L. Marshall Seafood	Machipongo								Clams ⁽⁵⁾
85	American Original Foods, Inc.	Machipongo	Parting Creek	.151 ⁽⁴⁾	2632		1337			
86	Harvey & Robert Bowen	Machipongo	Parting Creek	.0006 ⁽⁴⁾	6.2		1.7			Oyster
87	H.M. Terry	Machipongo	Parting Creek	.0004 ⁽⁴⁾	3.3		.62			Oyster
89	Webb's Island Seafood	South Ocean Area								Clams ⁽⁶⁾
90	Cliff's Seafood	South Ocean Area	Mockhorn Bay							Oyster & Clam ⁽⁶⁾
92	H. Allen Smith	South Ocean Area		.037 ⁽⁴⁾	213		522			Sea Clam
94	C & D Seafood, Inc.	South Ocean Area	Oyster Harbor	.04 ⁽⁴⁾	427		204 sea clam 34 ⁽²⁾ oyster			Sea Clam, Oyster
95	B.L. Bell & Sons	South Ocean Area	Oyster Harbor	.001 ⁽⁴⁾	12		.9			Oyster
98	Lance Fisher Seafood Co.	Pocomoke		.02 ⁽⁴⁾	38		12.8			Oyster and Clam
99	Fisher & Williams/Lester Fisher	Messongo								Building used to shed soft crabs ⁽⁵⁾

Regulations

100	Grady Rhodes Seafood	Messongo								Sold business, Building used to shed soft crabs ⁽⁵⁾
101	Bonowell Bros.	Messongo	Pocomoke Sound	.001 ⁽⁴⁾	12		2.5			Oyster
102	John H. Lewis & Co.	Messongo	Starling Creek							Oyster SS only, no discharge
103	Eastern Shore Seafood	Beasley								Crab, no discharge
106	Ashton's Seafood, Inc.	Pungoteague								Shell stock dealer-no discharge
107	Nandua Seafood Co.	Nandua		.0001 ⁽⁴⁾	.2		.9			Crab
108	A.M. Acuff	Cherrystone								Building used for storage, no discharge
110	D.L. Edgerton Co.	Cherrystone	Mud Creek							Conch. In operation. Retort drains overboard & fish wash-down ⁽⁶⁾
111 & 112	Tangier Island Seafood, Inc.	Tangier								Crab ⁽⁵⁾
113	Tangier	Chesapeake Bay								1000 KW Power Station
114	Chincoteague	Chincoteague Channel								2100 KW Power Station
115	Parksley									2400 KW Power Station
116	Tasley									1400 KW Power Station
117	Bayview									10,000 KW Power Station
118	Cape Charles	Cape Charles Harbor								1200 KW Power Station
119	Burdick Well & Pump Company									Holding Pond, no discharge

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120	Marshall & Son Crab Company	Messongo Cr.							Crab Shedding ⁽⁶⁾
	Linton & Lewis Crab Co.	Pocomoke Sound							Crab Shedding ⁽⁶⁾
122	D.L. Edgerton	Chincoteague							Fish Washdown ⁽⁶⁾
123	Evans Bros. Seafood Co.	Pocomoke Sound							Crab Shedding ⁽⁶⁾
124	Stanley F. Linton	Messongo	Starling Cr.						Crab Shedding ⁽⁶⁾
125	H.V. Drewer & Son	Messongo	Starling Cr.	.035 ⁽⁴⁾ .018 ⁽⁴⁾	349 180		736-clam 198-oyster		Oyster & Clam
126	Chincoteague Fish Co., Inc.	Chincoteague Channel							Fish Washdown ⁽⁶⁾
127	Chincoteague Crab Company	Assateague Channel			.18 ⁽²⁾		.54 ⁽²⁾		Crab & Crab Shedding
128	Aldon Miles & Sons	Pocomoke Sound							Crab Shedding ⁽⁶⁾
129	Saxis Crab Co.	Messongo	Starling Cr.						Crab Shedding ⁽⁶⁾
	Paul Watkinson SFD	Pocomoke Sound							Crab Shedding ⁽⁶⁾
131	Russell Fish Co., Inc	Chincoteague Channel							Fish ⁽⁶⁾
132	Mason Seafood Co.	Chincoteague Channel		.002 ⁽⁴⁾	7.7		13.7		Oysters

NOTE: ⁽¹⁾Water quality data taken from Discharge Monitoring Reports or special studies unless indicated.

⁽²⁾NPDES Permit limits given since the permit is new and discharge monitoring reports not yet available.

⁽³⁾Data from Accomack-Northampton Co. Water Quality Management Plan.

⁽⁴⁾Estimated.

⁽⁵⁾May need a permit--either company has not responded to SWCB letter or operation has just started up.

⁽⁶⁾No limits -- has an NPDES permit, but is not required to monitor.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
C16E	Cape Charles Town WWTP (1)	VA0021288	6,091	457
C11E	Onancock WWTP (2)	VA0021253	9,137	685
C13E	Shore Memorial Hospital	VA0027537	1,218	91

C10E	Tangier WWTP	VA0067423	1,218	91
C10R	Tyson Foods – Temperanceville	VA0004049	22,842	1,142
TOTALS:			40,506	2,467

NOTE: (1) Cape Charles STP: waste load allocations (WLAs) based on a design flow capacity of 0.5 million gallons per day (MGD). If plant is not certified to operate at 0.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

(2) Onancock STP: waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, ~~2010~~ 2011, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

VA.R. Doc. No. R10-2198; Filed November 4, 2009, 11:23 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC5-67. Advance Health Care Directive Registry (adding 12VAC5-67-10, 12VAC5-67-20, 12VAC5-67-30).**

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

Effective Dates: November 1, 2008, through April 30, 2010.

The Department of Health has requested an extension of the above-referenced emergency regulation, relating to the Advance Health Care Directive Registry. The emergency regulation was published in 25:4 VA.R. 658 October 27, 2008 (<http://register.dls.virginia.gov/vol25/iss04/v25i04.pdf>).

The key provisions of this regulation consist of a description of the documents that may be submitted to the Advance Health Care Directive Registry, a provision for reasonable fees to be charged by a vendor with whom the Department of Health may contract for implementing the registry, and provisions outlining who may gain access to documents in the registry. In order for the department to meet this mandate, it accepted unsolicited proposals from vendors under the Public-Private Education Facilities and Infrastructure Act of 2002. During the negotiation process at the conceptual phase, it was identified that several amendments needed to be made to the enabling (organic) statute. In consultation with the patron, it was determined that these amendments could be debated in the 2010 Session of the Virginia General Assembly. These amendments would include a requirement for hospitals to notify citizens of the availability of a statewide registry and would also expand the categories of providers that can have access to this registry. As these amendments would have an impact on the regulation, the department requests that the emergency regulations stay in place while the enabling statute is being debated.

In accordance with § 2.2-4011 D of the Code of Virginia, the Governor approved the department's request to extend the expiration date of the emergency regulation through April 30, 2010.

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

VA.R. Doc. No. R09-1382; Filed November 4, 2009, 4:53 p.m.

Final Regulation

Title of Regulation: **12VAC5-120. Regulations for Testing Children for Elevated Blood-Lead Levels (amending 12VAC5-120-10, 12VAC5-120-30; adding 12VAC5-120-35).**

Statutory Authority: § 32.1-46.1 of the Code of Virginia.

Effective Date: December 31, 2009.

Agency Contact: Nancy Van Voorhis, Director, Lead Safe Virginia, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7694, or email nancy.vanvoorhis@vdh.virginia.gov.

Summary:

The amendments permit the use of the Clinical Laboratory Improvement Amendments (CLIA)-waived instruments for point-of-care testing to screen for elevated blood-lead levels, provided any elevated blood-lead level is followed up with a venous blood-lead test performed by a qualified laboratory. The amendments also require health care providers to make information available on the dangers of lead poisoning, along with a list of available resources, to parents as part of regular well-check visits for all children up to 72 months of age.

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

Regulations

Part I Definitions and General Information

12VAC5-120-10. Definitions.

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

"Board" means the State Board of Health.

"Commissioner" means the Commissioner of Health.

"Elevated blood-lead level" for children means 10 or more micrograms of lead per deciliter of whole blood in a child up to and including 72 months of age.

"Health care provider" means a physician or his designee or an official of a local health department.

"High-risk ~~zip code~~ ZIP Code area" means a ~~zip code~~ ZIP Code area listed in guidelines issued by the Virginia Department of Health in which 27% or more of the housing was built before 1950 or 12% or more of the children have elevated blood-lead levels based on current available data.

"Physician" means a person licensed to practice medicine in any of the 50 states or the District of Columbia.

"Point of care testing" refers to testing by a health care provider that has a CLIA Certificate of Waiver.

"Qualified laboratory" means a laboratory that is certified by the Health Care Financing Administration in accordance with the Clinical Laboratory Improvement Act (42 CFR Part 430) Amendments of 1988 (CLIA) (42 CFR Part 493) and is participating in the Centers for Disease Control and Prevention's (CDC) Blood Lead Laboratory Proficiency Program.

"µg/dL" means micrograms of lead per deciliter of whole blood.

Part II

Protocol for Identification of Children with Elevated Blood-Lead Levels

12VAC5-120-30. Schedule for testing.

Virginia health care providers should test all children up to and including 72 months of age for elevated blood-lead levels according to the following schedule unless they are determined under 12VAC5-120-60 to be at low risk for elevated blood-lead levels. All blood-lead samples shall be analyzed by a qualified laboratory. The use of a CDC-approved and CLIA-waived instrument for point-of-care testing, as a means of administering screening tests for elevated blood-lead levels, is exempted from the requirement to have all blood-lead samples analyzed by a qualified laboratory. However, any elevated blood-lead level found through point-of-care testing to be equal to or greater than 10 µg/dL shall be confirmed by a venous blood-lead test

performed by a qualified laboratory in accordance with the requirements of 12VAC5-120-40.

1. Children should be tested at ages one and two years.
2. Children from 36 through 72 months of age should be tested if they have never been tested.
3. Additional testing may be ordered by the health care provider.
4. Children should be tested at the request of a parent or guardian due to any suspected exposure.

12VAC5-120-35. Information about lead poisoning.

The health care provider shall make available to parents information on the dangers of lead poisoning, along with a list of available resources, as part of regular well-check visits for all children up to 72 months of age.

VA.R. Doc. No. R08-917; Filed November 3, 2009, 3:39 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: 12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-40).

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

Effective Date: December 23, 2009.

Agency Contact: Keith Hayashi, Department of Medical Assistance Services, Health Care Services Division, Pharmacy, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-2773, FAX (804) 786-1680, or email keith.hayashi@dmas.virginia.gov.

Summary:

This action creates a method of reimbursement for specialty drugs, which are covered by the Virginia Medicaid program, based on the Wholesale Acquisition Cost of the drug. Specialty drug products are those that are used to treat chronic, high-cost, or rare diseases, including drugs for the treatment of hepatitis C and multiple sclerosis, as well as drugs such as growth hormone agents and interferon. These drugs tend to be much higher in cost than standard pharmaceutical products, can sometimes require special handling techniques, and typically also require unique patient education and monitoring. This action implements a new methodology to help contain the higher costs associated with these drugs.

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

12VAC30-80-40. Fee-for-service providers: pharmacy.

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in ~~42 CFR 447.331 (e)~~ 42 CFR 447.512(c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the CMS for multiple source drugs pursuant to ~~42 CFR 447.331~~ 42 CFR 447.512 and ~~447.332~~ 447.514, as determined by the CMS Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The methodology used to reimburse for generic drug products shall be the higher of either (i) the lowest Wholesale Acquisition Cost (WAC) plus 10% or (ii) the second lowest WAC plus 6.0%. This methodology shall reimburse for products' costs based on a Maximum Allowable Cost (VMAC) list to be established by the single state agency.

a. In developing the maximum allowable reimbursement rate for generic pharmaceuticals, the department or its designated contractor shall:

(1) Identify three different suppliers, including manufacturers that are able to supply pharmaceutical products in sufficient quantities. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the Food and Drug Administration's most recent version of the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book). Pharmaceutical products that are not available from three different suppliers, including manufacturers, shall not be subject to the VMAC list.

(2) Identify that the use of a VMAC rate is lower than the Federal Upper Limit (FUL) for the drug. The FUL is a known, widely published price provided by CMS; and

(3) Distribute the list of state VMAC rates to pharmacy providers in a timely manner prior to the implementation of VMAC rates and subsequent modifications. DMAS shall publish on its website, each month, the information used to set the Commonwealth's prospective VMAC rates, including, but not necessarily limited to:

(a) The identity of applicable reference products used to set the VMAC rates;

(b) The Generic Code Number (GCN) or National Drug Code (NDC), as may be appropriate, of reference products;

(c) The difference by which the VMAC rate exceeds the appropriate WAC price; and

(d) The identity and date of the published compendia used to determine reference products and set the VMAC rate. The difference by which the VMAC rate exceeds the appropriate WAC price shall be at least or equal to 10% above the lowest-published wholesale acquisition cost for products widely available for purchase in the Commonwealth and shall be included in national pricing compendia.

b. Development of a VMAC rate that does not have a FUL rate shall not result in the use of higher-cost innovator brand name or single source drugs in the Medicaid program.

c. DMAS or its designated contractor shall:

(1) Implement and maintain a procedure to add or eliminate products from the list, or modify VMAC rates, consistent with changes in the fluctuating marketplace. DMAS or its designated contractor will regularly review manufacturers' pricing and monitor drug availability in the marketplace to determine the inclusion or exclusion of drugs on the VMAC list; and

(2) Provide a pricing dispute resolution procedure to allow a dispensing provider to contest a listed VMAC rate. DMAS or its designated contractor shall confirm receipt of pricing disputes within 24 hours, via telephone or facsimile, with the appropriate documentation of relevant information, e.g., invoices. Disputes shall be resolved within three business days of confirmation. The pricing dispute resolution process will include DMAS' or the contractor's verification of accurate pricing to ensure consistency with marketplace pricing and drug availability. Providers will be reimbursed, as appropriate, based on findings. Providers shall be required to use this dispute resolution process prior to exercising any applicable appeal rights.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

4. The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision [8 g] of this section) or, in the absence thereof, by the following methodology set out in subdivisions a through c ~~below of this subdivision~~.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

Regulations

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

5. MAC methodology for specialty drugs. Payment for drug products designated by DMAS as specialty drugs shall be the lesser of subdivisions 1 through 4 of this section or the following method, whichever is least:

a. The methodology used to reimburse for designated specialty drug products shall be the WAC price plus the WAC percentage. The WAC percentage is a constant percentage identified each year for all GCNs.

b. Designated specialty drug products are certain products used to treat chronic, high-cost, or rare diseases; the drugs subject to this pricing methodology and their current reimbursement rates are listed on the DMAS website at the following internet address: http://www.dmas.virginia.gov/downloads/pdfs/pharm-special_mac_list.pdf.

c. The MAC reimbursement methodology for specialty drugs shall be subject to the pricing review and dispute resolution procedures described in subdivisions 2 c (1) and 2 c (2) of this section.

~~5.~~ 6. Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee for brand name and generic drugs is \$3.75.

~~6.~~ 7. The Program pays additional reimbursement for unit dose dispensing systems of dispensing drugs. DMAS defines its unit dose dispensing system coverage consistent with that of the Board of Pharmacy of the Department of Health Professions (18VAC110-20-420). This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose per capita fee to be calculated by DMAS' fiscal agent based on monthly per nursing home resident service per pharmacy provider. Only one service fee per month may be paid to the pharmacy for each patient receiving unit dose dispensing services. Multisource drugs will be reimbursed at the maximum allowed drug cost for specific multiple source drugs as identified by the state agency or CMS' upper limits as applicable. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency. The original per capita fee shall be determined by a DMAS analysis of costs related to such dispensing, and shall be reevaluated at periodic intervals for appropriate adjustment. The unit dose dispensing fee is \$5.00 per recipient per month per pharmacy provider.

~~7.~~ 8. Determination of EAC was the result of a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on the documented costs to the pharmacy. An EAC of AWP minus 10.25% shall become effective July 1, 2002.

The dispensing fee for brand name and generic drugs of \$3.75 shall remain in effect, creating a payment methodology based on the previous algorithm (least of ~~subdivisions 1 through 5 of this subsection above~~ section) plus a dispensing fee where applicable.

~~8.~~ 9. Home infusion therapy.

a. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the CMS 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

~~9.~~ 10. Supplemental rebate agreement. Based on the requirements in § 1927 of the Social Security Act, the Commonwealth of Virginia has the following policies for the supplemental drug rebate program for Medicaid recipients:

a. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for legend drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract A and Amendment #2 to Contract A has been authorized by CMS.

b. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract B and Amendment #2 to Contract B has been authorized by CMS.

c. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for

drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract C, and Amendments #1 and #2 to Contract C has been authorized by CMS.

d. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

e. Prior authorization requirements found in § 1927(d)(5) of the Social Security Act have been met.

f. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.

g. Payment of supplemental rebates may result in a product's inclusion on the PDL.

VA.R. Doc. No. R08-1319; Filed November 4, 2009, 11:33 a.m.

Final Regulation

Title of Regulation: 12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30, 12VAC30-80-190).

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

Effective Date: December 23, 2009.

Agency Contact: Carla Russell, Health Care Reimbursement Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (804) 371-8892, or email carla.russell@dmas.virginia.gov.

Summary:

Item 306 PP of Chapter 879 of the 2008 Acts of Assembly directed DMAS to recalibrate its Resource Based Relative Value System (RBRVS) physician reimbursement rates by implementing a site of service differential payment policy.

12VAC30-80-30 is amended to remove the long-standing payment reduction applied to physician services when performed in hospital settings, as compared to physicians' offices.

12VAC30-80-190 is amended to implement a site of service differential for RBRVS physician rates. Payment for physician services in some cases will be recalibrated to implement different rates for services depending on the site of service based on the relative value units (RVUs) for a procedure code published by the Centers for Medicare and Medicaid Services (CMS). For procedures that can be performed in either a facility or nonfacility, CMS publishes separate RVUs and Medicare rates are based on site of

service. Different Medicaid rates by site of service will be phased in over a four-year period.

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

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (~~12VAC30-80-160 has obstetric/pediatric fees~~). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), ~~except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office.~~ The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

Regulations

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be

reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.

b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

d. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment.

Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment

amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 17 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

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(3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

18. Reserved.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the Single State Agency Website.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12VAC30-80-190. State agency fee schedule for RBRVS.

A. Reimbursement of fee-for-service providers. Effective for dates of service on or after July 1, 1995, the Department of Medical Assistance Services (DMAS) shall reimburse fee-for-service providers, with the exception of home health services (see 12VAC30-80-180) and durable medical equipment services (see 12VAC30-80-30), using a fee schedule that is based on a Resource Based Relative Value Scale (RBRVS).

B. Fee schedule.

1. For those services or procedures which are included in the RBRVS published by the Centers for Medicare and Medicaid Services (CMS) as amended from time to time, DMAS' fee schedule shall employ the Relative Value Units (RVUs) developed by CMS as periodically updated.

a. Effective for dates of service on or after July 1, 2008, DMAS shall implement site of service differentials and employ both nonfacility and facility RVUs. The implementation shall be budget neutral using the methodology in subdivision 2 of this subsection.

b. The implementation of site of service shall be transitioned over a four-year period.

(1) Effective for dates of service on or after July 1, 2008, DMAS shall calculate the transitioned facility RVU by adding 75% of the difference between the [~~facility~~ nonfacility] RVU and [~~facility~~ nonfacility] RVU to the facility RVU.

(2) Effective for dates of service on or after July 1, 2009, DMAS shall calculate the transitioned facility RVU by adding 50% of the difference between the [~~facility~~ nonfacility] RVU and [~~facility~~ nonfacility] RVU to the facility RVU.

(3) Effective for dates of service on or after July 1, 2010, DMAS shall calculate the transitioned facility RVU by adding 25% of the difference between the [~~facility~~ nonfacility] RVU and [~~facility~~ nonfacility] RVU to the facility RVU.

(4) Effective for dates of service on or after July 1, 2011, DMAS shall use the unadjusted Medicare facility RVU.

2. DMAS shall calculate the RBRVS-based fees using conversion factors (CFs) published from time to time by CMS. DMAS shall adjust CMS' CFs by additional factors so that no change in expenditure will result solely from the implementation of the RBRVS-based fee schedule. DMAS may revise the additional factors when CMS updates its RVUs or CFs so that no change in expenditure will result solely from such updates. Except for this adjustment, DMAS' CFs shall be the same as those published from time to time by CMS. The calculation of the additional factors shall be based on the assumption that no change in services provided will occur as a result of these changes to the fee schedule. The determination of the additional factors required above shall be accomplished by means of the following calculation:

a. The estimated amount of DMAS expenditures if DMAS were to use Medicare's RVUs and CFs without modification, is equal to the sum, across all relevant procedure codes, of the RVU value published by the CMS, multiplied by the applicable conversion factor published by the CMS, multiplied by the number of occurrences of the procedure code in DMAS patient claims in the most recent period of time (at least six months).

b. The estimated amount of DMAS expenditures, if DMAS were not to calculate new fees based on the new CMS RVUs and CFs, is equal to the sum, across all

relevant procedure codes, of the existing DMAS fee multiplied by the number of occurrences of the procedures code in DMAS patient claims in the period of time used in subdivision 2 a of this subsection.

c. The relevant additional factor is equal to the ratio of the expenditure estimate (based on DMAS fees in subdivision 2 b of this subsection) to the expenditure estimate based on unmodified CMS values in subdivision 2 a of this subsection.

d. DMAS shall calculate a separate additional factor for:

(1) Emergency room services (defined as the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) codes 99281, 99282, 99283, 99284, and 992851 in effect at the time the service is provided);

(2) Obstetrical/gynecological services (defined as maternity care and delivery procedures, female genital system procedures, obstetrical/gynecological-related radiological procedures, and mammography procedures, as defined by the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) manual in effect at the time the service is provided);

(3) Pediatric preventive services (defined as preventive E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(4) Pediatric primary services (defined as evaluation and management (E&M) procedures, excluding those listed in subdivisions 2 d (1) and 2 d (3) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(5) Adult primary and preventive services (defined as E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients age 21 and over); and

(6) All other procedures set through the RBRVS process combined.

3. For those services or procedures for which there are no established RVUs, DMAS shall approximate a reasonable relative value payment level by looking to similar existing relative value fees. If DMAS is unable to establish a relative value payment level for any service or procedure, the fee shall not be based on a RBRVS, but shall instead be based on the previous fee-for-service methodology.

4. Fees shall not vary by geographic locality.

5. Effective for dates of service on or after July 1, 2007, fees for emergency room services (defined in subdivision 2 d (1) of this subsection) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

C. Effective for dates of service on or after May 1, 2006, fees for obstetrical/gynecological services (defined in subdivision B 2 d (2) of this section) shall be increased by 2.5% relative to the fees in effect on July 1, 2005.

D. Effective for dates of service on or after May 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on May 1, 2006. Effective for dates of service on or after July 1, 2007, fees for pediatric primary services (defined in subdivision B 2 d (4) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

E. Effective for dates of service on or after July 1, 2007, fees for pediatric preventive services (defined in subdivision B 2 d (3) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

F. Effective for dates of service on or after May 1, 2006, fees for adult primary and preventive services (defined in subdivision B 2 d (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2007, fees for adult primary and preventive services (defined in subdivision B 2 d (5) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

G. Effective for dates of service on or after July 1, 2007, fees for all other procedures set through the RBRVS process combined (defined in subdivision B 2 d (6) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

VA.R. Doc. No. R09-1331; Filed November 4, 2009, 11:32 a.m.

Emergency Regulation

Title of Regulation: 12VAC30-120. Waivered Services (amending 12VAC30-120-211, 12VAC30-120-213, 12VAC30-120-215, 12VAC30-120-217, 12VAC30-120-219, 12VAC30-120-221, 12VAC30-120-223, 12VAC30-120-225, 12VAC30-120-227, 12VAC30-120-229, 12VAC30-120-231, 12VAC30-120-233, 12VAC30-120-235, 12VAC30-120-237, 12VAC30-120-241, 12VAC30-120-245, 12VAC30-120-247, 12VAC30-120-249).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: October 29, 2009, through October 28, 2010.

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Agency Contact: Helen Leonard, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-2149, FAX (804) 786-1680, or email helen.leonard@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act provides that agencies may adopt emergency regulations in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or regulation requires that a regulation shall be effective in 280 days or less from its enactment. These changes were mandated by Item 306 PPP of Chapter 781 of the 2009 Acts of Assembly.

This emergency is required to comply with the Centers for Medicare and Medicaid Services' (CMS) requirements for the renewal of the Mental Retardation/Intellectual Disability (MR/ID) Waiver (previously referred to as the Mental Retardation Waiver). DMAS covers these services pursuant to a waiver of certain federal requirements, permitted by application to CMS, the federal Medicaid authority. CMS approved the request for the renewal effective July 1, 2009. These emergency regulations support the renewal application; therefore, these regulations are critical to successful implementation of the waiver upon receipt of CMS' approval for the continuation of essential services currently available to Virginians.

Part IV

Mental Retardation/Intellectual Disability Waiver

Article 1

Definitions and General Requirements

12VAC30-120-211. Definitions.

"Activities of daily living" or "ADL" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Appeal" means the process used to challenge adverse actions regarding services, benefits and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" or "AT" means specialized medical equipment and supplies to include devices, controls, or appliances, specified in the ~~consumer service plan~~ Individual Support Plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and

non-durable medical equipment not available under the Medicaid State Plan.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 1 (§ 37.2-100) of Title 37.2 of the Code of Virginia that plans, provides, and evaluates mental health, ~~mental-retardation~~ mental retardation/intellectual disability (MR/ID), and substance abuse services in the locality that it serves.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the ~~consumer service plan~~ Individual Support Plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the ~~consumer service plan~~ Individual Support Plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the ~~consumer service plan~~ Individual Support Plan.

"Case manager" means the individual on behalf of the community services board or behavioral health authority possessing a combination of ~~mental-retardation~~ MR/ID work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities as established by the Department of Medical Assistance Services in 12VAC30-50-450.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, ~~mental-retardation~~ MR/ID, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means, for the purpose of these regulations, a person who provides companion services.

"Companion services" means nonmedical care, support, and socialization, provided to an adult (age 18 and over). The provision of companion services does not entail hands-on care. It is provided in accordance with a therapeutic goal in the ~~consumer service plan~~ Individual Support Plan and is not purely diversional in nature.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical and level of care information by the case manager and is used as a basis for the

development of the ~~consumer service plan~~ Individual Support Plan.

"Consumer-directed model" means services for which the individual and the individual's family/caregiver, as appropriate, is responsible for hiring, training, supervising, and firing of the staff.

"Consumer-directed (CD) services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and the individual's family/caregiver, as appropriate, by ensuring the development and monitoring of the Consumer-Directed Services ~~Individual Service Plan for Supports~~, providing employee management training, and completing ongoing review activities as required by DMAS for ~~consumer directed~~ CD companion, personal assistance, and respite services.

~~"Consumer service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive mental retardation waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The individual service plans are incorporated in the CSP by the case manager.~~

"Crisis stabilization" means direct intervention to persons with ~~mental retardation~~ MR/ID who are experiencing serious psychiatric or behavioral challenges that jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so the individual can be supported in the community during and beyond the crisis period.

"DBHDS" means the Department of Behavioral Health and Developmental Services. Prior to July 1, 2009, this agency was known as "DMHMRSAS," or the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DBHDS staff" means persons employed by DBHDS.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

~~"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

~~"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of

self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through existing diagnostic and evaluative criteria.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals and the individual's family/caregivers, as appropriate, as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual and the individual's family/caregiver, as appropriate, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's and the individual's family/caregiver's, as appropriate, use of the providers' services.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the ~~MR~~ MR/ID Waiver and ~~DMHMRSAS~~ DBHDS has verified the availability of a ~~MR~~ MR/ID Waiver slot for that individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals who have disabilities on a shift and usually involves interactions with the public and with coworkers without disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site (when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act) that are necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Fiscal agent" means an agency or organization within DMAS or contracted by DMAS to handle employment,

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payroll, and tax responsibilities on behalf of individuals who are receiving ~~consumer-directed CD~~ personal assistance, respite, and companion services.

"Health Planning Region" or "HPR" means the federally designated geographical area within which health care needs assessment and planning takes place, and within which health care resource development is reviewed.

"Health, welfare, and safety standard" means that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written ~~individual service plan~~ Plan for Supports and that services can safely be provided in the community.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to persons with ~~mental retardation~~ MR/ID and children younger than age six who are at developmental risk who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (~~ICF/MR~~.)

"ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health, as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Individual" means the person receiving the services or evaluations established in these regulations.

~~"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.~~

"Individual Support Plan" means supports and actions to be taken during the year by each service provider to achieve desired outcomes. The Individual Support Plan is developed by the individual, and partners chosen by the individual, and contains essential information and includes what is important to the individual on a day-to-day basis and in the future and what is important for the individual to keep healthy and safe as reflected in the Plan for Supports. The Individual Support Plan is known as the Consumer Service Plan in the Day Support Waiver.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"ISAR" means the Individual Service Authorization Request and is the DMAS form used by providers to request prior authorization for ~~MR~~ MR/ID waiver services.

"Medicaid Long-Term Care Communication Form" or "DMAS-225" means the form used by the long-term care provider, including the case manager, to report information about changes in an individual's situation, including, but not limited to, information on a new address, a different case management agency, income, interruption in waiver services for more than 30 days, discharge from all waiver services, or death. DMAS policy describes specific procedures for the use of the DMAS-225.

~~"Mental retardation"~~ "Mental retardation/intellectual disability" or "MR/ID" means a disability as defined by the American Association on Intellectual and Developmental Disabilities (AAIDD). "MR" and "ID" are synonymous terms.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and ~~DMHMRSAS~~ DBHDS, and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for services until all required information is received by ~~DMHMRSAS~~ DBHDS.

"Person-centered planning" means a process that focuses on the needs and preferences of the individual to create an Individual Support Plan containing essential information, a personal profile, and desired outcomes of the individual to be shared with persons and providers involved in the provision of services and supports accomplished through provider(s) services and Plan for Supports. Person-centered planning is the foundation for identifying and providing services and supports through the MR/ID Waiver.

"Personal assistance services" means assistance with activities of daily living, instrumental activities of daily living, access to the community, self-administration of medication, or other medical needs, and the monitoring of health status and physical condition.

"Personal assistant" means a person who provides personal assistance services.

"Personal emergency response system (PERS)" is an electronic device that enables certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Plan for Supports" means each service provider's plan for supporting the individual in achieving his or her desired outcomes and facilitating ongoing health and safety. The Plan for Supports is one component of the Individual Support Plan. The Plan for Supports is referred to as an Individual Service Plan in the Day Support Waiver.

"Preauthorized" means that an individual service has been approved by ~~DMHMRSAS~~ the state-designated agency or its

contractor prior to commencement of the service by the service provider for initiation and reimbursement of services.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for providing such care.

"Qualified mental retardation professional" or "QMRP" for the purposes of the MR/ID Waiver means a professional possessing: (i) at least one year of documented experience working directly with individuals who have ~~mental retardation~~ MR/ID or developmental disabilities; (ii) at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology, or a bachelor's degree in another field in addition to an advanced degree in a human services field; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Residential support services" means support provided in the individual's home by a ~~DMHMRSAS-licensed~~ DBHDS-licensed residential provider or a DSS-approved provider of adult foster care services. This service is one in which training, assistance, and supervision is routinely provided to enable individuals to maintain or improve their health, to develop skills in activities of daily living and safety in the use of community resources, to adapt their behavior to community and home-like environments, to develop relationships, and participate as citizens in the community.

"Respite services" means services provided to individuals who are unable to care for themselves, furnished on a short-term basis because of the absence or need for relief of those unpaid persons normally providing the care.

"Services facilitation" means a service that assists the individual (or the individual's family or caregiver, as appropriate) in arranging for, directing, and managing services provided through the consumer-directed model.

"Services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and the individual's family/caregiver, as appropriate, by ensuring the development and monitoring of the Consumer-Directed Services ~~Individual Service Plan for Supports~~, providing employee management training, and completing ongoing review activities as required by DMAS for services with an option of a consumer-directed model. These services include companion, personal assistance, and respite services.

"Skilled nursing services" means services that are ordered by a physician and required to prevent institutionalization, that are not otherwise available under the State Plan for Medical Assistance and that are provided by a licensed registered professional nurse, or by a licensed practical nurse under the supervision of a licensed registered professional nurse, in each case who is licensed to practice in the Commonwealth.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with ~~mental retardation~~ MR/ID to maintain paid employment.

"Support plan" means the report of recommendations resulting from a therapeutic consultation.

"Therapeutic consultation" means activities to assist the individual and the individual's family/caregiver, as appropriate, staff of residential support, day support, and any other providers in implementing ~~an individual service plan a~~ Plan for Supports.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

12VAC30-120-213. General coverage and requirements for MR Mental Retardation/Intellectual Disability (MR/ID) waiver services.

A. Waiver service populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following individuals who have been determined to require the level of care provided in an ICF/MR.

1. Individuals with mental retardation; or
2. Individuals younger than the age of six who are at developmental risk. At the age of six years, these individuals must have a diagnosis of mental retardation to continue to receive home and community-based waiver services specifically under this program. ~~Mental~~

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~~Retardation (MR)~~ MR/ID Waiver recipients individuals who attain the age of six years of age, who are determined to not have a diagnosis of mental retardation, and who meet all ~~IFDDS~~ Individual and Family and Developmental Disability Support (IFDDS) Waiver eligibility criteria, shall be eligible for transfer to the IFDDS Waiver effective up to their seventh birthday. Psychological evaluations (or standardized developmental assessment for children under six years of age) confirming diagnoses must be completed less than one year prior to transferring to the IFDDS Waiver. These ~~recipients~~ individuals transferring from the ~~MR~~ MR/ID Waiver will automatically be assigned a slot in the IFDDS Waiver, subject to the approval of the slot by ~~CMS~~ the Centers for Medicare and Medicaid Services (CMS). The case manager will submit the current Level of Functioning Survey, ~~ESP~~ Individual Support Plan and psychological evaluation (or standardized developmental assessment for children under six years of age) to DMAS for review. Upon determination by DMAS that the individual is appropriate for transfer to the IFDDS Waiver, the case manager will provide the family with a list of IFDDS Waiver case managers. The case manager will work with the selected IFDDS Waiver case manager to determine an appropriate transfer date and submit a ~~DMAS-122~~ DMAS-225 to the local DSS. The ~~MR~~ MR/ID Waiver slot will be held by the CSB until the child has successfully transitioned to the IFDDS Waiver. Once the child has successfully transitioned, the ~~CSB~~ community services board (CSB) will reallocate the slot.

B. Covered services.

1. Covered services shall include: residential support services, day support, supported employment, personal assistance (both consumer-directed and agency-directed), respite services (both consumer-directed and agency-directed), assistive technology, environmental modifications, skilled nursing services, therapeutic consultation, crisis stabilization, prevocational services, personal emergency response systems (PERS), companion services (both consumer-directed and agency-directed), and transition services.

2. These services shall be appropriate and necessary to maintain the individual in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in an ~~ICF/MR~~ Intermediate Care Facility for the Mentally Retarded (ICFMR) under the State Plan that would have been provided had the waiver not been granted.

3. Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility, ICF/MR, or inpatient rehabilitation facility. Individuals with ~~mental retardation~~ MR/ID who are inpatients of these facilities may receive case management services as described in

12VAC30-50-450. The case manager may recommend waiver services that would promote exiting from the institutional placement; however, these services shall not be provided until the individual has exited the institution.

4. Under this § 1915(c) waiver, DMAS waives § 1902(a)(10)(B) of the Social Security Act related to comparability.

C. Requests for increased services. All requests for increased waiver services by ~~MR~~ MR/ID Waiver recipients will be reviewed under the health, welfare, and safety standard. This standard assures that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written ~~ISP~~ Plan for Supports and that services can safely be provided in the community.

D. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

E. Urgent criteria. The ~~CSB/BHA~~ CSB/behavioral health authority (BHA) will determine, from among the individuals included in the urgent category, who should be served first, based on the needs of the individual at the time a slot becomes available ~~and not on any predetermined numerical or chronological order~~ using the statewide criteria as specified in the Department of Behavioral Health and Developmental Services (DBHDS) guidance documents.

1. The urgent category will be assigned when the individual is in need of services because he is determined to meet one of the criteria established in subdivision 2 of this subsection and services are needed within 30 days. Assignment to the urgent category may be requested by the individual, his legally responsible relative, or primary caregiver. The urgent category may be assigned only when the individual, the individual's spouse, or the parent of an individual who is a minor child would accept the requested service if it were offered. Only after all individuals in the Commonwealth who meet the urgent criteria have been served can individuals in the nonurgent category be served. Individuals in the nonurgent category are those who meet the diagnostic and functional criteria for the waiver, including the need for services within 30 days, but who do not meet the urgent criteria. In the event that a CSB/BHA has a vacant slot and does not have an individual who meets the urgent criteria, the slot can be held by the CSB/BHA for 90 days from the date it is identified as vacant, in case someone in an urgent situation is identified. If no one meeting the urgent criteria is identified within 90 days, the slot will be made available for allocation to another CSB/BHA in the Health Planning Region (HPR). If there is no urgent need at the time that the HPR is to make a regional reallocation of a waiver slot, the HPR shall notify ~~DMHMRSAS~~ DBHDS. ~~DMHMRSAS~~

DBHDS shall have the authority to reallocate said slot to another HPR or CSB/BHA where there is unmet urgent need. Said authority must be exercised, if at all, within 30 days from receiving such notice.

2. Satisfaction of one or more of the following criteria shall indicate that the individual should be placed on the urgent need of waiver services list:

- a. Both primary caregivers are 55 years of age or older, or if there is one primary caregiver, that primary caregiver is 55 years of age or older;
- b. The individual is living with a primary caregiver, who is providing the service voluntarily and without pay, and the primary caregiver indicates that he can no longer care for the individual with mental retardation;
- c. There is a clear risk of abuse, neglect, or exploitation;
- d. A primary caregiver has a chronic or long-term physical or psychiatric condition or conditions which significantly limits the abilities of the primary caregiver or caregivers to care for the individual with mental retardation;
- e. Individual is aging out of publicly funded residential placement or otherwise becoming homeless (exclusive of children who are graduating from high school); or
- f. The individual with mental retardation lives with the primary caregiver and there is a risk to the health or safety of the individual, primary caregiver, or other individual living in the home due to either of the following conditions:
 - (1) The individual's behavior or behaviors present a risk to himself or others which cannot be effectively managed by the primary caregiver even with generic or specialized support arranged or provided by the CSB/BHA; or
 - (2) There are physical care needs (such as lifting or bathing) or medical needs that cannot be managed by the primary caregiver even with generic or specialized supports arranged or provided by the CSB/BHA.

F. Reevaluation of service need and utilization review. Case managers shall complete reviews and updates of the CSP Individual Support Plan and level of care as specified in 12VAC30-120-215 D. Providers shall meet the documentation requirements as specified in 12VAC30-120-217 B.

12VAC30-120-215. Individual eligibility requirements.

A. Individuals receiving services under this waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.211, 435.217, and 435.230. The income level used for 42 CFR 435.211,

435.217 and 435.230 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All ~~recipients~~ individuals under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based waiver services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

a. For individuals to whom § 1924(d) applies and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual under both this waiver and the ~~mental retardation day support waiver~~ Day Support Waiver, which is equal to 165% of the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

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(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the plan.

b. For individuals to whom § 1924(d) does not apply and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual under both this waiver and the ~~mental retardation day support waiver~~ Day Support Waiver, which is equal to 165% of the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children, which shall be equal to the Title XIX medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Medical Assistance Plan.

3. The following four criteria shall apply to all ~~mental retardation~~ mental retardation/intellectual disability (MR/ID) waiver services:

a. Individuals qualifying for ~~mental retardation~~ MR/ID waiver services must have a demonstrated need for the service resulting in significant functional limitations in major life activities. The need for the service must arise from either (i) an individual having a diagnosed condition of ~~mental retardation~~ MR/ID or (ii) a child younger than six years of age being at developmental risk of significant functional limitations in major life activities;

b. The CSP Individual Support Plan and services that are delivered must be consistent with the Medicaid definition of each service;

c. Services must be recommended by the case manager based on a current functional assessment using a ~~DMHMRSAS approved~~ Department of Behavioral Health and Developmental Services (DBHDS)-approved assessment instrument, as specified in DBHDS and DMAS guidance documents, and a demonstrated need for each specific service; and

d. Individuals qualifying for ~~mental retardation~~ MR/ID waiver services must meet the ICF/MR level of care criteria.

B. Assessment and enrollment.

1. To ensure that Virginia's home and community-based waiver programs serve only individuals who would otherwise be placed in an ICF/MR, home and community-based waiver services shall be considered only for individuals who are eligible for admission to an ICF/MR with a diagnosis of ~~mental retardation~~ MR/ID, or who are under six years of age and at developmental risk. For the case manager to make a recommendation for waiver services, ~~MR~~ MR/ID Waiver services must be determined to be an appropriate service alternative to delay or avoid placement in an ICF/MR, or promote exiting from either an ICF/MR placement or other institutional placement.

2. The case manager shall recommend the individual for home and community-based waiver services after completion of a comprehensive assessment of the individual's needs and available supports. This assessment process for home and community-based waiver services by the case manager is mandatory before Medicaid will assume payment responsibility of home and community-based waiver services. The comprehensive assessment includes:

a. Relevant medical information based on a medical examination completed no earlier than 12 months prior to the initiation of waiver services;

b. The case manager's ~~functional~~ assessment that demonstrates a need for each specific service. The ~~functional~~ assessment must be a ~~DMHMRSAS~~ DBHDS approved assessment completed no earlier than 12 months prior to enrollment;

c. The level of care required by applying the existing DMAS ICF/MR criteria (12VAC30-130-430 et seq.) completed no more than six months prior to enrollment. The case manager determines whether the individual meets the ICF/MR criteria with input from the individual and the individual's family/caregiver, as appropriate, and service and support providers involved in the individual's support in the community; and

d. A psychological evaluation or standardized developmental assessment for children under six years of age that reflects the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals.

3. The case manager shall provide the individual and the individual's family/caregiver, as appropriate, with the choice of ~~MR~~ MR/ID waiver services or ICF/MR placement.

4. The case manager shall send the appropriate forms to ~~DMHMRSAS~~ DBHDS to enroll the individual in the ~~MR~~ MR/ID Waiver or, if no slot is available, to place the individual on the waiting list. ~~DMHMRSAS~~ DBHDS shall only enroll the individual if a slot is available. If no slot is available, the individual's name will be placed on either the urgent or nonurgent statewide waiting list until such time as a slot becomes available. Once notification has been received from ~~DMHMRSAS~~ DBHDS that the individual has been placed on either the urgent or nonurgent waiting list, the case manager must notify the individual in writing within 10 business days of his placement on either list, and offer appeal rights. The case manager will contact the individual and the individual's family/caregiver, as appropriate, at least annually to provide the choice between institutional placement and waiver services while the individual is on the waiting list.

C. Waiver approval process: authorizing and accessing services.

1. Once the case manager has determined an individual meets the functional criteria for ~~mental retardation (MR)~~ MR/ID waiver services, has determined that a slot is available, and that the individual has chosen ~~MR~~ MR/ID waiver services, the case manager shall submit enrollment information to ~~DMHMRSAS~~ DBHDS to confirm level of care eligibility and the availability of a slot.

2. Once the individual has been enrolled by ~~DMHMRSAS~~ DBHDS, the case manager will submit a ~~DMAS 122~~ DMAS-225 along with a written confirmation from ~~DMHMRSAS~~ DBHDS of level of care eligibility, to the

local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities. If the individual receiving MR/ID Waiver services has a patient pay amount, a provider shall use the electronic patient pay process that became effective March 1, 2009. Local departments of social services (LDSS) will enter data regarding an individual's patient pay amount obligation into the DMAS electronic reimbursement system at the time action is taken on behalf of the individual either as a result of an application for long-term care services, redetermination of eligibility, or reported change in an individual's situation. Procedures for the verification of an individual's patient pay obligation are available in the appropriate Medicaid provider manual.

3. After the case manager has received written notification of Medicaid eligibility by ~~DSS~~ Department of Social Services (DSS) and written confirmation of enrollment from ~~DMHMRSAS~~ DBHDS, the case manager shall inform the individual and the individual's family/caregiver, as appropriate, so that the ~~CSP~~ Individual Support Plan can be developed. The individual and the individual's family/caregiver, as appropriate, will meet with the case manager within 30 calendar days to discuss the individual's needs and existing supports, and to develop a ~~CSP~~ Individual Support Plan that will establish and document the needed services. The case manager shall provide the individual and the individual's family/caregiver, as appropriate, with choice of needed services available under the ~~MR~~ MR/ID Waiver, alternative settings and providers. ~~A CSP~~ An Individual Support Plan shall be developed for the individual based on the assessment of needs as reflected in the level of care and functional assessment instruments and the individual's and the individual's family/caregiver's, as appropriate, preferences. The ~~CSP~~ Individual Support Plan development process identifies the services to be rendered to individuals, the frequency of services, the type of service provider or providers, and a description of the services to be offered.

4. The individual or case manager shall contact chosen service providers so that services can be initiated within 60 days of receipt of enrollment confirmation from ~~DMHMRSAS~~ DBHDS. The service providers in conjunction with the individual and the individual's family/caregiver, as appropriate, and case manager will develop ~~ISPs~~ Plans for Supports for each service. A copy of these plans will be submitted to the case manager. The case manager will review and ensure the ~~ISP~~ Plan for Supports meets the established service criteria for the identified needs prior to submitting to ~~DMHMRSAS~~ the state-designated agency or its contractor for prior authorization. The ~~ISP~~ Plan for Supports from each waiver service provider shall be incorporated into the ~~CSP~~ Individual Support Plan. Only ~~MR~~ MR/ID Waiver services authorized on the ~~CSP~~ Individual Support Plan by

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~~DMHMRSAS~~ the state-designated agency or its contractor according to DMAS policies may be reimbursed by DMAS. The Plan for Supports from each waiver service provider shall be incorporated into the Individual Support Plan along with the steps for risk mitigation as indicated by the risk assessment.

5. The case manager must submit the results of the comprehensive assessment and a recommendation to ~~the DMHMRSAS DBHDS~~ staff for final determination of ICF/MR level of care and authorization for community-based services. DMHMRSAS The state-designated agency or its contractor shall, within 10 working days of receiving all supporting documentation, review and approve, pend for more information, or deny the individual service requests. DMHMRSAS The state-designated agency or its contractor will communicate in writing to the case manager whether the recommended services have been approved and the amounts and type of services authorized or if any have been denied. Medicaid will not pay for any home and community-based waiver services delivered prior to the authorization date approved by ~~DMHMRSAS~~ the state-designated agency or its contractor if prior authorization is required.

6. ~~MR~~ MR/ID Waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the ~~Department of Social Services DSS~~;

b. The individual has a diagnosis of ~~mental retardation MR/ID~~ as defined by the American Association on ~~Mental Retardation: Mental Retardation: Definition, Classification, and System of Supports, 10th Edition, 2002~~ Intellectual and Developmental Disabilities, or is a child under the age of six at developmental risk, and would in the absence of waiver services, require the level of care provided in an ICF/MR the cost of which would be reimbursed under the Plan; and

c. The contents of the individual service plans are consistent with the Medicaid definition of each service.

7. All consumer service plans are subject to approval by DMAS. DMAS is the single state agency authority responsible for the supervision of the administration of the ~~MR~~ MR/ID Waiver.

8. If services are not initiated by the provider within 60 days, the case manager must submit written information to ~~DMHMRSAS DBHDS~~ requesting more time to initiate services. A copy of the request must be provided to the individual and the individual's family/caregiver, as appropriate. ~~DMHMRSAS DBHDS~~ has the authority to approve the request in 30-day extensions, up to a maximum of four consecutive extensions, or deny the request to retain the waiver slot for that individual.

~~DMHMRSAS DBHDS~~ shall provide a written response to the case manager indicating denial or approval of the extension. ~~DMHMRSAS DBHDS~~ shall submit this response within 10 working days of the receipt of the request for extension.

D. Reevaluation of service need.

1. ~~The consumer service plan (CSP)~~ Individual Support Plan.

a. The ~~CSP~~ Individual Support Plan shall be developed annually by the case manager with the individual and the individual's family/caregiver, as appropriate, other service providers, consultants, and other interested parties based on relevant, current assessment data.

b. The case manager is responsible for continuous monitoring of the appropriateness of the individual's services and revisions to the ~~CSP~~ Individual Support Plan as indicated by the changing needs of the individual. At a minimum, the case manager must review the ~~CSP~~ Individual Support Plan every three months to determine whether service goals and objectives are being met and whether any modifications to the ~~CSP~~ Individual Support Plan are necessary.

c. Any modification to the amount or type of services in the ~~CSP~~ Individual Support Plan must be preauthorized by ~~DMHMRSAS or DMAS~~ the state-designated agency or its contractor.

2. Review of level of care.

a. The case manager shall complete a reassessment annually in coordination with the individual and the individual's family/caregiver, as appropriate, and service providers. The reassessment shall include an update of the level of care and ~~functional~~ assessment instrument, risk assessment, and any other appropriate assessment data. If warranted, the case manager shall coordinate a medical examination and a psychological evaluation for the individual. The ~~CSP~~ Individual Support Plan shall be revised as appropriate.

b. A medical examination must be completed for adults based on need identified by the individual and the individual's family/caregiver, as appropriate, provider, case manager, or ~~DMHMRSAS DBHDS~~ staff. Medical examinations and screenings for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

c. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation. A psychological evaluation or standardized developmental assessment for children under six years of age must reflect the current

psychological status (diagnosis), adaptive level of functioning, and cognitive abilities.

3. The case manager will monitor the service providers' ISPs Plans for Supports to ensure that all providers are working toward the identified goals of the affected individuals.

4. Case managers will be required to conduct monthly onsite visits for all ~~MR~~ MR/ID waiver individuals residing in DSS-licensed assisted living facilities or approved adult foster care placements.

5. The case manager must obtain an updated ~~DMAS-122 form from DSS annually~~ DMAS-225, designate a collector of patient pay when applicable and forward a copy of the updated ~~DMAS-122~~ DMAS-225 form to all service providers and the consumer-directed fiscal agent if applicable.

12VAC30-120-217. General requirements for home and community-based participating providers.

A. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify ~~DMAS~~ the Department of Medical Assistance Services (DMAS) and ~~DMHMRSAS~~ the Department of Behavioral Health and Developmental Services (DBHDS), in writing, of any change in the information that the provider previously submitted to DMAS and ~~DMHMRSAS~~ DBHDS;

2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid program at the time the service or services were performed;

3. Assure the individual's freedom to refuse medical care, treatment and services;

4. Accept referrals for services only when staff is available to initiate services and perform such services on an ongoing basis;

5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as provided to the general public;

7. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS payment methodology from the individual's authorization date for the waiver services;

8. Use program-designated billing forms for submission of charges;

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state or federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

10. Agree to furnish information on request and in the form requested to DMAS, ~~DMHMRSAS~~ DBHDS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to ~~recipients of~~ individuals receiving Medicaid;

12. Pursuant to 42 CFR Part 431, Subpart F, 12VAC30-20-90, and any other applicable state or federal law, hold confidential and use for authorized DMAS or ~~DMHMRSAS~~ DBHDS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of the DMAS in conjunction with the cited laws;

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13. Notify DMAS of change of ownership. When ownership of the provider changes, DMAS shall be notified at least 15 calendar days before the date of change;

14. For all facilities covered by § 1616(e) of the Social Security Act in which home and community-based waiver services will be provided, be in compliance with applicable standards that meet the requirements for board and care facilities. Health and safety standards shall be monitored through the ~~DMHMRSAS~~ DBHDS licensure standards or through DSS-approved standards for adult foster care providers;

15. Suspected abuse or neglect. Pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver service individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS adult or child protective services worker and to ~~DMHMRSAS~~ DBHDS Offices of Licensing and Human Rights as applicable; and

16. Adhere to the provider participation agreement and the DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the DMAS provider manual.

B. Documentation requirements.

1. The case manager must maintain the following documentation for utilization review by DMAS for a period of not less than six years from each individual's last date of service:

a. The comprehensive assessment and all ~~CSPs~~ completed for the individual Individual Support Plans;

b. All ~~ISPs~~ Plans for Supports from every provider rendering waiver services to the individual;

c. All supporting documentation related to any change in the ~~CSP~~ Individual Support Plan;

d. All related communication with the individual and the individual's family/caregiver, as appropriate, consultants, providers, ~~DMHMRSAS~~ DBHDS, DMAS, DSS, DRS or other related parties; and

e. An ongoing log that documents all contacts made by the case manager related to the individual and the individual's family/caregiver, as appropriate.

2. The service providers must maintain, for a period of not less than six years from the individual's last date of service, documentation necessary to support services billed. Utilization review of individual-specific documentation

shall be conducted by DMAS staff. This documentation shall contain, up to and including the last date of service, all of the following:

a. All assessments and reassessments.

b. All ~~ISPs~~ Plans for Supports developed for that individual and the written reviews.

c. Documentation of the date services were rendered and the amount and type of services rendered.

d. Appropriate data, contact notes, or progress notes reflecting an individual's status and, as appropriate, progress or lack of progress toward the goals on the ~~ISP~~ Plan for Supports.

e. Any documentation to support that services provided are appropriate and necessary to maintain the individual in the home and in the community.

C. An individual's case manager shall not be the direct staff person or the immediate supervisor of a staff person who provides ~~MR~~ MR/ID Waiver services for the individual.

12VAC30-120-219. Participation standards for home and community-based waiver services participating providers.

A. Requests for participation will be screened to determine whether the provider applicant meets the basic requirements for participation.

B. For DMAS to approve provider agreements with home and community-based waiver providers, the following standards shall be met:

1. For services that have licensure and certification requirements, licensure and certification requirements pursuant to 42 CFR 441.302;

2. Disclosure of ownership pursuant to 42 CFR 455.104 and 455.105; and

3. The ability to document and maintain individual case records in accordance with state and federal requirements.

C. The case manager must inform the individual of all available waiver providers in the community in which he desires services and he shall have the option of selecting the provider of his choice from among those providers meeting the individual's needs.

D. DMAS shall be responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide home and community-based waiver services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's participation agreement, may result in a written request from DMAS for a corrective action plan that details the steps the provider must

take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies that have been cited.

E. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. DMAS may terminate at will a provider's participation agreement on 30 days written notice as specified in the DMAS participation agreement. DMAS may also immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the program. Such action precludes further payment by DMAS for services provided to individuals subsequent to the date specified in the termination notice.

F. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

G. Section 32.1-325 of the Code of Virginia mandates that "any such Medicaid agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, DC, must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

H. Case manager's responsibility for the Individual Information Form (DMAS-122) Medicaid Long-Term Care Communication Form (DMAS-225). It shall be the responsibility of the case management provider to notify DMHMRSAS Department of Behavioral Health and Developmental Services (DBHDS) and DSS, in writing, when any of the following circumstances occur. Furthermore, it shall be the responsibility of DMHMRSAS DBHDS to update DMAS, as requested, when any of the following events occur:

1. Home and community-based waiver services are implemented.
2. ~~A recipient~~ An individual dies.
3. ~~A recipient~~ An individual is discharged from all MR mental retardation/intellectual disability (MR/ID) waiver services.
4. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days.
5. A selection by the individual and the individual's family/caregiver, as appropriate, of a different community services board/behavioral health authority providing case management services.

I. Changes or termination of services. DMHMRSAS DBHDS shall authorize changes to an individual's CSP

Individual Support Plan based on the recommendations of the case management provider. Providers of direct service are responsible for modifying their ISPs Plans for Supports with the involvement of the individual and the individual's family/caregiver, as appropriate, and submitting ISPs Plans for Supports to the case manager any time there is a change in the individual's condition or circumstances which may warrant a change in the amount or type of service rendered. The case manager will review the need for a change and may recommend a change to the ISP Plan for Supports to the DMHMRSAS DBHDS staff. DMHMRSAS DBHDS will review and approve, deny, or pend for additional information the requested change to the individual's ISP Plan for Supports, and communicate this to the case manager within 10 business days of receiving all supporting documentation regarding the request for change or in the case of an emergency, within three working days of receipt of the request for change.

The individual and the individual's family/caregiver, as appropriate, will be notified, in writing, of the right to appeal the decision or decisions to reduce, terminate, suspend or deny services pursuant to DMAS client appeals regulations, Part I (12VAC30-110-10 et seq.) of 12VAC30-110. The case manager must submit this notification to the individual in writing within 10 business days of the decision. All CSPs Individual Support Plan are subject to approval by the Medicaid agency.

1. In a nonemergency situation, the participating provider shall give the individual and the individual's family/caregiver, as appropriate, and case manager 10 business days written notification of the provider's intent to discontinue services. The notification letter shall provide the reasons and the effective date the provider is discontinuing services. The effective date shall be at least 12 days from the date of the notification letter. The individual is not eligible for appeal rights in this situation and may pursue services from another provider.
2. In an emergency situation when the health and safety of the individual, other individuals in that setting, or provider personnel is endangered, the case manager and DMHMRSAS DBHDS must be notified prior to discontinuing services. The 10 business day written notification period shall not be required. If appropriate, the local DSS adult protective services or child protective services and DMHMRSAS DBHDS Offices of Licensing and Human Rights must be notified immediately.
3. In the case of termination of home and community-based waiver services by the CSB/BHA, DMHMRSAS DBHDS or DMAS staff, individuals shall be notified of their appeal rights by the case manager pursuant to Part I (12VAC30-110-10 et seq.) of 12VAC30-110. The case manager shall have the responsibility to identify those individuals who no longer meet the level of care criteria or

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for whom home and community-based waiver services are no longer an appropriate alternative.

Article 2

Covered Services and Limitations and Related Provider Requirements

12VAC30-120-221. Assistive technology (AT).

A. Service description. AT is the specialized medical equipment and supplies including those devices, controls, or appliances, specified in the ~~consumer service plan~~ Individual Support Plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items.

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in the individual's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. AT shall be covered in the least expensive, most cost-effective manner.

C. Service units and service limitations. Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. The combined total of assistive technology items and labor related to these items may not exceed \$5,000 per ~~CSP Individual Support Plan~~ year. Costs for assistive technology cannot be carried over from year to year and must be preauthorized each ~~CSP Individual Support Plan~~ year. AT shall not be approved for purposes of convenience of the caregiver or restraint of the individual. An independent professional consultation must be obtained from staff knowledgeable of that item for each AT request prior to approval by ~~DMHMRSAS~~ the state-designated agency or its contractor. All AT must be preauthorized by ~~DMHMRSAS~~ the state-designated agency or its contractor each ~~CSP Individual Support Plan~~ year. Equipment/supplies/technology not available as durable medical equipment through the State Plan may be purchased and billed as assistive technology as long as the request for equipment/supplies/technology is documented and justified in the individual's ISP Plan for Supports, recommended by the case manager, preauthorized by ~~DMHMRSAS~~ the state-designated agency or its contractor, and provided in the least expensive, most cost-effective manner.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and

12VAC30-120-219, assistive technology shall be provided by a DMAS-enrolled Durable Medical Equipment provider or a DMAS-enrolled CSB/BHA with a ~~MR~~ Mental Retardation/Intellectual Disability (MR/ID) Waiver provider agreement to provide assistive technology. The provider documentation requirements are as follows:

1. The appropriate ~~ISAR~~ Individualized Service Authorization Request (ISAR) form, to be completed by the case manager, may serve as the ~~ISP Plan for Supports~~, provided it adequately documents the need for the service, the process to obtain this service (contacts with potential vendors or contractors, or both, of service, costs, etc.), and the time frame during which the service is to be provided. This includes a separate notation of evaluation or design, or both, labor, and supplies or materials, or both. The ~~ISP/ISAR Plan for Supports/ISAR~~ must include documentation of the reason that a rehabilitation engineer is needed, if one is to be involved. A rehabilitation engineer may be involved if disability expertise is required that a general contractor will not have. The ISAR must be submitted to ~~DMHMRSAS~~ the state-designated agency or its contractor for authorization to occur;
2. Written documentation regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as durable medical equipment and supplies and that it is not available from a DME-provider when purchased elsewhere;
3. Documentation of the recommendation for the item by a qualified professional;
4. Documentation of the date services are rendered and the amount of service needed;
5. Any other relevant information regarding the device or modification;
6. Documentation in the case management record of notification by the designated individual or individual's representative of satisfactory completion or receipt of the service or item; and
7. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

12VAC30-120-223. Companion services.

A. Service description. Companion services provide nonmedical care, socialization, or support to an adult (age 18 or older). Companions may assist or support the individual with such tasks as meal preparation, community access and activities, laundry and shopping, but do not perform these activities as discrete services. Companions may also perform light housekeeping tasks. This service is provided in accordance with a therapeutic goal in the ~~CSP Individual Support Plan~~ and is not purely diversional in nature. This service may be provided either through an agency-directed or a consumer-directed model.

B. Criteria.

1. In order to qualify for companion services, the individual shall have demonstrated a need for assistance with IADLs, light housekeeping, community access, reminders for medication self-administration or support to assure safety. The provision of companion services does not entail hands-on care.
2. Individuals choosing the consumer-directed option must ~~receive support from a CD services facilitator and~~ meet requirements for consumer direction as described in 12VAC30-120-225.

C. Service units and service limitations.

1. The unit of service for companion services is one hour and the amount that may be included in the ~~ISP Plan for Supports~~ shall not exceed eight hours per 24-hour day. There is a limit of 8 hours per 24-hour day for companion services, either agency or consumer-directed or combined.
2. A companion shall not be permitted to provide the care associated with ventilators, continuous tube feedings, or suctioning of airways.
3. The hours authorized are based on individual need. No more than two unrelated individuals who are receiving waiver services and live in the same home are permitted to share the authorized work hours of the companion.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, companion service providers must meet the following qualifications:

1. Companion services providers.
 - a. Agency-directed model: must be licensed by ~~DMHMRSAS~~ Department of Behavioral Health and Developmental Services (DBHDS) as a residential service provider, supportive in-home residential service provider, day support service provider, or respite service provider or meet the DMAS criteria to be a personal care/respite care provider.
 - b. Consumer-directed model: a services facilitator meeting the requirements found in 12VAC30-120-225.
2. Companion qualifications. Companions must meet the following requirements:
 - a. Be at least 18 years of age;
 - b. Be able to read and write English and possess basic math skills;
 - c. Be capable of following ~~an ISP~~ a Plan for Supports with minimal supervision;
 - d. Submit to a criminal history record check within 15 days from the date of employment. The companion will

not be compensated for services provided to the individual if the records check verifies the companion has been convicted of crimes described in § 37.2-416 of the Code of Virginia;

- e. Possess a valid Social Security number;
- f. Be capable of aiding in instrumental activities of daily living; and
- g. Receive an annual tuberculosis (TB) screening.

3. Companion service providers may not be the individual's spouse. Other family members living under the same roof as the individual being served may not provide companion services unless there is objective written documentation as to why there are no other providers available to provide the service. Companion services shall not be provided by adult foster care providers or any other paid caregivers for an individual residing in that home.

4. Family members who are reimbursed to provide companion services must meet the companion qualifications.

5. For the agency-directed model, companions will be employees of providers that will have participation agreements with DMAS to provide companion services. Providers will be required to have a companion services supervisor to monitor companion services. The supervisor must have a bachelor's degree in a human services field and at least one year of experience working in the ~~mental retardation~~ mental retardation/intellectual disability (MR/ID) field, or be an LPN or an RN with at least one year of experience working in the ~~mental retardation~~ MR/ID field. An LPN or RN must have a current license or certification to practice nursing in the Commonwealth within his profession.

6. The supervisor or services facilitator must conduct an initial home visit prior to initiating companion services to document the efficacy and appropriateness of services and to establish ~~an individual service plan~~ Plan for Supports for the individual. The supervisor or services facilitator must provide follow-up home visits to monitor the provision of services quarterly under the agency-directed model and semi-annually (every six months) under the consumer-directed model or as often as needed.

7. Required documentation in the individual's record. The provider or services facilitator must maintain a record of each individual receiving companion services. At a minimum these records must contain:

- a. ~~A~~ A copy of the DBHDS-approved assessment and, as needed, an initial assessment completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

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b. ~~An ISP~~ A Plan for Supports containing the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, or both;

(2) The services to be rendered and the schedule of services to accomplish the above outcomes;

c. Documentation that the ~~ISP~~ Plan for Supports goals, objectives, and activities have been reviewed by the provider or services facilitator quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ~~ISP~~ Plan for Supports is modified, the ~~ISP~~ Plan for Supports must be reviewed with the individual and the individual's family/caregiver, as appropriate.

d. All correspondence to the individual and the individual's family/caregiver, as appropriate case manager, DMAS, and ~~DMHMRSAS~~ DBHDS;

e. Contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;

f. The companion services supervisor or CD services facilitator, as required by 12VAC30-120-225, must document in the individual's record in a summary note following significant contacts with the companion and home visits with the individual that occur at least quarterly under the agency-directed model and at least semi-annually under the consumer-directed model:

(1) Whether companion services continue to be appropriate;

(2) Whether the plan is adequate to meet the individual's needs or changes are indicated in the plan;

(3) The individual's satisfaction with the service;

(4) The presence or absence of the companion during the supervisor's visit;

(5) Any suspected abuse, neglect, or exploitation and to whom it was reported; and

(6) Any hospitalization or change in medical condition, functioning, or cognitive status.

g. A copy of the most recently completed ~~DMAS-122~~ DMAS-225. The provider or services facilitator must clearly document efforts to obtain the completed ~~DMAS-122~~ DMAS-225 from the case manager.

h. Agency-directed provider companion records. In addition to the above requirements, the companion record for agency-directed providers must contain:

(1) The specific services delivered to the individual by the companion, dated the day of service delivery, and the individual's responses;

(2) The companion's arrival and departure times;

(3) The companion's weekly comments or observations about the individual to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

(4) The companion's and individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

i. Consumer-directed model companion record. In addition to the above requirements outlined in subdivisions D 7 a through g of this section, the companion record for services facilitators must contain:

(1) The services facilitator's dated notes documenting any contacts with the individual and the individual's family/caregiver, as appropriate, and visits to the individual's home;

(2) Documentation of all training provided to the companion on behalf of the individual and the individual's family/caregiver, as appropriate;

(3) Documentation of all employee management training provided to the individual and the individual's family/caregiver, as appropriate, including the individual's and the individual's family/caregiver's, as appropriate, receipt of training on their responsibility for the accuracy of the companion's timesheets; and

(4) All documents signed by the individual and the individual's family/caregiver, as appropriate, that acknowledge the responsibilities as the employer.

12VAC30-120-225. Consumer-directed model of service delivery.

A. Criteria.

1. The ~~MR~~ Mental Retardation/Intellectual Disability (MR/ID) Waiver has three services, companion, personal assistance, and respite, that may be provided through a consumer-directed model.

2. Individuals who choose the consumer-directed model must have the capability to hire, train, and fire their own personal assistant or companion and supervise the assistant's or companion's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual. The case manager shall document in the Individual Support Plan the individual's choice for the CD

model and whether there is a need for a family/caregiver to serve as the employer on behalf of the individual.

3. The individual, or if the individual is unable, then family/caregiver, shall be the employer in this service, and therefore shall be responsible for hiring, training, supervising, and firing assistants and companions. Specific employer duties include checking of references of personal assistants/companions, determining that personal assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual and the individual's family/caregiver, as appropriate, must have a back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice.

4. Consumer Directed (CD) services facilitation.

a. Individuals choosing consumer-directed models of service delivery ~~must~~ may receive support from a CD services facilitator. This ~~is not a separate~~ waiver service, ~~but~~ is required used in conjunction with ~~consumer-directed~~ CD personal assistance, respite, or companion services. The CD services facilitator will be responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the ISP Plan for Supports, providing training to the individual and the individual's family/caregiver, as appropriate, on his responsibilities as an employer, and providing ongoing support of the consumer-directed models of services. The CD services facilitator cannot be the individual, the individual's case manager, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver employing the assistant/companion. If an individual enrolled in consumer-directed services has a lapse in services facilitator for more than 90 consecutive days, the case manager must notify ~~DMHMRSAS~~ Department of Behavioral Health and Developmental Services (DBHDS) and the consumer-directed services will be discontinued.

b. If a services facilitator is not selected by the individual, the individual or the family/caregiver serving as the employer shall perform all of the duties and requirements identified for services facilitation, including, but not limited to, those identified in this subsection and in subsection B of this section.

5. DMAS shall provide for fiscal agent services for consumer-directed personal assistance services, consumer-directed companion services, and consumer-directed respite services. The fiscal agent will be reimbursed by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle the responsibilities of

employment taxes for the individual. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

B. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, the CD services facilitator must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in a human service field working with persons with ~~mental retardation~~ MR/ID. The facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities must be documented on the provider's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that may occur in persons with ~~mental retardation~~ MR/ID, or persons with other disabilities, as well as strategies to reduce limitations and health problems;

(2) Physical assistance that may be required by people with ~~mental retardation~~ MR/ID, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by people with ~~mental retardation~~ MR/ID that reduce the need for human help and improve safety;

(4) Various long-term care program requirements, including nursing home and ICF/MR placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance, respite, and companion services;

(5) MR MR/ID waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

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(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in service planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed personal assistance, companion and respite services, including hiring, training, managing, approving time sheets, and firing an assistant/companion;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals and the individual's family/caregivers, as appropriate, and service providers;

(2) Assessing, supporting, observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to individuals with ~~mental retardation~~ MR/ID; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Develop a rapport and communicate with persons of diverse cultural backgrounds.

3. If the CD services facilitator is not a RN, the CD services facilitator must inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed.

4. Initiation of services and service monitoring.

a. For consumer-directed services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and the individual's family/caregiver, as appropriate, to identify the needs, assist in the development of the ISP Plan for Supports with the individual and the individual's family/caregiver, as appropriate, and provide employee management training. The initial comprehensive home visit is done

only once upon the individual's entry into the consumer-directed model of service regardless of the number or type of consumer-directed services that an individual chooses to receive. If an individual changes CD services facilitators, the new CD services facilitator must complete a reassessment visit in lieu of a comprehensive visit.

b. After the initial visit, the CD services facilitator will continue to monitor the companion, or personal assistant ISP Plan for Supports quarterly and on an as-needed basis. The CD services facilitator will review the utilization of consumer-directed respite services, either every six months or upon the use of 300 respite services hours, whichever comes first.

c. A face-to-face meeting with the individual must be conducted at least every six months to reassess the individual's needs and to ensure appropriateness of any CD services received by the individual.

5. During visits with the individual, the CD services facilitator must observe, evaluate, and consult with the individual and the individual's family/caregiver, as appropriate, and document the adequacy and appropriateness of consumer-directed services with regard to the individual's current functioning and cognitive status, medical needs, and social needs.

6. The CD services facilitator must be available to the individual by telephone.

7. ~~The CD services facilitator must submit a~~ A criminal record check pertaining to the assistant/companion on behalf of the individual ~~and shall be requested by the program's fiscal agent, who shall~~ report the findings of the criminal record check to the individual and the individual's family/caregiver, as appropriate, ~~and the program's fiscal agent~~. If the individual is a minor, the assistant/companion must also be screened through the DSS Child Protective Services Central Registry. Assistants/companions will not be reimbursed for services provided to the individual effective the date that the criminal record check confirms an assistant/companion has been found to have been convicted of a crime as described in § 37.2-416 of the Code of Virginia or if the assistant/companion has a confirmed record on the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Central Registry finding must be requested by the ~~CD services facilitator~~ program's fiscal agent within 15 calendar days of employment. The services facilitator must maintain evidence that a criminal record check was obtained and must make such evidence available for DMAS review.

8. The CD services facilitator shall review timesheets during the face-to-face visits or more often as needed to ensure that the number of ~~ISP-approved~~ approved hours approved in

the Plan for Supports is not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual to resolve discrepancies and must notify the fiscal agent.

9. The CD services facilitator must maintain a list of persons who are available to provide consumer-directed personal assistance, consumer-directed companion, or consumer-directed respite services.

10. The CD services facilitator must maintain records of each individual as described in 12VAC30-120-217, 12VAC30-120-223, and 12VAC30-120-233.

11. Upon the individual's request, the CD services facilitator shall provide the individual and the individual's family/caregiver, as appropriate, with a list of persons who can provide temporary assistance until the assistant/companion returns or the individual is able to select and hire a new personal assistant/companion. If an individual is consistently unable to hire and retain the employment of an assistant/companion to provide consumer-directed personal assistance, companion, or respite services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider or to discuss with the individual and the individual's family/caregiver, as appropriate, other service options.

12VAC30-120-227. Crisis stabilization services.

A. Crisis stabilization services involve direct interventions that provide temporary intensive services and support that avert emergency psychiatric hospitalization or institutional placement of persons with ~~mental retardation~~ Mental Retardation/Intellectual Disability (MR/ID) who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situation. Crisis stabilization services will include, as appropriate, neuropsychiatric, psychiatric, psychological, and other functional assessments and stabilization techniques, medication management and monitoring, behavior assessment and positive behavioral support, and intensive service coordination with other agencies and providers. This service is designed to stabilize the individual and strengthen the current living situation, so that the individual remains in the community during and beyond the crisis period. These services shall be provided to:

1. Assist with planning and delivery of services and supports to enable the individual to remain in the community;
2. Train family/caregivers and service providers in positive behavioral supports to maintain the individual in the community; and
3. Provide temporary crisis supervision to ensure the safety of the individual and others.

B. Criteria.

1. In order to receive crisis stabilization services, the individual must meet at least one of the following criteria:
 - a. The individual is experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;
 - b. The individual is experiencing extreme increase in emotional distress;
 - c. The individual needs continuous intervention to maintain stability; or
 - d. The individual is causing harm to self or others.
2. The individual must be at risk of at least one of the following:
 - a. Psychiatric hospitalization;
 - b. Emergency ICF/MR placement;
 - c. Immediate threat of loss of a community service due to a severe situational reaction; or
 - d. Causing harm to self or others.

C. Service units and service limitations. Crisis stabilization services may only be authorized following a documented face-to-face assessment conducted by a qualified mental retardation professional (QMRP).

1. The unit for each component of the service is one hour. This service may only be authorized in 15-day increments but no more than 60 days in a calendar year may be used. The actual service units per episode shall be based on the documented clinical needs of the individual being served. Extension of services, beyond the 15-day limit per authorization, may only be authorized following a documented face-to-face reassessment conducted by a ~~qualified mental retardation professional~~ QMRP.
2. Crisis stabilization services may be provided directly in the following settings (examples below are not exclusive):
 - a. The home of an individual who lives with family, friends, or other primary caregiver or caregivers;
 - b. The home of an individual who lives independently or semi-independently to augment any current services and supports;
 - c. A community-based residential program to augment current services and supports;
 - d. A day program or setting to augment current services and supports; or
 - e. A respite care setting to augment current services and supports.
3. Crisis supervision is an optional component of crisis stabilization in which one-to-one supervision of the individual in crisis is provided by agency staff in order to

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ensure the safety of the individual and others in the environment. Crisis supervision may be provided as a component of crisis stabilization only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. Crisis supervision must be provided one-to-one and face-to-face with the individual. Crisis supervision, if provided as a part of this service, shall be separately billed in hourly service units.

4. Crisis stabilization services shall not be used for continuous long-term care. Room, board, and general supervision are not components of this service.

5. If appropriate, the assessment and any reassessments, shall be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

D. Provider requirements. In addition to the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, the following crisis stabilization provider qualifications apply:

1. Crisis stabilization services shall be provided by providers licensed by ~~DMHMRSAS~~ Department of Behavioral Health and Developmental Services (DBHDS) as a provider of outpatient services, residential, or supportive in-home residential services, or day support services. The provider must employ or utilize ~~qualified mental-retardation-professionals (QMRPs)~~, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to individuals with ~~mental-retardation~~ MR/ID who are experiencing serious psychiatric or behavioral problems. The ~~qualified-mental-retardation-professional QMRP~~ shall have: (i) at least one year of documented experience working directly with individuals who have ~~mental-retardation~~ MR/ID or developmental disabilities; (ii) at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology or a bachelor's degree in another field in addition to an advanced degree in a human services field; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession;

2. To provide the crisis supervision component, providers must be licensed by ~~DMHMRSAS~~ DBHDS as providers of residential services, supportive in-home residential services, or day support services;

3. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving crisis stabilization services. At a minimum, the record must contain the following:

a. Documentation of the face-to-face assessment and any reassessments completed by a ~~qualified-mental-retardation-professional~~ QMRP;

b. ~~An~~ ISP A Plan for Supports that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports;

(2) The individual's goals;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP Plan for Supports.

c. ~~An~~ ISP A Plan for Supports must be developed or revised and submitted to the case manager for submission to ~~DMHMRSAS~~ DBHDS within 72 hours of the requested start date for authorization;

d. Documentation indicating the dates and times of crisis stabilization services, the amount and type of service or services provided, and specific information regarding the individual's response to the services and supports as agreed to in the ISP Plan for Supports objectives; and

e. Documentation of qualifications of providers must be maintained for review by ~~DMHMRSAS~~ DBHDS and DMAS staff.

12VAC30-120-229. Day support services.

A. Service description. Day support services shall include a variety of training, assistance, support, and specialized supervision for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. These services are typically offered in a nonresidential setting that allows peer interactions and community and social integration.

B. Criteria. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings other than the individual's own residence that allows an opportunity for being productive and contributing members of communities.

C. Types of day support. The amount and type of day support included in the individual's service plan is determined according to the services required for that individual. There are two types of day support: center-based, which is provided primarily at one location/building, or noncenter-based, which is provided primarily in community settings. Both types of

day support may be provided at either intensive or regular levels.

D. Levels of day support. There are two levels of day support, intensive and regular. To be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) requires physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii) requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

E. Service units and service limitations. Day support services are billed according to the DMAS fee schedule. Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from ~~DMHMRSAS~~ the state-designated agency or its contractor. Noncenter-based day support services must be separate and distinguishable from either residential support services or personal assistance services. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing. The supporting documentation must provide an estimate of the amount of day support required by the individual. Service providers are reimbursed only for the amount and level of day support services included in the individual's approved ISP Plan for Supports based on the setting, intensity, and duration of the service to be delivered. This service shall be limited to 780 units, or its equivalent under the DMAS fee schedule, per ~~CSP~~ Individual Support Plan year. If this service is used in combination with prevocational and/or group supported employment services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP Individual Support Plan year.

F. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, day support providers need to meet additional requirements.

1. The provider of day support services must be licensed by ~~DMHMRSAS~~ Department of Behavioral Health and Developmental Services (DBHDS) as a provider of day support services.
2. In addition to licensing requirements, day support staff must also have training in the characteristics of ~~mental retardation~~ mental retardation/intellectual disability (MR/ID) and appropriate interventions, training strategies, and support methods for persons with ~~mental retardation~~

MR/ID and functional limitations. All providers of day support services must pass an objective, standardized test of skills, knowledge, and abilities approved by ~~DMHMRSAS~~ DBHDS and administered according to ~~DMHMRSAS'~~ DBHDS' defined procedures.

3. Required documentation in the individual's record. The provider must maintain records of each individual receiving services. At a minimum, these records must contain the following:

- a. ~~A functional completed copy of the DBHDS-approved assessment conducted by the provider to evaluate each individual in the day support environment and community settings.~~
- b. ~~An ISP~~ A Plan for Supports that contains, at a minimum, the following elements:
 - (1) The individual's strengths, desired outcomes, required or desired supports and training needs;
 - (2) The individual's goals and measurable objectives to meet the above identified outcomes;
 - (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;
 - (4) A timetable for the accomplishment of the individual's goals and objectives as appropriate;
 - (5) The estimated duration of the individual's needs for services; and
 - (6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP Plan for Supports.
- c. Documentation confirming the individual's attendance and amount of time in services and specific information regarding the individual's response to various settings and supports as agreed to in the ISP Plan for Supports objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units, or their equivalent under the DMAS fee schedule, provided.
- d. Documentation indicating whether the services were center-based or noncenter-based.
- e. Documentation regarding transportation. In instances where day support staff are required to ride with the individual to and from day support, the day support staff time can be billed as day support, provided that the billing for this time does not exceed 25% of the total time spent in the day support activity for that day. Documentation must be maintained to verify that billing for day support staff coverage during transportation does not exceed 25% of the total time spent in the day support for that day.

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f. If intensive day support services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive day support services, there must be clear documentation of the ongoing needs and associated staff supports.

g. Documentation indicating that the ISP Plan for Supports goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the ISP Plan for Supports is modified, the ISP Plan for Supports must be reviewed with the individual and the individual's family/caregiver, as appropriate.

h. Copy of the most recently completed DMAS-122 DMAS-225 form. The provider must clearly document efforts to obtain the completed DMAS-122 DMAS-225 form from the case manager.

12VAC30-120-231. Environmental modifications.

A. Service description. Environmental modifications shall be defined as those physical adaptations to the home or vehicle, required by the individual's ESP Individual Support Plan, that are necessary to ensure the health, welfare, and safety of the individual, or which enable the individual to function with greater independence and without which the individual would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the individual. Modifications can be made to an automotive vehicle if it is the primary vehicle being used by the individual. Modifications may be made to an individual's work site when the modification exceeds the reasonable accommodation requirements of the Americans with Disabilities Act.

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered in an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.

C. Service units and service limitations. Environmental modifications shall be available to individuals who are receiving at least one other waiver service in addition to targeted ~~mental retardation~~ mental retardation/intellectual disability (MR/ID) case management. A maximum limit of \$5,000 may be reimbursed per ESP Individual Support Plan

year. Costs for environmental modifications shall not be carried over from ESP Individual Support Plan year to ESP Individual Support Plan year and must be prior authorized by ~~DMHMRSAS~~ the state-designated agency or its contractor for each ESP Individual Support Plan year. Modifications may not be used to bring a substandard dwelling up to minimum habitation standards. Excluded are those adaptations or improvements to the home that are of general utility, such as carpeting, roof repairs, central air conditioning, etc., and are not of direct medical or remedial benefit to the individual. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act. Adaptations that add to the total square footage of the home shall be excluded from this service.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, environmental modifications must be provided in accordance with all applicable federal, state or local building codes and laws by contractors of the CSB/BHA or providers who have a participation agreement with DMAS who shall be reimbursed for the amount charged by said contractors. The following are provider documentation requirements:

1. ~~An~~ ISP A Plan for Supports that documents the need for the service, the process to obtain the service, and the time frame during which the services are to be provided. The ISP Plan for Supports must include documentation of the reason that a rehabilitation engineer or specialist is needed, if one is to be involved;
2. Documentation of the time frame involved to complete the modification and the amount of services and supplies;
3. Any other relevant information regarding the modification;
4. Documentation of notification by the individual and the individual's family/caregiver, as appropriate, of satisfactory completion of the service; and
5. Instructions regarding any warranty, repairs, complaints, and servicing that may be needed.

12VAC30-120-233. Personal assistance and respite services.

A. Service description. Services may be provided either through an agency-directed or consumer-directed model.

1. Personal assistance services are provided to individuals in the areas of activities of daily living, instrumental activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, monitoring of health status and physical condition, and work-related personal assistance. They may

be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. When specified, such supportive services may include assistance with instrumental activities of daily living (IADLs). Personal assistance does not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

2. Respite services are supports for that which is normally provided by the family or other unpaid primary caregiver of an individual. These services are furnished on a short-term basis because of the absence or need for relief of those unpaid caregivers normally providing the care for the individuals.

B. Criteria.

1. In order to qualify for personal assistance services, the individual must demonstrate a need for assistance with activities of daily living, community access, self-administration of medications or other medical needs, or monitoring of health status or physical condition.

2. Respite services may only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the individual.

C. Service units and service limitations.

1. The unit of service is one hour.

2. Each individual must have a back-up plan in case the personal assistant does not show up for work as expected or terminates employment without prior notice.

3. Personal assistance is not available to individuals: (i) who receive congregate residential services or live in assisted living facilities; (ii) who would benefit from personal assistance training and skill development; or (iii) who receive comparable services provided through another program or service.

4. Respite services shall not be provided to relieve group home or assisted living facility staff where residential care is provided in shifts. Respite services shall not be provided by adult foster care providers for an individual residing in that home. Training of the individual is not provided with respite services.

5. Respite services shall be limited to a maximum of 720 hours per calendar year. Individuals who are receiving services through both the agency-directed and consumer-directed model cannot exceed 720 hours per calendar year combined.

6. The hours authorized are based on individual need. No more than two unrelated individuals who live in the same home are permitted to share the authorized work hours of the assistant.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, personal assistance and respite providers must meet additional provider requirements:

1. Services shall be provided by:

a. For the agency-directed model, an enrolled DMAS personal care/respite care provider or by a ~~DMHMRSAS licensed~~ residential services provider licensed by the Department of Behavioral Health and Developmental Services (DBHDS). In addition, respite services may be provided by a ~~DMHMRSAS licensed~~ DBHDS-licensed respite services provider or a DSS-approved foster care home for children or adult foster home provider. All personal assistants must pass an objective standardized test of skills, knowledge, and abilities approved by ~~DMHMRSAS~~ DBHDS and administered according to ~~DMHMRSAS'~~ DBHDS' defined procedures.

b. For consumer-directed model, ~~a services facilitator meeting the services shall meet~~ the requirements found in 12VAC30-120-225.

2. For ~~DMHMRSAS licensed~~ DBHDS-licensed residential or respite services providers, a residential or respite supervisor will provide ongoing supervision of all assistants.

3. For DMAS-enrolled personal care/respite care providers, the provider must employ or subcontract with and directly supervise a RN or a LPN who will provide ongoing supervision of all assistants. The supervising RN or LPN must be currently licensed to practice nursing in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility.

4. The supervisor or services facilitator must make a home visit to conduct an initial assessment prior to the start of services for all individuals requesting personal assistance or respite services. The supervisor or services facilitator must also perform any subsequent reassessments or changes to the supporting documentation.

5. The supervisor or services facilitator must make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits is every 30 to 90 days under the agency-directed model and semi-annually (every six

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months) under the consumer-directed model depending on the individual's needs.

a. When respite services are not received on a routine basis, but are episodic in nature, the supervisor or services facilitator is not required to conduct a supervisory visit every 30 to 90 days. Instead, the supervisor or services facilitator must conduct the initial home visit with the respite assistant immediately preceding the start of services and make a second home visit within the respite period.

b. When respite services are routine in nature and offered in conjunction with personal assistance, the supervisory visit conducted for personal assistance may serve as the supervisory visit for respite services. However, the supervisor or services facilitator must document supervision of respite services separately. For this purpose, the same individual record can be used with a separate section for respite services documentation.

6. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor or services facilitator shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

7. Qualification of assistants.

a. The assistant must:

(1) Be 18 years of age or older and possess a valid social security number;

(2) Be able to read and write English to the degree necessary to perform the tasks expected and possess basic math skills; and

(3) Have the required skills to perform services as specified in the individual's ISP Plan for Supports.

b. Additional requirements for DMAS-enrolled personal care/respite care providers.

(1) Assistants must complete a training curriculum consistent with DMAS requirements. Prior to assigning an assistant to an individual, the provider must obtain documentation that the assistant has satisfactorily completed a training program consistent with DMAS requirements. DMAS requirements may be met in one of three ways:

(a) Registration as a certified nurse aide;

(b) Graduation from an approved educational curriculum that offers certificates qualifying the student as a nursing assistant, geriatric assistance, or home health aide;

(c) Completion of provider-offered training, which is consistent with the basic course outline approved by DMAS; and

(2) Assistants must have a satisfactory work record, as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect, or exploitation of aged or incapacitated adults or children.

c. Additional requirements for the consumer-directed option. The assistant must:

(1) Submit to a criminal records check and, if the individual is a minor, consent to a search of the DSS Child Protective Services Central Registry. The assistant will not be compensated for services provided to the individual if either of these records checks verifies the assistant has been convicted of crimes described in § 37.2-416 of the Code of Virginia or if the assistant has a founded complaint confirmed by the DSS Child Protective Services Central Registry;

(2) Be willing to attend training at the individual and the individual's family/caregiver, as appropriate, request;

(3) Understand and agree to comply with the DMAS ~~MR~~ mental retardation/intellectual disability (MR/ID) Waiver requirements; and

(4) Receive an annual tuberculosis (TB) screening.

8. Assistants may not be the parents of individuals who are minors, or the individuals' spouses. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the service. Family members who are approved to be reimbursed for providing this service must meet the assistant qualifications.

9. Provider inability to render services and substitution of assistants (agency-directed model).

a. When an assistant is absent, the provider is responsible for ensuring that services continue to be provided to individuals. The provider may either provide another assistant, obtain a substitute assistant from another provider, if the lapse in coverage is to be less than two weeks in duration, or transfer the individual's services to another provider. The provider that has the authorization to provide services to the individual must contact the case manager to determine if additional preauthorization is necessary.

b. If no other provider is available who can supply a substitute assistant, the provider shall notify the individual and the individual's family/caregiver, as appropriate, and case manager so that the case manager may find another available provider of the individual's choice.

c. During temporary, short-term lapses in coverage not to exceed two weeks in duration, the following procedures must apply:

- (1) The preauthorized provider must provide the supervision for the substitute assistant;
- (2) The provider of the substitute assistant must send a copy of the assistant's daily documentation signed by the individual and the individual's family/caregiver, as appropriate, on his behalf and the assistant to the provider having the authorization; and
- (3) The preauthorized provider must bill DMAS for services rendered by the substitute assistant.

d. If a provider secures a substitute assistant, the provider agency is responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS' requirements. The two providers involved are responsible for negotiating the financial arrangements of paying the substitute assistant.

10. Required documentation in the individual's record. The provider must maintain records regarding each individual receiving services. At a minimum these records must contain:

a. ~~An~~ A copy of the completed DBHDS-approved assessment and, as needed, an initial assessment completed by the supervisor or services facilitator prior to or on the date services are initiated;

b. An ISP A Plan for Supports, that contains, at a minimum, the following elements:

- (1) The individual's strengths, desired outcomes, required or desired supports;
- (2) The individual's goals and objectives to meet the above identified outcomes;
- (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives; and
- (4) For the agency-directed model, the provider staff responsible for the overall coordination and integration of the services specified in the ISP Plan for Supports.

c. The ISP Plan for Supports goals, objectives, and activities must be reviewed by the supervisor or services facilitator quarterly for personal assistance only, annually, and more often as needed modified as appropriate and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP Plan for Supports is modified, the ISP Plan for Supports must be reviewed with the individual.

d. Dated notes of any contacts with the assistant, individual and the individual's family/caregiver, as

appropriate, during supervisory or services facilitator visits to the individual's home. The written summary of the supervision or services facilitation visits must include:

- (1) Whether services continue to be appropriate and whether the ISP Plan for Supports is adequate to meet the need or if changes are indicated in the ISP Plan for Supports;
- (2) Any suspected abuse, neglect, or exploitation and to whom it was reported;
- (3) Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;
- (4) The individual's satisfaction with the service;
- (5) Any hospitalization or change in medical condition or functioning status;
- (6) Other services received and their amount; and
- (7) The presence or absence of the assistant in the home during the supervisor's visit.

e. All correspondence to the individual and the individual's family/caregiver, as appropriate, case manager, DMAS, and ~~DMHMRSAS~~ DBHDS;

f. Reassessments and any changes to supporting documentation made during the provision of services;

g. Contacts made with the individual, family/caregivers, physicians, formal and informal service providers, and all professionals concerning the individual;

h. Copy of the most recently completed ~~DMAS-122~~ DMAS-225 form. The provider or services facilitator must clearly document efforts to obtain the completed ~~DMAS-122~~ DMAS-225 form from the case manager.

i. For the agency-directed model, the assistant record must contain:

- (1) The specific services delivered to the individual by the assistant, dated the day of service delivery, and the individual's responses;
- (2) The assistant's arrival and departure times;
- (3) The assistant's weekly comments or observations about the individual to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and
- (4) The assistant's and individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that services during that week have been rendered.

j. For individuals receiving personal assistance and respite services in a congregate residential setting,

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because services that are training in nature are currently or no longer appropriate or desired, the record must contain:

(1) The specific services delivered to the individual, dated the day services were provided, the number of hours as outlined in the ISP Plan for Supports, the individual's responses, and observations of the individual's physical and emotional condition; and

(2) At a minimum, monthly verification by the residential supervisor of the services and hours and quarterly verification as outlined in 12VAC30-120-241.

k. For the consumer-directed model, the assistant record must contain:

(1) Documentation of all training provided to the assistants on behalf of the individual and the individual's family/caregiver, as appropriate;

(2) Documentation of all employee management training provided to the individual and the individual's family/caregiver, as appropriate, including the individual and the individual's family/caregiver, as appropriate, receipt of training on their responsibility for the accuracy of the assistant's timesheets;

(3) All documents signed by the individual and the individual's family/caregiver, as appropriate, that acknowledge the responsibilities as the employer.

12VAC30-120-235. Personal Emergency Response System (PERS).

A. Service description. PERS is a service which monitors individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's home telephone line. PERS may also include medication monitoring devices.

B. Criteria. PERS can be authorized when there is no one else in the home who is competent or continuously available to call for help in an emergency.

C. Service units and service limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, monitoring, and adjustments of the PERS. A unit of service is the one-month rental price set by DMAS. The one-time installation of the unit includes installation, account activation, individual and caregiver instruction, and removal of PERS equipment.

2. PERS services must be capable of being activated by a remote wireless device and be connected to the individual's telephone line. The PERS console unit must provide

hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, PERS providers must also meet the following qualifications:

1. A PERS provider is a personal assistance agency, a durable medical equipment provider, a hospital, a licensed home health provider, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance and service calls), and PERS monitoring.

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of receiving signals for help from an individual's PERS equipment 24-hours a day, 365, or 366, days per year as appropriate, of determining whether an emergency exists, and of notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help.

3. A PERS provider must comply with all applicable Virginia statutes, applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed.

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication-monitoring unit while the original equipment is being repaired.

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line and must furnish all supplies necessary to ensure that the system is installed and working properly.

6. The PERS installation includes local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the phone be off the hook or in use when the unit is activated.

7. A PERS provider must maintain a data record for each PERS individual at no additional cost to DMAS. The record must document the following:

a. Delivery date and installation date of the PERS;

b. Individual or family/caregiver signature verifying receipt of PERS device;

- c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;
 - d. Updated and current individual responder and contact information, as provided by the individual, the individual's family/caregiver, or case manager; and
 - e. A case log documenting the individual's utilization of the system and contacts and communications with the individual, family/caregiver, case manager, and responders.
8. The PERS provider must have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals.
9. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for Digital Alarm Communicator System Units and Number 1637, which is the UL safety standard for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the individual.
10. A PERS provider must furnish education, data, and ongoing assistance to DMAS, ~~DMHMRSAS~~ Department of Behavioral Health and Developmental Services (DBHDS) and case managers to familiarize staff with the service, allow for ongoing evaluation and refinement of the program, and must instruct the individual, family/caregiver, and responders in the use of the PERS service.
11. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24-hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit must also be able to self-disconnect and redial the back-up monitoring site without the individual resetting the system in the event it cannot get its signal accepted at the response center.
12. Monitoring agencies must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the agency's equipment meets the following requirements. The monitoring agency must be capable of simultaneously

responding to signals for help from multiple individuals' PERS equipment. The monitoring agency's equipment must include the following:

- a. A primary receiver and a back-up receiver, which must be independent and interchangeable;
- b. A back-up information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A back-up power supply;
- e. A separate telephone service;
- f. A toll free number to be used by the PERS equipment in order to contact the primary or back-up response center; and
- g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

13. The monitoring agency must maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment, emergency response protocols, and recordkeeping and reporting procedures.

14. The PERS provider shall document and furnish within 30 days of the action taken a written report to the case manager for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error.

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid recipients.

16. The provider must obtain and keep on file a copy of the most recently completed ~~DMAS-122~~ DMAS-225 form. The provider must clearly document efforts to obtain the completed ~~DMAS-122~~ DMAS-225 form from the case manager.

12VAC30-120-237. Prevocational services.

A. Service description. Prevocational services are services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services, (excluding supported employment programs). Activities included in this service are not primarily directed at teaching specific job skills but at underlying rehabilitative goals such as accepting supervision, attendance, task completion, problem solving, and safety.

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B. Criteria. In order to qualify for prevocational services, the individual shall have a demonstrated need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

C. Service units and service limitations. Billing is in accordance with the DMAS fee schedule.

1. This service is limited to 780 units, or its equivalent under the DMAS fee schedule, per ~~CSP Individual Support Plan~~ year. If this service is used in combination with day support and /or group-supported employment services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per ~~CSP Individual Support Plan~~ year.

2. Prevocational services can be provided in center- or noncenter-based settings. Center-based means services are provided primarily at one location/building and noncenter-based means services are provided primarily in community settings. Both center-based or noncenter-based prevocational services may be provided at either regular or intensive levels.

3. Prevocational services can be provided at either a regular or intensive level. For prevocational services to be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish service goals; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

4. There must be documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA, documentation is required only for lack of ~~DRS Department of Rehabilitation (DRS)~~ funding. When services are provided through these sources, the ~~ISP Plan for Supports~~ shall not authorize them as a waiver expenditure.

5. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, prevocational providers must also meet the following qualifications:

1. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services for ~~DRS Department of Rehabilitation (DRS)~~, or be licensed by ~~DMHMRSAS Department of Behavioral Health and Developmental Services (DBHDS)~~ as a provider of day support services.

2. Providers must ensure and document that persons providing prevocational services have training in the characteristics of ~~mental—retardation~~ mental retardation/intellectual disability (MR/ID) and appropriate interventions, training strategies, and support methods for persons with ~~mental-retardation~~ MR/ID and functional limitations. All providers of prevocational services must pass an objective, standardized test of skills, knowledge, and abilities approved by ~~DMHMRSAS DBHDS~~ and administered according to ~~DMHMRSAS DBHDS'~~ defined procedures.

3. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving prevocational services. At a minimum, the records must contain the following:

a. A ~~functional~~ completed copy of the DBHDS-approved assessment conducted by the provider to evaluate each individual in the prevocational environment and community settings.

b. ~~An ISP~~ A Plan for Supports, which contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, and training needs;

(2) The individual's goals and measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP Plan for Supports.

c. Documentation indicating that the ISP Plan for Supports goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and that the results of these reviews have been submitted to the case manager. For the annual review and in cases where the ISP Plan for Supports is modified, the ISP Plan for Supports must be reviewed with the individual and the individual's family/caregiver, as appropriate.

d. Documentation confirming the individual's attendance, amount of time spent in services, and type of services rendered, and specific information regarding the individual's response to various settings and supports as agreed to in the ISP Plan for Supports objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units, or their equivalent under the DMAS fee schedule, provided.

e. Documentation indicating whether the services were center-based or noncenter-based.

f. Documentation regarding transportation. In instances where prevocational staff are required to ride with the individual to and from prevocational services, the prevocational staff time can be billed for prevocational services, provided that billing for this time does not exceed 25% of the total time spent in prevocational services for that day. Documentation must be maintained to verify that billing for prevocational staff coverage during transportation does not exceed 25% of the total time spent in the prevocational services for that day.

g. If intensive prevocational services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive prevocational services, there must be clear documentation of the ongoing needs and associated staff supports.

h. Documentation indicating whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA).

i. A copy of the most recently completed ~~DMAS-122~~ DMAS-225. The provider must clearly document efforts to obtain the completed ~~DMAS-122~~ DMAS-225 form from the case manager.

12VAC30-120-241. Residential support services.

A. Service description. Residential support services consist of training, assistance or specialized supervision provided primarily in an individual's home or in a licensed or approved residence to enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

Service providers shall be reimbursed only for the amount and type of residential support services included in the individual's approved ISP Plan for Supports. Residential support services shall be authorized in the ISP Plan for Supports only when the individual requires these services and these services exceed the services included in the individual's room and board arrangements for individuals residing in

group homes, or, for other individuals, if these services exceed supports provided by the family/caregiver. Services will not be routinely reimbursed for a continuous 24-hour period.

B. Criteria.

1. In order for Medicaid to reimburse for residential support services, the individual shall have a demonstrated need for supports to be provided by staff who are paid by the residential support provider.

2. In order to qualify for this service in a congregate setting, the individual shall have a demonstrated need for continuous training, assistance, and supervision for up to 24 hours per day.

3. ~~A functional~~ Providers must participate in the completion of the Department of Behavioral Health and Developmental Services (DBHDS)-approved assessment must be conducted to evaluate each individual in his home environment and community settings.

4. The residential support ISP A Plan for Supports must indicate the necessary amount and type of activities required by the individual, the schedule of residential support services, and the total number of projected hours per week of waiver reimbursed residential support.

C. Service units and service limitations. Total billing cannot exceed the authorized amount in the ISP Plan for Supports. The provider must maintain documentation of the date and times that services were provided, and specific circumstances that prevented provision of all of the scheduled services.

1. This service must be provided on an individual-specific basis according to the ISP Plan for Supports and service setting requirements;

2. Congregate residential support services may not be provided to any individual who receives personal assistance services under the ~~MR~~ mental retardation/intellectual disability (MR/ID) Waiver or other residential services that provide a comparable level of care. Respite services may be provided in conjunction with in-home residential support services to unpaid caregivers.

3. Room, board, and general supervision shall not be components of this service;

4. This service shall not be used solely to provide routine or emergency respite for the family/caregiver with whom the individual lives; and

5. Medicaid reimbursement is available only for residential support services provided when the individual is present and when a qualified provider is providing the services.

D. Provider requirements.

1. In addition to meeting the general conditions and requirements for home and community-based participating

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providers as specified in 12VAC30-120-217 and 12VAC30-120-219, the provider of residential services must have the appropriate ~~DMHMRSAS~~ Department of Behavioral Health and Developmental Services (DBHDS) residential license.

2. Residential support services may also be provided in adult foster care homes approved by local DSS offices pursuant to state DSS regulations.

3. In addition to licensing requirements, persons providing residential support services are required to participate in training in the characteristics of ~~mental-retardation~~ MR/ID and appropriate interventions, training strategies, and support methods for individuals with ~~mental-retardation~~ MR/ID and functional limitations. All providers of residential support services must pass an objective, standardized test of skills, knowledge, and abilities approved by ~~DMHMRSAS~~ DBHDS and administered according to ~~DMHMRSAS'~~ DBHDS' defined procedures.

4. Required documentation in the individual's record. The provider agency must maintain records of each individual receiving residential support services. At a minimum these records must contain the following:

a. A ~~functional~~ completed copy of the DBHDS-approved assessment conducted by the provider to evaluate each individual in the residential environment and community settings.

b. An ISP Plan for Supports containing the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, or both, and training needs;

(2) The individual's goals and measurable objectives to meet the above identified outcomes;

(3) The services to be rendered and the schedule of services to accomplish the above goals, objectives, and desired outcomes;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP Plan for Supports.

c. The ISP Plan for Supports goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP Plan for Supports is modified, the ISP Plan for

Supports must be reviewed with the individual and the individual's family/caregiver, as appropriate.

d. Documentation must confirm attendance, the amount of time in services, and provide specific information regarding the individual's response to various settings and supports as agreed to in the ISP Plan for Supports objectives.

e. A copy of the most recently completed ~~DMAS-122~~ DMAS-225. The provider must clearly document efforts to obtain the completed ~~DMAS-122~~ DMAS-225 form from the case manager.

12VAC30-120-245. Skilled nursing services.

A. Service description. Skilled nursing services shall be provided for individuals with serious medical conditions and complex health care who do not meet home health criteria needs that require specific skilled nursing services that cannot be provided by non-nursing personnel. Skilled nursing may be provided in the individual's home or other community setting on a regularly scheduled or intermittent need basis. It may include consultation, nurse delegation as appropriate, oversight of direct care staff as appropriate, and training for other providers.

B. Criteria. In order to qualify for these services, the individual shall have demonstrated complex health care needs that require specific skilled nursing services ordered by a physician and that cannot be otherwise accessed under the Title XIX State Plan for Medical Assistance. The ~~CSP~~ Individual Support Plan must indicate that the service is necessary in order to prevent institutionalization and is not available under the State Plan for Medical Assistance.

C. Service units and service limitations. Skilled nursing services to be rendered by either registered or licensed practical nurses are provided in hourly units. The services must be explicitly detailed in ~~an ISP~~ a Plan for Supports and must be specifically ordered by a physician as medically necessary to prevent institutionalization.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, participating skilled nursing providers must meet the following qualifications:

1. Skilled nursing services shall be provided by either a DMAS-enrolled home care organization provider or home health provider, or by a registered nurse licensed by the Commonwealth or licensed practical nurse licensed by the Commonwealth (under the supervision of a registered nurse licensed by the Commonwealth), contracted or employed by ~~DMHMRSAS licensed~~ Department of Behavioral Health and Developmental Services-licensed day support, respite, or residential providers.

2. Skilled nursing services providers may not be the parents of individuals who are minors, or the individual's spouse. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the care. Family members who provide skilled nursing services must meet the skilled nursing requirements.

3. Foster care providers may not be the skilled nursing services providers for the same individuals to whom they provide foster care.

4. Required documentation. The provider must maintain a record that contains:

a. ~~An ISP~~ A Plan for Supports that contains, at a minimum, the following elements:

- (1) The individual's strengths, desired outcomes, required or desired supports;
- (2) The individual's goals;
- (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;
- (4) The estimated duration of the individual's needs for services; and
- (5) The provider staff responsible for the overall coordination and integration of the services specified in the ISP Plan for Supports;

b. Documentation of any training of family/caregivers or staff, or both, to be provided, including the person or persons being trained and the content of the training, consistent with the Nurse Practice Act;

c. Documentation of the determination of medical necessity by a physician prior to services being rendered;

d. Documentation of nursing license/qualifications of providers;

e. Documentation indicating the dates and times of nursing services and the amount and type of service or training provided;

f. Documentation that the ISP Plan for Supports was reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP Plan for Supports is modified, the ISP Plan for Supports must be reviewed with the individual;

g. Documentation that the ISP Plan for Supports has been reviewed by a physician within 30 days of initiation of services, when any changes are made to the ISP, and also reviewed and approved annually by a physician; and

h. A copy of the most recently completed ~~DMAS-122~~ DMAS-225. The provider must clearly document efforts to obtain the completed ~~DMAS-122~~ DMAS-225 form from the case manager.

12VAC30-120-247. Supported employment services.

A. Service description.

1. Supported employment services are provided in work settings where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with ~~mental retardation~~ mental retardation/intellectual disability (MR/ID), who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

2. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disability need ongoing support to perform in a work setting.

3. Supported employment can be provided in one of two models. Individual supported employment shall be defined as intermittent support, usually provided one-on-one by a job coach to an individual in a supported employment position. Group supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and ~~CSP~~ Individual Support Plan must clearly reflect the individual's need for training and supports.

B. Criteria.

1. Only job development tasks that specifically include the individual are allowable job search activities under the ~~MR~~ MR/ID waiver supported employment and only after determining this service is not available from DRS.

2. In order to qualify for these services, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports, and that because of his disability, he needs ongoing support to perform in a work setting.

3. ~~A functional~~ Providers must participate in the completion of the Department of Behavioral Health and Developmental Services (DBHDS)-approved assessment must be conducted to evaluate the individual in his work environment and related community settings.

4. The ISP Plan for Supports must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP Plan for Supports based on the intensity and duration of the service delivered.

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C. Service units and service limitations.

1. Supported employment for individual job placement is provided in one hour units. This service is limited to 40 hours per week.
2. Group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported employment) will be billed according to the DMAS fee schedule.

This service is limited to 780 units, or its equivalent under the DMAS fee schedule, per CSP Individual Support Plan year. If this service is used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP Individual Support Plan year.

3. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, supported employment provider qualifications include:

1. Group and agency-directed individual supported employment shall be provided only by agencies that are DRS vendors of supported employment services;
2. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving supported employment services. At a minimum, the records must contain the following:

a. ~~A functional completed copy of the DBHDS-approved assessment conducted by the provider to evaluate each individual in the supported employment environment and related community settings.~~

b. Documentation indicating individual ineligibility for supported employment services through DRS or IDEA. If the individual is not eligible through IDEA, documentation is required only for the lack of DRS funding.

c. ~~An ISP~~ A Plan for Supports that contains, at a minimum, the following elements:

- (1) The individual's strengths, desired outcomes, required/desired supports and training needs;
- (2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) Provider staff responsible for the overall coordination and integration of the services specified in the plan.

d. The ISP Plan for Supports goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. For the annual review and in cases where the ISP Plan for Supports is modified, the ISP Plan for Supports must be reviewed with the individual and the individual's family/caregiver, as appropriate.

e. In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time can be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day. Documentation must be maintained to verify that billing for supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.

f. There must be a copy of the completed ~~DMAS-122~~ DMAS-225 in the record. Providers must clearly document efforts to obtain the ~~DMAS-122~~ DMAS-225 form from the case manager.

12VAC30-120-249. Therapeutic consultation.

A. Service description. Therapeutic consultation provides expertise, training and technical assistance in any of the following specialty areas to assist family members, caregivers, and other service providers in supporting the individual. The specialty areas are (i) psychology, (ii) behavioral consultation, (iii) therapeutic recreation, (iv) speech and language pathology, (v) occupational therapy, (vi) physical therapy, and (vii) rehabilitation engineering. The need for any of these services, is based on the individual's CSP Individual Support Plan, and provided to those individuals for whom specialized consultation is clinically necessary and who have additional challenges restricting their ability to function in the community. Therapeutic consultation services may be provided in the individual's home, and in appropriate community settings and are intended to facilitate implementation of the individual's desired outcomes as identified in his CSP Individual Support Plan.

B. Criteria. In order to qualify for these services, the individual shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the

CSP Individual Support Plan cannot be implemented effectively and efficiently without such consultation from this service.

1. The individual's therapeutic consultation ISP Plan for Supports must clearly reflect the individual's needs, as documented in the ~~social~~ assessment information, for specialized consultation provided to family/caregivers and providers in order to implement the ISP Plan for Supports effectively.

2. Therapeutic consultation services may not include direct therapy provided to waiver individuals or monitoring activities, and may not duplicate the activities of other services that are available to the individual through the State Plan for Medical Assistance.

C. Service units and service limitations. The unit of service shall equal one hour. The services must be explicitly detailed in the ISP Plan for Supports. Travel time, written preparation, and telephone communication are in-kind expenses within this service and are not billable as separate items. Therapeutic consultation may not be billed solely for purposes of monitoring. Only behavioral consultation may be offered in the absence of any other waiver service when the consultation is determined to be necessary to prevent institutionalization.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, professionals rendering therapeutic consultation services shall meet all applicable state or national licensure, endorsement or certification requirements. Persons providing rehabilitation consultation shall be rehabilitation engineers or certified rehabilitation specialists. Behavioral consultation may be performed by professionals based on the professionals' work experience, education, and demonstrated knowledge, skills, and abilities.

The following documentation is required for therapeutic consultation:

1. An ISP A Plan for Supports, that contains at a minimum, the following elements:
 - a. Identifying information;
 - b. Targeted objectives, time frames, and expected outcomes; and
 - c. Specific consultation activities.
2. A written support plan detailing the recommended interventions or support strategies for providers and family/caregivers to use to better support the individual in the service.
3. Ongoing documentation of consultative services rendered in the form of contact-by-contact or monthly notes that identify each contact.

4. If the consultation service extends beyond the one year, the ISP Plan for Supports must be reviewed by the provider with the individual receiving the services and the case manager, and this written review must be submitted to the case manager, at least annually, or more as needed. If the consultation services extend three months or longer, written quarterly reviews are required to be completed by the service provider and are to be forwarded to the case manager. Any changes to the ISP Plan for Supports must be reviewed with the individual and the individual's family/caregiver, as appropriate.

5. A copy of the most recently completed ~~DMAS-122~~ DMAS-225. The provider must clearly document efforts to obtain a copy of the completed ~~DMAS-122~~ DMAS-225 from the case manager.

6. A final disposition summary that must be forwarded to the case manager within 30 days following the end of this service.

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS (12VAC30-120)

- Virginia Uniform Assessment Instrument (UAI) (1994).
- Consent to Exchange Information, DMAS-20 (rev. 4/03).
- Provider Aide/LPN Record Personal/Respite Care, DMAS-90 (rev. 12/02).
- LPN Skilled Respite Record, DMAS-90A (eff. 7/05).
- Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03).
- Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).
- Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 10/06).
- Screening Team Plan of Care for Medicaid-Funded Long Term Care, DMAS-97 (rev. 12/02).
- Provider Agency Plan of Care, DMAS-97A (rev. 9/02).
- Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).
- Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 4/03).
- Consumer-Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (rev. 8/03).
- MI/MR Level I Supplement for EDCD Waiver Applicants, DMAS-101A (rev. 10/04).

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Assessment of Active Treatment Needs for Individuals with MI, MR, or RC Who Request Services under the Elder or Disabled with Consumer-Direction Waivers, DMAS-101B (rev. 10/04).

AIDS Waiver Evaluation Form for Enteral Nutrition, DMAS-116 (6/03).

~~Patient Information Form, DMAS-122 (rev. 11/07).~~

Medicaid LTC Communication Form, DMAS-225.

Technology Assisted Waiver/EPSTDT Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259.

Home Health Certification and Plan of Care, CMS-485 (rev. 2/94).

IFDDS Waiver Level of Care Eligibility Form (eff. 5/07).

<u>Medicaid LTC Communication Form</u>	Patient Name: _____ Medicaid ID#: _____ SSN: _____
<p>Provider Name: _____ Address: _____</p> <p>Provider NPI#: _____ Provider Rep.: _____ Title: _____</p> <p>Telephone: _____ Fax: _____ Date: ____/____/____</p> <p><small>Patient Information: DMAS-96 <input type="checkbox"/> attached <input type="checkbox"/> unavailable</small></p> <p><input type="checkbox"/> Patient/Enrollee admitted to this facility/service on ____/____/____ (date), from <input type="checkbox"/> Home <input type="checkbox"/> Hospital <input type="checkbox"/> Other Facility</p> <p><input type="checkbox"/> Patient Pay determination requested <input type="checkbox"/> Patient Funds Account balance \$ ____ as of ____/____/____ (date).</p> <p><input type="checkbox"/> Patient/Enrollee discharged ____/____/____ (date), to: <input type="checkbox"/> Home <input type="checkbox"/> Hospital <input type="checkbox"/> Other Facility <input type="checkbox"/> Deceased</p> <p><input type="checkbox"/> Change in income, deductions, health insurance or other: _____</p> <p>*Enrollee Residential Address: _____ *Enrollee FIPS: _____ (Waiver Enrollees Only)</p> <p>Medicaid Per Diem Rate: \$ _____ Hours received in the month of Discharge: _____</p> <p>CBC Provider Hourly Rate: \$ _____</p>	
<p>LDSS: _____ FIPS Code: _____ Eligibility Worker: _____</p> <p>Telephone: _____ Fax : _____ Date: ____/____/____</p> <p><small>Eligibility Information:</small></p> <p><input type="checkbox"/> Eligible, full Medicaid services beginning ____/____/____ (date) <input type="checkbox"/> Eligible, QMB Medicaid only</p> <p><input type="checkbox"/> Eligible Medicare premium payment only</p> <p><input type="checkbox"/> Ineligible for Medicaid <input type="checkbox"/> Ineligible for Medicaid payment of LTC services from ____/____/____ to ____/____/____</p> <p><input type="checkbox"/> Medicare Part A insurance Other health insurance: _____ LTC insurance: _____</p> <p><input type="checkbox"/> Change in deductions, health insurance or other: _____</p>	

DMAS-225

Department of Medical Assistance

Medicaid LTC Communication Form

DMAS-225

PURPOSE OF FORM--To allow the local Department of Social Services (LDSS) and nursing facility (NF) or Community Based Care (CBC) Waiver Providers to exchange information regarding:

- o The Medicaid eligibility status of a patient/enrollee;
- o A change in the patient/enrollee level of care;
- o Admission or discharge of a patient/enrollee to an institution or Medicaid CBC services, or death of a patient;
- o Other information known to the provider that might cause a change in the eligibility status or patient pay amounts.

USE OF FORM--Initiated by either the LDSS or the provider of care. A new form must be prepared by the LDSS whenever there is any change in the enrollee's circumstances that results in a change in eligibility status or information needs to be given to the provider. The provider must use the form to document admission date, request Medicaid eligibility status, and notify the LDSS of changes in the patient's circumstances, discharge or death.

NUMBER OF COPIES--Original and one copy for NF patients; original and two copies for CBC patients.

DISTRIBUTION OF COPIES--For NF patients/enrollees, send the original to the nursing facility. For PACE patients/enrollees, send the original to the PACE provider. For Medicaid CBC, send the original to the following individuals:

- Case Manager at DMAS for Tech Waiver, DMAS, Division of LTC, Waiver Unit, 600 E. Broad St., Richmond, VA 23219
- Case Manager at the Community Service Board for the MR and DS waivers
- Case Manager (Support Coordinator) for DD Waiver
- Service Facilitator for EDCD with consumer-directed service,
- Case Manager for any enrollee with case management services, and
- Personal Care Provider for EDCD-personal care services and other services.

Place a copy of this form in the eligibility case file.

INSTRUCTIONS FOR PREPARATION OF THE FORM--Complete either the Provider or LDSS section as appropriate. At the top of the form, enter the Patient's name, Social Security number and Medicaid identification number, if known.

Provider Section--Complete all data elements in the gray section. Check the appropriate boxes and complete all data elements as appropriate in the white section to the enrollee's circumstances. Providers should attach a copy of the DMAS-96 to this form when the patient is first admitted to care. Waiver providers must advise the LDSS of the enrollee residential address when different from the address from which this form originates and provide the Enrollee FIPS code.

LDSS Section--Complete all data elements of the gray section. Check the appropriate boxes and complete all data elements in the white section as appropriate to the patient's circumstances. Do not provide the source of an enrollee's income. If the enrollee is ineligible for Medicaid payment of long-term care due to imposition of a penalty period, send a copy of this memo to the DMAS, Long-Term Care Division, 600 E. Broad St., Suite 1300, Richmond, Va. 23219

Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12VAC30-50-131).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200; adding 12VAC30-80-96).

12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-380; adding 12VAC30-120-396).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: October 29, 2009, through October 28, 2010.

Agency Contact: Molly Carpenter, Child and Maternal Health Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act provides that agencies may adopt emergency regulations in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or regulation requires that a regulation shall be effective in 280 days or less from its enactment. These changes were mandated by Item 306 TTT of Chapter 781 of the 2009 Acts of Assembly.

The planned regulatory action creates a new model for Medicaid coverage of Early Intervention services for children less than three years of age who are eligible for services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia in accordance with Part C of the Individuals with Disabilities Education Act (IDEA) (20 USC § 1431 et seq.). This new methodology fulfills the General Assembly mandate as follows: first, it establishes a framework for ensuring that providers of Early Intervention services for Medicaid children through the Part C program bill Medicaid first before using state-only Part C program funds to comply with the federal Part C payor of last resort requirement set out in 34 CFR 303.527. In order to ensure compliance with federal Part C requirements DMAS, through these emergency regulations, is establishing a newly recognized provider type and specialty to provide services specifically oriented to the requirements of individuals eligible for Part C services. This specialized provider group will support the service delivery system the state adopted to provide Early Intervention services -- the Virginia Infant and Toddler Connection of Virginia (I&TC). The I&TC is administered through local lead agencies. All local efforts are overseen by the Department of Behavior Health and Developmental Services (DBHDS), which receives Virginia's Part C

allotment and administers the overall program. DBHDS contracts with local lead agencies to facilitate implementation of Early Intervention services statewide. The majority of local lead agencies are under the auspices of community services boards, along with several universities, public health districts, local governments, and local education agencies.

12VAC30-50-131. EPSDT and Early Intervention services.

A. Definitions. The following words and terms when used in these regulations shall have the following meanings unless the context clearly indicates otherwise:

"DBHDS" means the Department of Behavioral Health and Developmental Services, the lead state agency for Early Intervention services appointed by the Governor in accordance with Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

"Early Intervention services" means services provided through Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.), as amended, and in accordance with 42 CFR 440.130(d), which are designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development, and are provided to children from birth to age three who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

"Individualized family service plan" or "IFSP" means a comprehensive and regularly updated statement specific to the child being treated containing, but not necessarily limited to, treatment or training needs, measurable outcomes expected to be achieved, services to be provided with the recommended frequency to achieve the outcomes, and estimated timetable for achieving the outcomes. The IFSP is developed by a multidisciplinary team which includes the family, under the auspices of the local lead agency.

"Local lead agency" means an agency under contract with the Department of Behavioral Health and Developmental Services to facilitate implementation of a local Early Intervention system as described in Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

"Primary care provider" means a practitioner who provides preventive and primary health care and is responsible for providing routine Early and Periodic Screening, Diagnosis and Treatment (EPSDT) screening and referral and coordination of other medical services needed by the child.

B. Coverage for Early Intervention services.

1. Early Intervention services shall be reimbursed for individuals younger than 21 years of age who meet criteria for Early Intervention services established by DBHDS in

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accordance with Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

2. Early Intervention services shall be recommended by the child's primary care provider or other qualified EPSDT screening provider as necessary to correct or ameliorate a physical or mental condition.

3. Early Intervention services shall be provided in settings that are natural or normal for an infant or toddler without a disability, such as the home, unless there is justification for an atypical location.

4. Except for the initial and periodic assessments, Early Intervention services shall be described in an IFSP developed by the local lead agency and designed to prevent or ameliorate developmental delay within the context of the Early Intervention services system defined by Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

5. Medical necessity for Early Intervention shall be defined by the IFSP. The IFSP shall describe service needs in terms of amount, duration, and scope. The IFSP shall be approved by the child's primary care provider.

6. Covered Early Intervention services include the following functions provided with the infant or toddler and the child's parent or other authorized caregiver by a certified Early Intervention professional:

a. Assessment, including consultation with the child's family and other service providers, to evaluate:

(1) The child's level of functioning in the following developmental areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development;

(2) The family's capacity to meet the developmental needs of the child; and

(3) Services needed to correct or ameliorate developmental conditions during the infant and toddler years.

b. Participation in a multidisciplinary team review of assessments to develop integrated, measurable outcomes for the IFSP.

c. The planning and design of activities, environments, and experiences to promote the normal development of an infant or toddler with a disability, consistent with the outcomes in the IFSP.

7. Covered Early Intervention services include the following functions when included in the IFSP and provided with an infant or toddler with a disability and the child's parent or other authorized caregiver by a certified Early Intervention professional or by a certified Early

Intervention specialist under the supervision of a certified Early Intervention professional:

a. Providing families with information and training to enhance the development of the child.

b. Working with the child with a disability to promote normal development in one or more developmental domains.

c. Consulting with the child's family and other service providers to assess service needs, plan, coordinate, and evaluate services to ensure that services reflect the unique needs of the child in all developmental domains.

C. The following functions shall not be covered under this section:

1. Screening to determine if the child is suspected of having a disability. Screening is covered as an EPSDT service provided by the primary care provider and is not covered as an Early Intervention service under this section.

2. Administration and coordination activities related to the development, review, and evaluation of the IFSP and procedural safeguards required by Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.).

3. Services other than the initial and periodic assessments that are provided but are not documented in the child's IFSP or linked to a service in the IFSP.

4. Sessions that are conducted for family support, education, recreational, or custodial purposes, including respite or child care.

5. Services provided by a relative who is legally responsible for the child's care.

6. Services rendered in a clinic or provider's office without justification for the location.

7. Services provided in the absence of the child and a parent or other authorized caregiver identified in the IFSP with the exception of multidisciplinary team meetings, which need not include the child.

D. Qualifications of providers:

1. Individual practitioners of Early Intervention must be certified by DBHDS as a qualified Early Intervention professional or Early Intervention specialist.

2. Certified individuals and service agencies or groups who employ or contract with certified individuals may enroll with DMAS as Early Intervention providers. In accordance with 42 CFR 431.51, recipients may obtain Early Intervention services from any willing and qualified Medicaid provider who participates in this service, or for individuals enrolled with a Managed Care Organization (MCO), from such providers available in their MCO network.

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 2 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and
7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals.
2. Outpatient hospital services excluding laboratory.
 - a. Definitions. The following words and terms when used in this regulation shall have the following meanings

when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

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(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation to 80% of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at 80% of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, 2003, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date. Operating costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Capital costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Operating and capital costs of Type One hospitals shall continue to be reimbursed at 94.2% and 90% of cost respectively.

d. Outpatient reimbursement methodology prior to July 1, 2003. DMAS shall continue to reimburse for outpatient hospital services, with the exception of direct graduate medical education for interns and residents, at 100% of reasonable costs less a 10% reduction for allowable capital costs and a 5.8% reduction for allowable operating costs. This methodology shall continue to be in effect after July 1, 2003, for Type One hospitals.

e. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

~~3. Rehabilitation agencies operated by community services boards. For reimbursement methodology applicable to other rehabilitation agencies, see 12VAC30-80-200. Reimbursement for physical therapy, occupational therapy, and speech language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.~~

4. 3. Comprehensive outpatient rehabilitation facilities.

~~5.~~ 4. Rehabilitation hospital outpatient services.

12VAC30-80-96. Fee-for-service: Early Intervention (under EPSDT).

A. Payment for Early Intervention services pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004, as set forth in 12VAC30-50-131, for individuals younger than 21 years of age shall be the lower of the state agency fee schedule or actual charge (charge to the general public). All private and governmental fee-for-service providers are reimbursed according to the same methodology. The agency's rates were set as of October 1, 2009, and are effective for services on or after that date. Rates are published on the agency's website at www.dmas.virginia.gov.

B. There shall be separate fees for:

1. Certified Early Intervention professionals who are also licensed as either a physical therapist, occupational therapist, speech pathologist, or registered nurse and certified Early Intervention specialists who are also licensed as either a physical therapy assistant or occupational therapy assistant; and

2. All other certified Early Intervention professionals and certified Early Intervention specialists.

C. Provider travel time shall not be included in billable time for reimbursement.

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies.

A. Effective for dates of service on and after July 1, 2003, rehabilitation agencies, ~~excluding those operated by community services boards,~~ shall be reimbursed a prospective rate equal to the lesser of the agency's cost per visit for each type of rehabilitation service (physical therapy, occupational therapy, and speech therapy) or a statewide ceiling

established for each type of service. The prospective ceiling for each type of service shall be equal to 112% of the median cost per visit, for such services, of rehabilitation agencies. The median shall be calculated using a base year to be determined by the department. Effective July 1, 2003, the median calculated and the resulting ceiling shall be applicable to all services beginning on and after July 1, 2003, and all services in provider fiscal years beginning in SFY2004.

B. In each provider fiscal year, each provider's prospective rate shall be determined based on the cost report from the previous year and the ceiling, calculated by DMAS, that is applicable to the state fiscal year in which the provider fiscal year begins.

C. For providers with fiscal years that do not begin on July 1, 2003, services for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date based on the number of calendar months before and after that date. Costs apportioned before that date shall be settled based on allowable costs, and those after shall be settled based on the prospective methodology.

D. Beginning with state fiscal years beginning on and after July 1, 2004, the ceiling and the provider specific cost per visit shall be adjusted for inflation, from the previous year to the prospective year, using the nursing facility inflation factor published for Virginia by DRI, applicable to the calendar year in progress at the start of the state fiscal year.

Part VI
Medallion II

12VAC30-120-360. Definitions.

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Early Intervention" means EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 as set forth in 12VAC30-50-131.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
2. Serious impairment to bodily functions, or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and MCO enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External Quality Review Organization" (EQRO) is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs

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external quality reviews, other EQR related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

"Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO or PCCM.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for

these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12VAC30-50-229.1.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

12VAC30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include, but are not limited to, those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360), community mental health services (rehabilitative, targeted case management and substance abuse services) and long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services.

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO. These services shall include EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004, as set forth in 12VAC30-50-131, as identified and defined by the contracts between DMAS and the MCOs. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized

representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

12VAC30-120-396. Payment for Early Intervention.

Payment for Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004, as set forth in 12VAC30-50-131, and as identified and defined by the contracts between DMAS and the MCOs, to an enrollee of an MCO by a nonparticipating provider shall be the lesser of the provider's charges or the Medicaid fee schedule. This shall be considered payment in full to the provider of Early Intervention services.

V.A.R. Doc. No. R10-2080; Filed October 29, 2009, 3:05 p.m.

Final Regulation

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

Title of Regulation: **12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-100, 12VAC30-141-740).**

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

Effective Date: January 1, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

Currently, individuals eligible for FAMIS and FAMIS MOMS must be either a U.S. citizen, U.S. national, or qualified noncitizen. U.S. citizens and nationals may establish that they meet this eligibility requirement by submitting a written declaration of citizenship or nationality as required by § 1137(d) of the Social Security Act. Individuals eligible for Medicaid must provide documentary evidence of citizenship or nationality and documentation of personal identity in addition to the written declaration. Currently, documentary evidence is not required for eligibility under FAMIS and FAMIS MOMS.

This action implements a mandate in Section 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (P.L. 111-3) that applies the Medicaid citizenship verification requirements to the Children's Health Insurance Program (CHIP). Upon implementation

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of this regulation, FAMIS and FAMIS MOMS applicants will be required to provide documentary evidence of citizenship or nationality and documentation of personal identity in order to meet the citizenship eligibility requirement unless otherwise exempt. CHIPRA also gives an additional option for meeting this requirement through an agreement with the Social Security Administration.

Part III

Eligibility Determination and Application Requirements

12VAC30-141-100. Eligibility requirements.

A. This section shall be used to determine eligibility of children for FAMIS.

B. FAMIS shall be in effect statewide.

C. Eligible children must:

1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;
2. Be under 19 years of age;
3. Be residents of the Commonwealth;
4. Be either U.S. citizens, U.S. nationals or qualified noncitizens;
5. Be uninsured, that is, not have comprehensive health insurance coverage;
6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency;
7. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS,

the local department of social services will enroll the child in the FAMIS program.

2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare & Medicaid. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been

verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b and c of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.

G. H. Coverage under other health plans.

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance the child currently has or had within the past four months. If the child had health insurance coverage that was terminated in the past four months, inquiry as to why the health insurance was terminated is made. Each redetermination of eligibility shall also document inquiry about current health insurance or health insurance the child had within the past four months. If the child has been covered under a health insurance plan within four months of application for or receipt of FAMIS services, the child will be ineligible, unless the child is pregnant at the time of application, or, if age 18 or if under the age of 18, the child's parent, caretaker relative, guardian, legal custodian or authorized representative demonstrates good cause for discontinuing the coverage.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

c. Good cause. A child shall not be ineligible for FAMIS if health insurance was discontinued within the four-month period prior to the month of application if one of the following good cause exceptions is met.

(1) The family member who carried insurance, changed jobs, or stopped employment, and no other family member's employer contributes to the cost of family health insurance coverage.

(2) The employer stopped contributing to the cost of family coverage and no other family member's employer contributes to the cost of family health insurance coverage.

(3) The child's coverage was discontinued by an insurance company for reasons of uninsurability, e.g., the child has used up lifetime benefits or the child's coverage was discontinued for reasons unrelated to payment of premiums.

(4) Insurance was discontinued by a family member who was paying the full cost of the insurance premium under a COBRA policy and no other family member's employer contributes to the cost of family health insurance coverage.

(5) Insurance on the child was discontinued by someone other than the child (if 18 years of age) or if under age 18, the child's parent or stepparent living in the home, e.g., the insurance was discontinued by the child's absent parent, grandparent, aunt, uncle, godmother, etc.

(6) Insurance on the child was discontinued because the cost of the premium exceeded 10% of the family's monthly income or exceeded 10% of the family's monthly income at the time the insurance was discontinued.

(7) Other good cause reasons may be established by the DMAS director.

H. I. Eligibility of newborns. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time.

12VAC30-141-740. Eligibility requirements.

A. This section shall be used to determine eligibility of pregnant women for FAMIS MOMS.

B. FAMIS MOMS shall be in effect statewide.

C. Eligible pregnant women must:

1. Be determined ineligible for Medicaid due to excess income by a local department of social services or by DMAS eligibility staff co-located at the FAMIS CPU;

2. Be a pregnant woman at the time of application;

3. Be a resident of the Commonwealth;

4. Be either a U.S. citizen, U.S. national or a qualified noncitizen;

5. Be uninsured, that is, not have comprehensive health insurance coverage;

6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and

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7. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All applications for FAMIS MOMS coverage received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Pregnant women screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS MOMS until there has been a finding of ineligibility for Medicaid. Pregnant women who do not appear to be eligible for Medicaid due to excess income shall have their eligibility for FAMIS MOMS determined and, if eligible, will be enrolled in the FAMIS MOMS program. Applications for FAMIS MOMS received at a local department of social services shall have a full Medicaid eligibility determination completed. Pregnant women determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS MOMS determined and, if eligible, the local department of social services will enroll the pregnant woman in the FAMIS MOMS program.

2. Standards. Income standards for FAMIS MOMS are based on a comparison of countable income to 200% of the federal poverty level for the family size. Countable income and family size are based on the methodology utilized by the Medicaid program as defined in 12VAC30-40-100 e. Pregnant women who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS MOMS.

3. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS MOMS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS MOMS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a pregnant woman is a resident of Virginia for purposes of eligibility for FAMIS MOMS. A child who is not emancipated and is temporarily living away from home is considered living with her parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizenship or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and

documentation of personal identify unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b and c of 12VAC30-40-10 will be used when determining whether a pregnant woman is a qualified noncitizen for purposes of FAMIS MOMS eligibility.

~~G.~~ H. Coverage under other health plans.

1. Any pregnant woman covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS MOMS.

2. No substitution for private insurance.

a. Only uninsured pregnant women shall be eligible for FAMIS MOMS. A pregnant woman is not considered to be insured if the health insurance plan covering the pregnant woman does not have a network of providers in the area where the pregnant woman resides. Each application for FAMIS MOMS coverage shall include an inquiry about health insurance the pregnant woman has at the time of application.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

VA.R. Doc. No. R10-2135; Filed November 2, 2009, 3:47 p.m.

BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Emergency Regulation

Title of Regulation: **12VAC35-220. Certification Requirements for Early Intervention Professionals and Early Intervention Specialists (adding 12VAC35-220-10 through 12VAC35-220-100).**

Statutory Authority: § 2.2-5304 of the Code of Virginia.

Effective Dates: November 3, 2009, through November 2, 2010.

Agency Contact: Karen Durst, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-9844, FAX (804) 371-7959, or email karen.durst@dbhds.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act provides that agencies may adopt emergency regulations

in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or regulation requires that a regulation shall be effective in 280 days or less from its enactment.

These changes were mandated by Item 315 #1c of Chapter 781 of the 2009 Acts of Assembly to comply with the payor of last resort requirements of Part C of the Individuals with Disabilities Education Act (IDEA) of 2004. The emergency regulations provide requirements for the certification of early intervention professionals and early intervention specialists who may provide early intervention services and supports to children and their families under the federal Part C program.

CHAPTER 220

CERTIFICATION REQUIREMENTS FOR EARLY INTERVENTION PROFESSIONALS AND EARLY INTERVENTION SPECIALISTS

12VAC35-220-10. Authority and applicability.

A. Pursuant to § 2.2-5304 of the Code of Virginia, the Governor has designated the Department of Behavioral Health and Developmental Services as the state lead agency responsible for implementing the Virginia early intervention services system and ensuring compliance with federal requirements. These regulations are necessary to ensure the competence for early intervention services system practitioners under the authority granted to the lead agency.

B. Individual providers of early intervention services under the Medicaid State Plan must be certified by the Department of Behavioral Health and Developmental Services as qualified early intervention professionals or early intervention specialists. These regulations provide certification requirements for early intervention professionals and early intervention specialists.

12VAC35-220-20. Definitions.

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

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Department" means the Department of Behavioral Health and Developmental Services. The Governor has designated the department as the state lead agency for Virginia's early intervention services system pursuant to § 2.2-5304 of the Code of Virginia.

"Discipline" or "profession" means a specific occupational category that may provide early intervention supports and services to eligible children under Part C of the Individuals with Disabilities Education Act and their families.

"Early intervention services" means services provided through Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.), as amended, designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

12VAC35-220-30. Certification required for the provision of early intervention services.

A. Individual practitioners of early intervention services, with the exception of physicians, audiologists, and registered dietitians, shall be certified by the department as early intervention professionals or early intervention specialists.

B. Certified early intervention professionals shall have expertise in a discipline trained to enhance the development of children with a disability, as evidenced by state licensure, state endorsement, or certification by a national professional organization. Qualified personnel in the following disciplines may seek certification from the department as early intervention professionals:

1. Counselors:

- a. Licensed professional counselors licensed by the Virginia Board of Counseling; and
- b. School counselors (Pre K - 12) endorsed by the Virginia Board of Education;

2. Educators:

- a. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Early Childhood (Birth - 5);
- b. Educators licensed by the Virginia Board of Education with endorsement in Early/Primary Education (Pre K - 3);
- c. Educators licensed by the Virginia Board of Education with endorsement in Career and Technical Education - Family and Consumer Services;
- d. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Hearing Impairments (Pre K - 12);
- e. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Visual Impairments (Pre K - 12); and
- f. Educators with a technical professional license issued by the Virginia Board of Education in Career and Technical Education - Family and Consumer Sciences;

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3. Family and consumer science professionals certified through the American Association of Family and Consumer Sciences (AAFCS). Individuals certified by the AAFCS after June 30, 2009, shall meet certification requirements in family and consumer sciences-human development and family studies;

4. Marriage and family therapists licensed by the Virginia Board of Counseling;

5. Music therapists certified by the Certification Board for Music Therapists (CBMT);

6. Nurses;

a. Nurse practitioners licensed by the Virginia Board of Nursing; and

b. Registered nurses licensed by the Virginia Board of Nursing;

7. Occupational therapists licensed by the Virginia Board of Medicine;

8. Orientation and mobility specialists certified by the National Blindness Professional Certification Board as a National Orientation and Mobility Certificant (NOMC) or certified by the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP) as a Certified Orientation and Mobility Specialist (COMS);

9. Physical therapists licensed by the Virginia Board for Physical Therapy;

10. Psychologists:

a. Applied psychologists licensed by the Virginia Board of Psychology;

b. Clinical psychologists licensed by the Virginia Board of Psychology; and

c. School psychologists licensed by the Virginia Board of Education with an endorsement in school psychology;

11. Social workers:

a. Licensed clinical social workers licensed by the Virginia Board of Social Work; and

b. School social workers licensed by the Virginia Board of Education with an endorsement as a school social worker;

12. Speech-language pathologists licensed by the Virginia Board of Audiology and Speech-Language Pathology; and

13. Therapeutic recreation specialists certified by the National Council on Therapeutic Recreation.

C. Certified early intervention specialists shall hold a minimum of a high school diploma or general equivalency diploma. Qualified personnel in the following disciplines may

seek certification from the department as early intervention specialists:

1. Early intervention assistants whose qualifications have been approved by the Department of Behavioral Health and Developmental Services;

2. Licensed social workers licensed by the Virginia Board of Social Work;

3. Nurses:

a. Certified nurse aides certified by the Virginia Board of Nursing; and

b. Licensed practical nurses licensed by the Virginia Board of Nursing;

4. Occupational therapy assistants licensed by the Virginia Board of Medicine; and

5. Physical therapy assistants licensed by the Virginia Board of Physical Therapy.

D. Certified early intervention professionals and certified early intervention specialists shall demonstrate knowledge of early intervention principles and practices, including infant and toddler development, family-centered practice and multidisciplinary team practice, by successful completion of the early intervention principles and practices online training modules administered by the department. A score of at least 80% accuracy on each module's competency test shall be required for successful completion.

12VAC35-220-40. Supervision requirements.

A. Certified early intervention professionals providing supervision to other early intervention personnel shall complete the supervision training administered by the department. A score of at least 80% accuracy on the competency test shall be required for successful completion.

B. Certified early intervention specialists shall work under the supervision of a certified early intervention professional who has completed the required supervision training.

12VAC35-220-50. Initial certification and recertification processes.

A. Initial certification. To apply for initial certification as an early intervention professional or early intervention specialist, practitioners shall:

1. Obtain the designated early intervention certification application package from the department; and

2. Submit a completed and signed application package to the department with:

a. A signed assurance that the practitioner will comply with all federal and state early intervention requirements;

b. Documentation of the practitioner's professional certification, licensing, endorsement, or other

qualification for the practice of his profession in the Commonwealth of Virginia; and

c. Documentation of the practitioner's successful completion of the early intervention principles and practices training administered by the department.

B. Three-year recertification. At least 30 days prior to the expiration of the practitioner's certification period, certified early intervention professionals and certified early intervention specialists shall submit an application for recertification to the department. This application shall include:

1. Documentation of the practitioner's continuing professional certification, licensing, endorsement, or other qualification for the practice of his profession in the Commonwealth of Virginia, and

2. Documentation that the practitioner has successfully completed at least 30 hours of continuing learning activities during the three-year certification period. The continuing learning activities shall address one or more of the following: (i) evidenced-based practices in early intervention services; (ii) changes in federal or state law, regulations, or practice requirements; (iii) topics identified on a personal development plan; and (iv) training needed for new responsibilities relating to early intervention services. For each continuing learning activity, documentation shall include a description of the activity and sponsoring organization, if applicable; the date or dates of training; the number of hours; and a copy of a certificate or verification of attendance, if applicable.

12VAC35-220-60. Notice of decision on application for certification or recertification.

The department shall provide written notice of the decision on the application for certification or recertification within 30 days of the receipt of a completed application and required documentation.

12VAC35-220-70. Early intervention practitioner database.

Practitioners meeting the requirements for certification shall be included in the Infant and Toddler Connection of Virginia practitioner database maintained by the department. Practitioners are responsible for notifying the department of any change that may affect their certification status or their participation in Virginia's early intervention services system.

12VAC35-220-80. Restoration of expired certifications.

A. The department shall notify practitioners in writing of the date their certification as an early intervention professional or early intervention specialist expired and that the practitioner has been placed on inactive status in the practitioner database maintained by the department.

B. Practitioners whose certification as early intervention professionals or early intervention specialists has expired may apply to the department for restoration of their certifications.

C. The department may restore certification for practitioners as early intervention professionals or early intervention specialists under the following conditions:

1. The individual's certification has been lapsed for a period of less than one year; and

2. The certification:

a. Has lapsed because the practitioner failed to complete the three-year recertification requirements and the individual provides documentation to the department demonstrating (i) he is currently qualified for the practice of his discipline or profession in the Commonwealth of Virginia, and (ii) he has completed at least 30 hours of training addressing one or more of the topics specified in 12VAC35-220-50 B 2; or

b. Has lapsed because the practitioner's discipline or profession-specific qualification expired and the practitioner documents that he now holds a current license, certification, endorsement, or other qualification for the practice of his discipline or profession in the Commonwealth of Virginia.

D. The department shall provide written notice of the decision on reinstatement of the practitioner's certification within 30 days of the receipt of a completed request and required documentation.

E. Upon restoration of the practitioner's certification as an early intervention professional or early intervention specialist, the department shall reinstate the individual's active status in the practitioner database maintained by the department.

12VAC35-220-90. Termination of early intervention professional or early intervention specialist certification.

A. The department shall terminate a practitioner's certification as an early intervention professional or early intervention specialist under the following circumstances:

1. The practitioner's discipline-specific license, certification, or endorsement has been suspended or terminated;

2. The practitioner, after a year, fails to comply with the recertification requirements set forth in these regulations; or

3. The practitioner fails to comply with his signed assurance that he will comply with all federal and state early intervention requirements.

B. The department shall notify the practitioner in writing of the date of and reason for termination and that the practitioner has been removed from the practitioner database maintained by the department.

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12VAC35-220-100. Reconsideration or decision to deny or terminate certification.

A. In the event that the practitioner disagrees with the determination to deny or terminate certification, he may request reconsideration from the commissioner. The request shall be made in writing within 30 days of the date of the written notice of denial or termination and may include relevant additional information or documentation to support the request.

B. The commissioner shall review the request for reconsideration and information presented and issue a decision in writing within 30 business days following receipt of the request. The decision of the commissioner shall be a final case decision that may be appealed under the Virginia Administrative Process Act.

VA.R. Doc. No. R10-1928; Filed November 3, 2009, 10:49 a.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

<p>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.</p>

Title of Regulation: **14VAC5-290. Rules Establishing Standards for Companies Deemed to Be in Hazardous Financial Condition (amending 14VAC5-290-10 through 14VAC5-290-50).**

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

Effective Date: December 7, 2009.

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

Summary:

The amendments incorporate the revisions made by the National Association of Insurance Commissioners to its Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition, which provides additional tools for state insurance departments to utilize in identifying and dealing with companies in hazardous financial condition, including the authority to issue corrective action orders.

AT RICHMOND, OCTOBER 29, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00124

Ex Parte: In the matter of
Adopting Revisions to the Rules
Establishing Standards for Companies
Deemed to be in Hazardous
Financial Condition

ORDER ADOPTING RULES

By Order To Take Notice entered June 16, 2009, all interested persons were ordered to take notice that subsequent to July 24, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to the regulations entitled Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition ("Rules"), proposed by the Bureau of Insurance ("Bureau") which amend the Rules at 14 VAC 5-290-10 through 14 VAC 5-290-50, unless on or before July 24, 2009, any person objecting to the adoption of the proposed amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed amendments to the Rules on or before July 24, 2009.

No request for a hearing was filed with the Clerk. By letter dated July 24, 2009, the American Council of Life Insurers filed comments with the Clerk. Title Resources Guaranty Company filed electronic comments with the Clerk on July 24, 2009.

On October 20, 2009, the Bureau filed with the Clerk its response to the comments filed in this matter.

The Bureau does not recommend further changes to the proposed amendments to the Rules and further recommends that the amendments to the Rules be adopted as proposed.

THE COMMISSION, having considered the Bureau's recommendation, is of the opinion that the attached amendments to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the regulations entitled "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" at 14 VAC 5-290-10 through 14 VAC 5-290-50, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective December 7, 2009.

(2) AN ATTESTED COPY hereof, together with a copy of the proposed new 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 new regulations by mailing a copy of this Order, together with the proposed new regulations, to all licensed insurers and certain interested parties designated by the Bureau.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached regulations, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the adopted regulations on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

14VAC5-290-10. Purpose.

The purpose of this chapter (~~14VAC5-290-10 et seq.~~) is to set forth the standards ~~which that~~ that the Commission ~~commission~~ may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public ~~or to holders of their policies or certificates of insurance.~~

This chapter shall not be interpreted to limit the powers granted the ~~Commission~~ commission by any laws or provisions of any law of this Commonwealth, nor shall this chapter be interpreted to ~~supersede~~ supersede any laws or parts of laws of this Commonwealth.

14VAC5-290-20. Applicability and scope.

This chapter, ~~14VAC5-290-10 et seq.~~, shall apply to every entity that is licensed, approved, registered, or accredited in Virginia under the provisions of Title 38.2 of the Code of Virginia, and also subject to solvency regulation in this Commonwealth pursuant to the provisions of Title 38.2 of the Code of Virginia. All such entities are hereinafter referred to as "insurer."

14VAC5-290-30. Standards.

The following factors and standards, either singly or a combination of two or more, may be considered in determining whether an insurer's financial condition, method of operation, or manner of doing business in this Commonwealth might be deemed to be hazardous to its policyholders, creditors, or the general public:

1. Adverse findings resulting from any financial condition or market conduct examination conducted pursuant to

Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia or any inspection authorized by the general provisions of § 38.2-200, including inspections of financial statements filed pursuant to §§ 38.2-1300, 38.2-1301, 38.2-1316.2, 38.2-1316.3, 38.2-4811, or 38.2-5103 of the Code of Virginia, or reported in any examination or other information submitted pursuant to § 38.2-5103 of the Code of Virginia, or reported in any audit report, and actuarial opinions, reports, or summaries submitted pursuant to §§ 38.2-1315.1 and 38.2-3127.1 of the Code of Virginia;

2. The National Association of Insurance Commissioners' ("NAIC") Insurance Regulatory Information System ("IRIS") and its ~~related~~ other financial analysis solvency tools and reports;

- ~~3. The ratios of commission expenses, general insurance expenses, policy benefits and reserve increases as to annual premium and net investment income;~~

- ~~4. 3.~~ The ratio of the annual premium volume to surplus or of liabilities to surplus in relation to loss experience and/or the kinds of risks insured;

- ~~5. 4.~~ Whether the insurer's asset portfolio when viewed in light of current economic conditions and indications of financial or operation leverage is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

- ~~5.~~ Whether the insurer has established reserves and related actuarial items that make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

6. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

- ~~7.~~ Whether the insurer's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

- ~~8.~~ Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20% of the insurer's remaining

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surplus as regards policyholders in excess of the minimum required;

~~7.~~ 9. Whether the excess of surplus to policyholders over and above an insurer's statutorily required surplus to policyholders has decreased by more than 50% in the preceding ~~12-month~~ 12-month period or any shorter period of time;

~~8.~~ Whether the insurer's current or projected net income is adequate to meet the insurer's present or projected obligations;

~~9.~~ 10. The age and collectibility of receivables;

~~10.~~ 11. Whether a reinsurer, obligor, or any affiliate, subsidiary or reinsurer entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which may affect the solvency of the insurer;

~~11.~~ 12. Contingent liabilities, pledges or guaranties ~~which~~ that either individually or collectively involve a total amount that may affect the solvency of the insurer;

~~12.~~ 13. Whether any affiliate of an insurer is delinquent in the transmitting to, or payment of, net premiums or other amounts due to such insurer;

~~13.~~ 14. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

~~14.~~ 15. Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

16. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commission;

~~15.~~ 17. Whether the management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

~~16.~~ 18. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; ~~or~~

~~17.~~ 19. Whether the ~~company~~ insurer has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

20. Whether management has established reserves and related actuarial values that do not comply with the requirements of Title 38.2 of the Code of Virginia, related rules, regulations, administrative promulgations, and statutory accounting standards, or that are not computed in accordance with presently accepted actuarial standards consistently applied and in accordance with sound actuarial principles and standards of practice;

21. Whether management persistently engages in material under reserving that results in adverse development;

22. Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or

23. Any other finding determined by the commission to be hazardous to the insurer's policyholders, creditors, or the general public.

14VAC5-290-40. Commission's authority.

A. For purposes of making a determination of an insurer's financial condition, the ~~Commission~~ commission may:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer ~~which~~ that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

2. Make appropriate adjustments, including disallowance, to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Practices and Procedures Manual, state laws, and regulations;

3. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

B. For all entities subject to the provisions of § 38.2-1038 of the Code of Virginia, the ~~Commission~~ commission may issue an order regarding corrective action when it finds that (i) the insurer cannot, or there is a reasonable expectation that the insurer will not be able to, meet its obligations to all policyholders, or (ii) the insurer's continued operation in this Commonwealth is hazardous to policyholders, creditors, and the general public in this Commonwealth. Such an order may require the insurer, among other things, to undertake one or more of the following steps:

1. Reduce the total amount of present and potential liability for policy benefits by reinsurance;
2. Reduce, suspend, or limit the volume of business being accepted or renewed;
3. Reduce general insurance and commission expenses by specified methods;
4. Increase the insurer's capital and surplus;
5. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
6. File reports in a form acceptable to the ~~Commission~~ commission concerning the market value of an insurer's assets;
7. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the ~~Commission~~ commission deems necessary;
8. Document the adequacy of premium rates in relation to the risks insured;
9. ~~File or cause to be filed, as evidence of the insurer's financial and business standing or solvency, one or more of the following reports:~~
 - ~~a. Regular annual statements and interim financial reports;~~
 - ~~b. Certified audited financial reports;~~
 - ~~c. Actuarial opinions of reserves, including actuarial analyses of the reserves and the assets supporting such reserves, and~~
 - ~~d. Any, in addition to regular annual statements, interim financial reports on the form adopted by the NAIC or in such format as promulgated by the commission or any other analyses of the insurer's data necessary to secure complete information concerning the condition and affairs of the insurer; ;~~
10. Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commission;
11. Provide a business plan to the commission in order to continue to transact business in this Commonwealth; or
12. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any nonlife insurance product written by the insurer that the commission considers necessary to improve the financial condition of the insurer.

14VAC5-290-50. Severability.

If any provision in this chapter, ~~14VAC5 290 10 et seq.~~, or the application thereof to any person or circumstance is held for any reason held to be invalid, the remainder of the

~~provisions in this chapter, 14VAC5 290 10 et seq., and the application of the provision to other persons or circumstances shall not be affected thereby.~~

VA.R. Doc. No. R09-1946; Filed November 2, 2009, 1:05 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Notice of Extension of Emergency Regulation

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (adding 18VAC48-50-10 through 18VAC48-50-200).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Dates: November 13, 2008, through May 12, 2010.

The Common Interest Community Board has requested an extension of the above-referenced emergency regulation. The emergency regulation was published in 25:5 VA.R. 1095-1100 November 10, 2008 (<http://register.dls.virginia.gov/vol25/iss05/v25i05.pdf>).

In accordance with § 2.2-4011 D of the Code of Virginia, the Governor approved the department's request to extend the expiration date of the emergency regulation through May 12, 2010.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R09-1641; Filed November 11, 2009, 10:42 a.m.

BOARD OF DENTISTRY

Emergency Regulation

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18VAC60-20-10, 18VAC60-20-30; adding 18VAC60-20-332, 18VAC60-20-342, 18VAC60-20-352).**

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

Effective Dates: January 8, 2010, through January 7, 2011.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

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Preamble:

Chapter 781 of the 2009 Acts of the Assembly requires the Board of Dentistry to revise its regulations to provide for registration of mobile dental clinics and portable dental operations. The legislation further requires that the board promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. Therefore, there is an "emergency situation" as defined in § 2.2-4011 of the Administrative Process Act.

To protect the health and safety of persons served in mobile dental clinics, amendments to 18VAC60-20 require registration to include information about where and when the practices will be operating and which practitioners will be providing care. The clinics must also certify to agreements for follow-up care, emergency contact arrangements, access to all essential equipment and conformity to laws and regulations. There must be written consent to dental care in a mobile clinic, and patients must be provided with an information sheet that details who provided treatment, a description of the treatment and any additional dental needs, a recommendation or referral for follow-up care, and emergency contact information. Such requirements are necessary to ensure that patients (often school children) are not left with unresolved dental problems or with little or no information about what was done during a visit by a mobile clinic. Finally, regulations stipulate that the same rules and standards of care apply for practice in a mobile clinic as in a fixed facility.

The amendments establish (i) definitions for "mobile dental clinic" and "portable dental operation"; (ii) requirements for registration including fees; and information on locations, dates, and practitioners providing services; certifications of agreements for follow-up care and access to emergency care; certification of availability of certain equipment and resources; and conformity to operational and permitting standards; (iii) requirements for operation of the clinic, including posting of licenses, written consent for treatment, information on treatment and needed follow-up for patients, and maintenance of patient records; and (iv) exemptions from the requirements for registration for governmental agencies and periodic volunteer clinics providing free care.

Part I General Provisions

18VAC60-20-10. Definitions.

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

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a

dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Direction" means the dentist examines the patient and is present for observation, advice, and control over the performance of dental services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that the dentist has examined the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patient's homes, schools, nursing homes or other institutions.

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license by examination, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be \$400. The application fee for dental license by credentials shall be \$500.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be \$175. The application fee for dental hygienist license by endorsement shall be \$275.

C. Duplicate wall certificate. Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of \$60.

D. Duplicate license. Licensees desiring a duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of \$20. If a licensee maintains more than one office, a notarized photocopy of a license may be used.

E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of \$35 for each endorsement or certification.

F. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of \$285.

G. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be \$25.

H. Returned check. The fee for a returned check shall be \$35.

I. Inspection fee. The fee for an inspection of a dental office shall be \$350.

J. Mobile dental clinic or portable dental operation. The application fee for registration of a mobile dental clinic or portable dental operation shall be \$250. The annual renewal fee shall be \$150.

Part VIII

Mobile Dental Clinics and Portable Dental Operations

18VAC60-20-332. Registration of a mobile dental clinic or portable dental operation.

A. An applicant for registration of a mobile dental facility or portable dental operation shall provide:

1. The name and address of the owner of the facility or operation and an official address of record for the facility or operation, which shall not be a post office address. Notice shall be given to the board within 30 days if there is a change in the ownership or the address of record for a mobile dental facility or portable dental operation;

2. The name, address and license number of each dentist and dental hygienist or the name, address and registration number of each dental assistant II who will provide dental services in the facility or operation. The identity and license or registration number of any additional dentists, dental hygienists or dental assistants II providing dental services in a mobile dental facility or portable dental operation shall be provided to the board at least 10 days prior to the provision of such services;

3. The address or location of each place where the mobile dental facility or portable dental operation will provide dental services and the dates on which such services will be provided. Any additional locations or dates for the provision of dental services in a mobile dental facility or portable dental operation shall be provided to the board at least 10 days prior to the provision of such services.

B. An application for registration of a mobile dental facility or portable dental operation shall include:

1. Certification that there is a written agreement for follow-up care for patients to include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area;

2. Certification that the facility or operation has access to communication facilities that enable the dental personnel to contact assistance in the event of a medical or dental emergency;

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3. Certification that the facility has a water supply and all equipment necessary to provide the dental services to be rendered therein;

4. Certification that the facility or operation conforms to all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, sanitation, zoning, flammability and construction standards; and

5. Certification that the applicant possesses all applicable city or county licenses or permits to operate the facility or operation.

C. Registration may be denied or revoked for a violation of provisions of § 54.1-2706 of the Code of Virginia.

18VAC60-20-342. Requirements for a mobile dental clinic or portable dental operation.

A. The registration of the facility or operation and copies of the licenses of the dentists and dental hygienists or registrations of the dental assistants II shall be displayed in plain view of patients.

B. Prior to treatment, the facility or operation shall obtain written consent from the patient or if the patient is a minor or incapable of consent, his parent, guardian or authorized representative.

C. Each patient shall be provided with an information sheet or if the patient, his parent, guardian or authorized agent has given written consent to an institution or school to have access to the patient's dental health record, the institution may be provided a copy of the information. At a minimum, the information sheet shall include:

1. Patient name, date of service and location where treatment was provided;

2. Name of dentist or dental hygienist who provided services;

3. Description of the treatment rendered and tooth numbers, when appropriate;

4. Billed service codes and fees associated with treatment;

5. Description of any additional dental needs observed or diagnosed;

6. Referral or recommendation to another dentist if the facility or operation is unable to provide follow-up treatment; and

7. Emergency contact information.

D. Patient records shall be maintained, as required by 18VAC60-20-15, in a secure manner within the facility or at the address of record listed on the registration application. Records shall be made available upon request by the patient, his parent guardian or authorized representative and shall be available to the board for inspection and copying.

E. The practice of dentistry and dental hygiene in a mobile dental clinic or portable dental operation shall be in accordance with the laws and regulations governing such practice.

18VAC60-20-352. Exemptions from requirement for registration.

The following shall be exempt from requirements for registration as a mobile dental clinic or portable dental operation:

1. All federal, state or local governmental agencies; and

2. Dental treatment which is provided without charge to patients or to any third party payer and which is not provided on a regular basis (recurring at fixed or uniform intervals).

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS (18VAC60-20)

Application Requirements for Dentists (rev. 8/08).

Application for License to Practice Dentistry (rev. 8/08).

Application Requirements for Restricted Dental Volunteer License/Restricted Dental Hygiene License (rev. 8/08).

Application for Restricted Volunteer License to Practice Dentistry or Dental Hygiene (rev. 8/08).

Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs (rev. 5/08).

Application for Temporary Resident's License (rev. 5/08).

Form A, Certification of Dental School for Temporary Resident's License (rev. 5/08).

Form B, Temporary Resident's License (Certification from Dean of Dental School or Director of Accredited Graduate Program) (rev. 5/08).

Form C, Temporary Resident's License (Certification of Dental Licensure) (rev. 5/08).

Form D, Temporary Resident's License (Chronology) (rev. 5/08).

Form A, Certification of Dental/Dental Hygiene School (rev. 8/08).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (rev. 8/08).

Form B, Chronology (rev. 8/08).

Form C, Certification of Dental/Dental Hygiene Boards (rev. 8/08).

Application Requirements for Dental Hygienists (rev. 1/08).

Application for Licensure to Practice Dental Hygiene (rev. 1/08).

Instructions for Reinstatement of License (rev. 4/08).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 4/08).

Instructions for Application for Reactivation of License (rev. 8/08).

Application for Reactivation of License (rev. 8/08).

Application for Certification to Perform Cosmetic Procedures (rev. 8/08).

Oral and Maxillofacial Surgeon Registration of Practice (rev. 8/08).

Application for Registration for Volunteer Practice (rev. 8/08).

Sponsor Certification for Volunteer Registration (rev. 8/08).

Application for Registration of a Mobile Dental Facility or Portable Dental Operation (eff. 1/10).

<p>Commonwealth Of Virginia BOARD OF DENTISTRY Department of Health Professions 9960 Mayland Drive, Suite 300 Henrico, VA 23233-1463 www.dhp.virginia.gov/dentistry (804) 367-4538 denbd@dhp.virginia.gov</p>		
<p>Application for Registration of a Mobile Dental Facility or Portable Dental Operation</p>		
<p>Type or print clearly. Complete all sections. If the space provided for any section is insufficient, submit information on a separate page.</p>		
Name of Owner:	Address of Owner:	Enclose the \$250 Application Fee as a certified check, cashier's check or money order, made payable to the Treasurer of Virginia . Pursuant to 18 VAC 60-20-40 fees are non-refundable. A \$35 processing fee will be charged for any check or money order returned unpaid.
Telephone Number of Owner:	E-Mail Address of Owner:	
The owner is: () one or more licensed dentists with a current, active license in Virginia. Check one. () a professional corporation registered with the Virginia State Corporation Commission. () a limited liability company registered with the Virginia State Corporation Commission. () Other. Explain _____		
Name of Facility or Portable Operation:		Physical Address of Facility or Portable Operation which shall not be a post office box:
Physical address of each location where dental services will be provided:	Dates at this location:	Contact person and phone number at this location:
Name of each <u>dentist</u> providing dental services:	Address of record:	License Number:

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Name of each dental hygienist providing dental services:	Address of record:	License Number:
<p>NOTICE TO APPLICANT: In addition to annual renewal, you are required to update your registration at least 10 days prior to the provision of dental services by providing the Board with:</p> <ul style="list-style-type: none"> • Any additional locations and/or dates dental services will be provided; and • Information on any additional dentists or dental hygienists who will provide dental services. 		
<p>Certifications Required for Registration of a mobile dental facility or portable dental operation:</p>		
1.	I certify that a written agreement has been executed for follow-up care for patients to include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area of each location where the applicant provides dental services.	Initial here:
2.	I certify that each location where the applicant provides dental services has access to communication facilities that enable the dental personnel to contact assistance in the event of a medical or dental emergency.	Initial here:
3.	I certify that each location where the applicant provides dental services has a water supply and all equipment necessary to provide the dental services to be rendered therein.	Initial here:
4.	I certify that the facility or operation conforms to all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, sanitation, zoning, flammability and construction standards.	Initial here:
5.	I certify that the applicant possesses all applicable city or county licenses or permits to operate the facility or operation.	Initial here:

I declare and certify under penalty of perjury that all answers given and all statements made in this application are true and correct. I hereby agree that furnishing any false information in this application constitutes cause for the denial, suspension, or revocation of registration to operate in the Commonwealth of Virginia. Further, I have carefully read the laws and regulations applicable to the operation of mobile dental clinics and portable dental operations and those applicable to the practice of dentistry, dental hygiene and dental assisting. I hereby agree to abide by and remain current with the applicable laws and regulations which are available online at www.dhp.virginia.gov/dentistry.

Signature of Applicant

Date

Effective January 2010

VA.R. Doc. No. R10-1945; Filed November 4, 2009, 2:42 p.m.

Regulations

BOARD OF PHARMACY

Proposed Regulation

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-400; adding 18VAC110-20-740 through 18VAC110-20-800).

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

Public Hearing Information:

December 16, 2009 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comment Deadline: January 22, 2010.

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

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. Section 54.1-3411.1 of the Code of Virginia provides the board with authority to promulgate regulations to establish a drug donation program.

Purpose: The purpose of the regulatory action is to comply with a state legislative mandate to promulgate regulations for the establishment of a Prescription Drug Donation Program. Requirements for eligible drugs must comply with Virginia law and the federal Drug Enforcement Administration, so the applicability of the program is inherently limited. Given that limitation, the board has proposed a program that allows for participation without unnecessary expense or burdensome reporting. At the same time, there must be safeguards for the security and efficacy of the drugs that will be redispensed to a patient of a free clinic.

The need for a drug donation program has been recognized in other states where such programs are being introduced. For example, Iowa reports that for the time period from March 2007 through December 2007, the drug donation repository received almost 319,000 dosage units worth an estimated \$150,000 to program participants who might otherwise not be able to get needed medication. The challenge is to balance the desire to make unused drugs available with the necessity for safety and the limitations on the types of drugs eligible for donation.

As stated above, state and federal law currently limits donation of Schedule II through V drugs; only Schedule VI drugs where official compendium storage requirements are assured and the drugs are in manufacturers' original sealed containers or in sealed individual dose or unit dose packaging that meets official compendium class A or B container requirements are eligible. Additionally, drugs that are

restricted in distribution, have an expiration date of less than 90 days from donation, or may be considered hazardous cannot be donated and redispensed.

It is the responsibility of the pharmacist or pharmacy technician at the donation site to screen drugs for eligibility and to obtain a donor form with contact information and other assurances of proper storage and voluntary donation. The donated drug is thereby tracked from donation to transfer to redispensing in order to have a record that ensures compliance with requirements for the program and provides vital information in case of a drug recall or other subsequent issue. While there is some risk with a system in which consumers donate drugs that have been in their possession for redispensing to other patients, the board has included all safeguards necessary to ensure that the risk is minimal. Procedures for collecting donated drugs, storage of such drugs, maintenance of records, destruction of any unused drugs and redispensing to patients with valid prescriptions are intended to protect public health and safety within the parameters of a donation program that can be implemented for the public welfare.

Substance: Regulations promulgated pursuant to the legislative mandate set forth requirements for pharmacies that want to register as a drug donation site; criteria for drugs eligible for donation; procedures for collecting donated drugs, including specification of information on a donor form for each drug donated; procedures for transferring and redispensing donated drugs; procedures for disposing of any unused donated drugs; and recordkeeping requirements associated with the program.

Issues: The primary advantage of the establishment of a drug donation program is the possibility of an increase in the amount of donated drugs available to persons who utilize free clinics for health care. Additionally, drugs that are donated do not create disposal issues for the water supply or landfills. There are no disadvantages since the criteria for drugs that may be donated to the program are designed to limit the possibility of contamination or adulteration and limit the category to drugs that have no potential for abuse. There are no advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 429 (HB85) of the 2008 Acts of the Assembly, the Board of Pharmacy proposes to establish a prescription drug donation program. The proposed program has been in effect since April 10, 2009, under emergency regulations.

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

Estimated Economic Impact. Pursuant to Chapter 429 (HB85) of the 2008 Acts of the Assembly, the Board of Pharmacy proposes to establish a prescription drug donation program. The program allows participating pharmacies to accept previously dispensed unused drugs that meet certain criteria and transfer them to free clinics for re-dispensing. Due to restrictions imposed by the Federal Drug Enforcement Administration, only Schedule VI drugs are eligible for the program.

Participating pharmacies are expected to incur some additional costs associated with screening drugs for eligibility, recordkeeping, storage, and possibly transfer to free clinics. However, participation is completely voluntary. Thus, we can reliably infer that the benefits to participating pharmacies should exceed the costs of participation.

Also, the program is expected generate some savings to free clinics in terms of the free drugs donated which can be re-dispensed and benefit the individuals who are receiving services. There is no readily available estimate for the magnitude of the drugs that may be donated. However, the participation may be somewhat limited. Since April 2009, no pharmacies in Virginia have applied to participate in the program. Moreover, about 319,000 dosage units worth approximately \$150,000 were received through a similar program in Iowa between March 2007 and December 2007.

Two of the potential costs include health risks to the consumers and the board's administrative costs involved in monitoring the program. According to the Department of Health Professions, the board included all safeguards necessary to ensure that the risk is minimal. Also, the department does not expect any significant costs to administer this program which is expected to have a limited participation.

Businesses and Entities Affected. There are 1,647 pharmacies and 18 free clinics that could participate in the proposed program. Participation is completely voluntary and is expected to be limited.

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

Projected Impact on Employment. No significant impact is expected on employment.

Effects on the Use and Value of Private Property. No significant impact is expected on the use and value of private property.

Small Businesses: Costs and Other Effects. No significant costs and other effects are expected on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact is expected on small businesses.

Real Estate Development Costs. No adverse impact is expected 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 Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget on proposed regulations for the drug donation program.

Summary:

Pursuant to Chapter 429 of the 2008 Acts of Assembly, the Board of Pharmacy proposes to establish a prescription drug donation program. The proposed regulations set forth requirements for pharmacies to register as a drug donation site; criteria for drugs eligible for donation; procedures for collecting donated drugs, including specification of information on a donor form for each drug donated; procedures for transferring and redispensing donated drugs; procedures for disposing of any unused donated drugs; and recordkeeping requirements associated with the program.

Part I
General Provisions

18VAC110-20-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

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"ACPE" means the Accreditation Council for Pharmacy Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or his designated agent.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the United States Drug Enforcement Administration.

"Drug donation site" means a permitted pharmacy that specifically registers with the board for the purpose of

receiving or redispensing eligible donated prescription drugs pursuant to § 54.1-3411.1 of the Code of Virginia.

"Electronic transmission prescription" means any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted from a practitioner authorized to prescribe directly to a pharmacy without interception or intervention from a third party, or from one pharmacy to another pharmacy.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the United States Food and Drug Administration.

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has passed approved examinations establishing proficiency in English.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed or otherwise distributed by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if

necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

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1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. "Room temperature" means the temperature prevailing in a working area.

3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

18VAC110-20-400. Returning of drugs and devices.

~~A. Drugs may be accepted for return or exchange by any pharmacist or pharmacy for resale in accordance with the provisions of § 54.1-3411.1 of the Code of Virginia. Devices may be accepted for return or exchange provided the device is in the manufacturer's original sealed packaging.~~

~~B. Any pharmacy accepting drugs returned from nursing homes for the purpose of redispensing to the indigent free of charge shall maintain a copy of a written agreement with the nursing home in accordance with § 54.1-3411.1 B of the Code of Virginia and a current policy and procedure manual describing the following:~~

- ~~1. Method of delivery from the nursing home to the pharmacy and of tracking of all prescription medications;~~
- ~~2. Procedure for determining the suitability and integrity of drugs for redispensing to include assurance that the drugs have been stored according to official compendial standards; and~~
- ~~3. Procedure for assigning a beyond use date on redispensed drugs.~~

18VAC110-20-740. Drug donation sites.

Any pharmacy with a current active pharmacy permit may apply on a form provided by the board for registration as a drug donation site. A registered drug donation site may receive eligible donated drugs, transfer such donated drugs to another registered drug donation site, or redispense the donated drugs in accordance with § 54.1-3411.1 of the Code of Virginia to patients of clinics organized in whole or in part for the delivery of health care services to the indigent. Drugs collected under the drug donation program may not be dispensed to any other patient, sold, or otherwise distributed except as authorized in 18VAC110-20-770 or 18VAC110-20-790.

18VAC110-20-750. Eligible drugs.

A. Drugs may be accepted by a registered drug donation site only if the following criteria are met:

1. Official compendium storage requirements are assured and the drugs are in manufacturers' original sealed containers or in sealed individual dose or unit dose packaging that meets official compendium Class A or B container requirements, or better, as set forth in § 54.1-3411.1 A 2 of the Code of Virginia;
2. The drugs bear an expiration date that is not less than 90 days from the date the drug is donated; and
3. The drugs have not been adulterated or misbranded.

B. The following drugs shall not be accepted by a drug donation site:

1. Schedule II-V controlled substances or any other drug if such return is inconsistent with federal law;

2. Drugs determined to be hazardous for donation based on (i) the pharmacist's professional judgment, experience or knowledge, or (ii) available reference materials;

3. Drugs that may only be dispensed to a patient registered with the drug manufacturer under a restricted distribution system; and

4. Drugs that have been previously compounded.

18VAC110-20-760. Procedures for collecting eligible donated drugs.

A. A pharmacist or a pharmacy technician under the personal supervision of a pharmacist shall receive and conduct the initial screening for eligibility of donated drugs.

B. At the time of accepting donated drugs, the drug donation site shall ensure that a donor form is completed. The drug donation site shall give a copy of the donor form to the person donating the drug at the time of the donation and shall maintain the original donor form. A donor form is not required for drugs donated by a patient residing in a long-term care facility or other facility where drugs are administered to that patient if the drugs are donated directly to the provider pharmacy for that facility and such provider pharmacy is registered as a drug donation site.

C. A donor form shall include the following information:

1. A statement that the donor is the patient or patient's agent for whom the prescription drug was dispensed;

2. A statement that the donor intends to voluntarily donate the prescription drug for redispensing;

3. A statement attesting that the drugs have been properly stored at all times while in the possession of the patient according to official compendium storage requirements;

4. Contact information for the patient or patient's agent;

5. The date of donation;

6. A listing of the donated drugs to include name, strength, and quantity;

7. A statement that private health information will be protected;

8. The signature of the patient or patient's agent; and

9. The initials of the receiving pharmacist, or the initials of the receiving pharmacy technician and supervising pharmacist.

D. Donated prescription drugs shall be stored within the prescription department, separate from other drug inventory.

E. Prior to transferring any donated drugs or redispensing donated drugs, a pharmacist shall perform a final review of

any donated drug for eligibility and shall ensure that all the donor's patient specific information has been removed from previous labeling or rendered unreadable.

F. A drug donation site may not charge a fee for collecting donated drugs.

18VAC110-20-770. Procedure for transferring donated prescription drugs.

A. A drug donation site may transfer eligible donated prescription drugs to another drug donation site for the purpose of redispensing.

B. The transferring drug donation site shall provide a transfer record to the receiving drug donation site that includes the following:

1. The names and addresses of the transferring site and the receiving site;

2. The name, strength, and quantity of each donated drug being transferred; and

3. The date of transfer.

C. The original transfer record shall be maintained by the transferring drug donation site.

D. A copy of the transfer record shall be provided to the receiving drug donation site, the date of receipt shall be recorded on the copy, and it shall be maintained by the receiving drug donation site.

18VAC110-20-780. Procedure for dispensing donated prescription drugs.

A. A drug donation site redispensing donated prescription drugs shall comply with applicable federal and state laws and regulations for dispensing prescription drugs.

B. The pharmacy redispensing donated drugs shall not charge for cost of donated drugs, but may charge a dispensing or administrative fee for each such drug redispensed, consistent with the provisions of subdivision 10 of § 54.1-3301 of the Code of Virginia.

C. Recipients of a redispensed donated drug shall sign a form prior to receiving the drug that includes a statement that the recipient understands that the drug received has been donated for the purpose of redispensing pursuant to § 54.1-3411.1 of the Code of Virginia. The drug donation site shall maintain this form.

D. A drug donation site is under no obligation to obtain a prescription drug that is not in inventory at the time of a request for such drug.

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18VAC110-20-790. Procedures for disposing of donated prescription drugs.

A. A drug donation site in possession of donated prescription drugs ineligible for redispensing shall dispose of such drugs in compliance with 18VAC110-20-210.

B. A drug donation site shall maintain records of disposal or transfer for disposal of donated prescription drugs separately from other pharmacy disposal records.

18VAC110-20-800. Records.

A. All records required for drug donation programs shall be maintained chronologically for two years.

B. Records and prescriptions related to donated drugs shall be maintained separately from other pharmacy records.

C. Storage of records.

1. Transfer, dispensing, and disposal records may be stored in an electronic database or record.

2. Prescriptions and signed forms, as well as any other records, may be stored as an electronic image that provides an exact, clearly legible image of the document.

3. Records may be stored in secured storage, either on or offsite.

D. All records in offsite storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS (18VAC110-20)

Application for Registration as a Pharmacy Intern (rev. 8/07).

Affidavit of Practical Experience, Pharmacy Intern (rev. 8/07).

Application for Licensure as a Pharmacist by Examination (rev. 8/07).

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 11/07).

Application to Reinstatement or Reactivate a Pharmacist License (rev. 11/07).

Application for Approval of a Continuing Education Program (rev. 8/07).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 4/09).

Application for License to Dispense Drugs (permitted physician) (rev. 8/07).

Application for a Pharmacy Permit (rev. 3/09).

Application for a Nonresident Pharmacy Registration (rev. 7/08).

Application for a Permit as a Medical Equipment Supplier (rev. 3/09).

Application for a Controlled Substances Registration Certificate (rev. 4/09).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 8/07).

Closing of a Pharmacy (rev. 8/07).

Application for Approval of a Robotic Pharmacy System (rev. 8/07).

Inspection Required for Approval of a Robotic Pharmacy System (rev. 8/07).

Application for Approval of an Innovative (Pilot) Program (rev. 8/07).

Pharmacy Technician Registration Instructions and Application (rev. 3/09).

Instructions for Reinstating a Pharmacy Technician Registration (rev. 11/07).

Application to Reinstatement a Pharmacy Technician Registration (rev. 11/07).

Application for Approval of a Pharmacy Technician Training Program (rev. 8/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/07).

Preceptor Verification Form (rev. 8/07).

Application for Reinstatement of Registration as a Pharmacy Intern (eff. 9/07).

Affidavit for Limited-Use Pharmacy Technician (rev. 8/07).

Limited-Use Pharmacy Technician Registration Instructions and Application (rev. 7/08).

Application for Registration as a Pharmacy Technician (eff. 3/09).

Registration for a Pharmacy to be a Collection Site for Donated Drugs (eff. 4/09).



COMMONWEALTH OF VIRGINIA

Board of Pharmacy

9960 Mayland Drive, Suite 300
 Richmond, Virginia 23233
 www.dhp.virginia.gov/pharmacy

(804) 367-4456 (Tel)
 (804) 527-4472 (Fax)
 pharmbd@dhp.virginia.gov (email)

**REGISTRATION FOR A PHARMACY TO BE A COLLECTION SITE FOR
 DONATED DRUGS**

Applicant—Please provide the information requested below. (Print or Type) Use full name not initials

Name of Pharmacy		Area Code and Telephone Number	
Street Address		Area Code and Fax Number	
City	State	Zip Code	
Email address, if you would like to receive Board communications electronically			
If a current pharmacy permit is held, indicate the permit number 0201-			
Expected start date for collection of donated items			

4-2009

VA.R. Doc. No. R09-1606; Filed November 4, 2009, 2:40 p.m.

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Fast-Track Regulation

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-550).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 23, 2009.

Effective Date: January 7, 2010.

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

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the Board of Pharmacy, and the board's responsibility to promulgate regulations. The specific authority to control prescription drugs in the Commonwealth is found in Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to address a public health need in many nursing homes that have become "sub-acute hospitals." Nursing homes are seeing an increased number of acute patients with many health complications. Many are admitted postsurgically after an orthopedic procedure (hip replacement, etc.), and the adequate and timely administration of pain medication is critical to their well-being and recovery. Patients who have their pain controlled have fewer complications and heal faster. Patients may be admitted when the pharmacy is not open, and it may take many hours for the prescriber's order to be filled by the provider pharmacy and delivered to the facility for administration. In the best of circumstances, there is a gap of time between the patient's arrival at the nursing home and the delivery of prescription pain medication from the provider pharmacy. By amending the current regulation, the board has addressed this issue in a manner that is responsive to patient health needs but also retains safeguards against diversion and medication error. Only persons licensed to administer, dispense, or prescribe may access a stat-drug box, and a valid prescription or order from a prescriber must be received prior to removal of any drug from the stat-drug box.

Rationale for Using Fast-Track Process: The amendment is being sought by a coalition of nursing homes, provider pharmacies, and professional associations serving the long-term care industry. There is a sense of urgency about the need for the amendment to alleviate pain and enhance patient comfort and recovery, and there is consensus about the language being proposed. No opposition is expected.

Substance: The substantive provision is deletion of the prohibition against the stat-drug box in a long-term care facility containing Schedule II drugs.

Issues: The primary advantage to the public is that the inclusion of Schedule II drugs in a stat-drug box in a long-term care facility will allow facilities and physicians to ensure their patients receive pain medications appropriately and expeditiously. There are no disadvantages to the public. Any concern about diversion is addressed by the security measures and accountability required, and only licensed nurses, pharmacists, or prescribers can access drugs in a stat-drug box. There are no advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to allow long term care facilities to keep a stock of Schedule II drugs so that new patients can receive prescribed pain medication in a timely manner. The Board also proposes to allow long term care facilities to stock greater quantities of Schedule III through V drugs so that they are on hand to be used as prescribed for patients.

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

Estimated Economic Impact. Current regulations allow long term care facilities to keep up to five doses of each therapeutic class of Schedule III through V drugs in a locked stat-drug box. These drugs are there for patients who might suffer harm if the taking of prescribed medication is delayed because provider pharmacies need time to fill and deliver prescriptions.

The Board proposes to increase the number of medication doses that can be kept in the stat-drug box, to 20 solid dosage units per schedule, and to allow Schedule II drugs to be kept in the stat-drug box. No entities are likely to incur any costs on account of these regulatory changes as they do not mandate any change in current practice. Patients in long term care facilities are likely to benefit from these changes in several ways. First, increasing the number of doses of any given medication that can be kept in a stat-drug box will allow more patients to be given prescribed drugs in a time frame that is therapeutically indicated. Second, patients who are in need of Schedule II medications (mainly for treatment of pain) will be able to receive those medications from the stat-drug box rather than waiting in pain for their prescriptions to be filled and delivered.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that all long term care facilities with nursing staff licensed to dispense prescribed medications, as well as patients to whom medication will be

dispensed, are affected by these proposed regulations. The Department of Health currently licenses 276 such facilities.

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 Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget on fast-track amendments to regulations for the stat-drug boxes in long-term care facilities.

Summary:

The amendments allow a stat-drug box in a long-term care facility to contain doses of Schedule II drugs for the relief of acute pain and offer more flexibility in the drugs that are maintained in a stat-drug box, depending on the needs of patients in the facility.

18VAC110-20-550. Stat-drug box.

An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. Access to the stat-drug box is restricted to a licensed nurse, pharmacist, or prescriber and only these licensed individuals may administer a drug taken from the stat-drug box. Additionally, a valid prescription or lawful order of a prescriber must exist prior to the removal of any drug from the stat-drug box. A stat-drug box shall be subject to the following conditions:

1. The box is sealed in such a manner that will preclude the loss of drugs.
 - a. The dispensing pharmacy must have a method of sealing such boxes so that once the seal is broken, it cannot be reasonably resealed without the breach being detected.
 - b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication or resealing, or both. The pharmacy shall maintain a record of the seal identifiers when placed on a box and maintain the record until such time as the seal is replaced.
 - c. In lieu of seals, a box with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy is also acceptable.
2. The box shall have a form to be filled out upon opening the box and removing contents to write the name of the person opening the box, the date, the time, and the name and quantity of item(s) removed. When the stat-drug box has been opened, it is returned to the pharmacy.
3. There shall be a listing of the contents of the box maintained in the pharmacy and also attached to the box in the facility. This same listing shall become a part of the policy and procedure manual of the facility served by the pharmacy.
4. The drug listing on the box shall bear an expiration date for the box. The expiration date shall be the day on which the first drug in the box will expire.
5. The contents of the box shall be limited to those drugs in which a delay in initiating therapy may result in harm to the patient.
 - a. The listing of drugs contained in the stat-drug box shall be determined by the provider pharmacist in

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consultation with the medical and nursing staff of the long-term care facility.

~~b. The stat drug box shall contain no Schedule II drugs.~~

e. ~~b. The stat-drug box shall contain no more than one 20 solid dosage units per schedule of Schedule II through V drug in each therapeutic class and no more than five doses of each drugs except that one unit of liquid, not to exceed 30 ml, may be substituted for a solid dosage unit. If the unit of a liquid that may contain more than one dose is removed from the stat-drug box pursuant to a patient order, the remainder shall be stored with that patient's other drugs, may be used for subsequent doses administered to that patient, and shall not be administered to any other patient.~~

VA.R. Doc. No. R10-2134; Filed November 4, 2009, 2:42 p.m.

Final Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehouse (amending 18VAC110-50-20).

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

Effective Date: December 23, 2009.

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

Summary:

The amendments change the annual renewal dates for pharmacies and other types of licenses and permits other than pharmacists and technicians to February 28 or April 30.

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

18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25

4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations	\$90
10. Innovative program approval.	\$250

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

11. Approval of a pharmacy technician training program	\$150
12. Approval of a continuing education program	\$100

D. Annual renewal fees.

1. Pharmacist active license – <u>due December 31</u>	\$90
2. Pharmacist inactive license – <u>due December 31</u>	\$45
3. Pharmacy technician registration – <u>due December 31</u>	\$25
4. Pharmacy permit – <u>due April 30</u>	\$270
5. Physician permit to practice pharmacy – <u>due February 28</u>	\$270
6. Medical equipment supplier permit – <u>due February 28</u>	\$180
7. Humane society permit – <u>due February 28</u>	\$20
8. Nonresident pharmacy – <u>due April 30</u>	\$270
9. Controlled substances registrations – <u>due February 28</u>	\$90
10. Innovative program continued approval based on board order not to exceed \$200 per approval period.	
11. Approval of a pharmacy technician training program	\$75 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case

of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$30
2. Pharmacist inactive license	\$15
3. Pharmacy technician registration	\$10
4. Pharmacy permit	\$90
5. Physician permit to practice pharmacy	\$90
6. Medical equipment supplier permit	\$60
7. Humane society permit	\$5
8. Nonresident pharmacy	\$90
9. Controlled substances registrations	\$30
10. Approval of a pharmacy technician training program	\$15

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	\$210
2. Pharmacist license after revocation or suspension	\$500
3. Pharmacy technician registration	\$35
4. Pharmacy technician registration after revocation or suspension	\$125
5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:	
a. Pharmacy permit	\$240
b. Physician permit to practice pharmacy	\$240
c. Medical equipment supplier permit	\$210
d. Humane society permit	\$30

e. Nonresident pharmacy	\$115
f. Controlled substances registration	\$180
g. Approval of a pharmacy technician training program	\$75

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	\$50
2. Change of ownership for any facility	\$50
3. Inspection for remodeling or change of location for any facility	150
4. Reinspection of any facility	\$150
5. Board-required inspection for a robotic pharmacy system	\$150
6. Board-required inspection of an innovative program location	\$150
7. Change of pharmacist responsible for an approved innovative program	\$25

H. Miscellaneous fees.

1. Duplicate wall certificate	\$25
2. Returned check	\$35

I. For the annual renewal due on the stated dates, the following fees shall be imposed for a license, permit or registration:

1. Pharmacist active license – December 31, 2009	\$50
2. Pharmacist inactive license – December 31, 2009	\$25
3. Pharmacy technician registration – December 31, 2009	\$15
4. Pharmacy permit – April 30, 2010	\$210
5. Physician permit to practice pharmacy – February 28, 2010	\$210
6. Medical equipment supplier permit – February 28, 2010	\$140
7. Humane society permit – February 28, 2010	\$20
8. Nonresident pharmacy – April 30, 2010	\$210
9. Controlled substances registrations – February 28, 2010	\$50

18VAC110-50-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

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B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	\$90
2. Restricted manufacturer permit	\$60
3. Wholesale distributor license	\$90
4. Warehouser permit	\$90
5. Nonresident wholesale distributor	\$90
6. Controlled substances registration	\$30

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	\$240
b. Restricted manufacturer permit	\$210
c. Wholesale distributor license	\$240
d. Warehouser permit	\$240
e. Nonresident wholesale distributor	\$240
f. Controlled substances registration	\$180

F. Application for change or inspection fees.

1. Reinspection fee	\$150
2. Inspection fee for change of location, structural changes, or security system changes	\$150
3. Change of ownership fee	\$50
4. Change of responsible party	\$50

G. The fee for a returned check shall be \$35.

H. For the annual renewal due on February 28, 2010, the following fees shall be imposed for a license or permit:

1. Nonrestricted manufacturer permit	\$210
2. Restricted manufacturer permit	\$140
3. Wholesale distributor license	\$210
4. Warehouser permit	\$210
5. Nonresident wholesale distributor	\$210

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC110-50)

Application for a Permit as a Restricted Manufacturer (rev. ~~8/07~~ 3/09).

Application for a Permit as a Nonrestricted Manufacturer (rev. ~~8/07~~ 3/09).

Application for a Permit as a Warehouser (rev. ~~8/07~~ 3/09).

Application for a License as a Wholesale Distributor (rev. ~~8/07~~ 3/09).

Application for a Nonresident Wholesale Distributor Registration (rev. ~~8/07~~ 9/08).

Application for a License as a Wholesale Distributor -- Limited Use for Distribution of Medical Gases Only (rev. 8/07) 3/09).

VA.R. Doc. No. R09-1311; Filed November 4, 2009, 2:40 p.m.

BOARD OF SOCIAL WORK

Fast-Track Regulation

Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-50, 18VAC140-20-60, 18VAC140-20-70, 18VAC140-20-105).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 23, 2009.

Effective Date: January 7, 2010.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the amended regulation is clarity and flexibility so applicants, supervisees, and licensees will be better able to comply with requirements. Allowing more flexibility in face-to-face supervision requirements may enable a few persons to complete supervision requirements more quickly and obtain a license to provide social work services. Allowing more flexibility in continuing education requirements will give licensees more options and opportunities to obtain required hours and courses. Changes that allow social workers more time to focus on providing service to clients are beneficial to public health, safety, and welfare. The amendment to specifically prohibit a supervisee (not yet licensed) from representing himself as an independent practitioner protects persons who may be receiving services from such a person.

Rationale for Using Fast-Track Process: The proposed amendments are intended to clarify regulations that have been problematic for licensees and applicants; they address questions that have arisen for which the regulations did not clearly state board policy. Additionally, amendments make supervision requirements consistent and more flexible. Accordingly, the board does not expect the regulatory changes to be controversial.

Substance: The amended regulations clarify regulations pertaining to practice as a candidate for licensure under

supervision to eliminate confusing language about full-time and part-time and to allow more flexibility in obtaining hours of face-to-face supervision. An amendment specifies that a supervisee may not directly bill for services or represent himself as an independent practitioner. An amendment specifies that a candidate must reapply for approval if he has not passed the required examination within two years. Finally, amendments to continuing education requirements specify and clarify the subject matter for approved continuing education must pertain to the practice of social work or another behavioral health field, including the two hours of ethics or laws on practice. Amendments require that a request for an exemption must be made prior to the renewal date and allow membership on a social work board to count as two hours of Category II continuing education.

Issues: The primary advantage to persons seeking licensure is more clarity in regulation to address questions and situations that have been problematic. Additionally, more flexibility in the regulation for face-to-face supervision will make the requirement more reasonable to meet. Amendments to the regulation for two hours of ethics and laws will expand the availability of courses and activities that may be used to meet the continuing education requirements. The restriction on supervisees holding themselves out as independent practitioners further protects the public. There are no disadvantages to the public.

The primary advantage to the agency is the resolution of issues and questions that have taken staff and board time to address. Clarity and flexibility in the continuing education requirements and in the supervision requirements may result in fewer hours and meetings for board committees to address nonroutine applications or noncompliance in a continuing education audit. There are no disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Social Work (Board) proposes to: 1) allow more flexibility for licensure candidates in obtaining face-to-face supervision, 2) specify that a candidate must reapply for approval if he has not passed the required examination within two years, 3) clarify that supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners or licensed clinical social workers, 4) allow more flexibility for licensees to meet continuing education requirements, and 5) specify that a request for an exemption from continuing education compliance must be made prior to the license renewal date.

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

Estimated Economic Impact. Under both the current and proposed regulations applicants for the clinical social worker

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license must complete a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services, with at least 100 of those hours being face-to-face supervision. The current regulations require that there be at least one hour of face-to-face supervision every week. The proposed regulations require that there be a minimum of one hour and a maximum of four hours of face-to-face supervision per 40 hours of work experience. This will enable greater flexibility for licensure candidates in obtaining face-to-face supervision in that the 40 hours allows for breaks due to illness or vacation. The increased flexibility should not detract from assurance of supervised work.

Currently, regulations require that a candidate take an examination within 2 years; but this could allow someone to remain an active applicant indefinitely and require the board to maintain the application file if he attempts passage of the examination once every two years. According to the Department of Health Professions (Department), a candidate who has not passed an examination within two years is unlikely to ever pass unless he obtains some additional education and/or experience to make up deficiencies in knowledge and/or skills. Under the proposed language a candidate can still take an examination once every 90 days; so within a two-year period, he can attempt the exam 8 times.

The Board proposes to specify that continuing education courses used to satisfy the licensure renewal requirement be directly related to the practice of social work or another behavioral health field. Also, the Board proposes to allow additionally flexibility in obtaining ethics training. The proposed amendments will allow for more flexibility in meeting the continuing education requirements by generally allowing courses related to any behavioral health field and by allowing the two hours to pertain to ethics or standards of practice for the behavioral health professions.

The current regulations allow up to 2 hours of continuing education credit for serving as an officer or committee member of a national professional social work association. The Board proposes to grant the same two credit hours for membership on a state social work licensing board, which according to the Department is an activity more likely to educate one in the laws and standards of the profession. Thus this proposed change will produce a net benefit.

Lastly, the Board proposes to specify that a request for an exemption from continuing education compliance must be made prior to the renewal date. The requirement is necessary to ensure the circumstances are legitimate and not used as an excuse to avoid compliance with an audit of continuing education two years after a renewal date.

Businesses and Entities Affected. The proposed amendments potentially affect the 4855 licensed clinical social workers and 302 licensed social workers in Virginia, candidates for licensure, firms and government agencies that employ

licensed clinical social workers and licensed social workers, and providers of continuing education.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are not expected to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposals to allow more flexibility for licensees to meet continuing education requirements and for license candidates to obtain face-to-face supervision may allow staff of some firms to use their time more efficiently.

Small Businesses: Costs and Other Effects. The proposals to allow more flexibility for licensees to meet continuing education requirements and for license candidates to obtain face-to-face supervision may allow staff of some small firms to use their time more efficiently. This may moderately reduce costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are not expected to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 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 Social

Work concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC140-20, Regulations Governing the Practice of Social Work, relating to supervision, examination and continuing education.

Summary:

The proposed amendments (i) allow more flexibility for licensure candidates in obtaining hours of face-to-face supervision; (ii) specify that a candidate must reapply for approval if he has not passed the required examination within two years; (iii) clarify that supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers; (iv) allow more flexibility for licensees to meet continuing education requirements; and (v) specify that a request for an exemption from continuing education compliance must be made prior to the license renewal date.

Part I
General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

- Board
- Casework
- Casework management and supportive services
- Clinical social worker
- Practice of social work
- Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Clinical course of study" means graduate course work which includes specialized advanced courses in human behavior and social environment, social policy, research, clinical practice with individuals, families, groups and a clinical practicum which focuses on diagnostic, prevention and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance

abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

18VAC140-20-50. Education and experience requirements for licensed clinical social worker.

A. Education. The applicant shall hold a minimum of a master's degree from an accredited school of social work. Graduates of foreign institutions shall establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council of Social Work Education.

1. The degree program shall have included a graduate clinical course of study; or
2. The applicant shall provide documentation of having completed specialized experience, course work or training acceptable to the board as equivalent to a clinical course of study.

B. Supervised experience. Supervised experience in all settings obtained in Virginia without prior written board approval will not be accepted toward licensure. Supervision begun before November 26, 2008, that met the requirements of this section in effect prior to that date will be accepted until November 26, 2012.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision:
 - a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and
 - b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

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2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided ~~each week~~ per 40 hours of work experience for a total of at least 100 hours.

No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability or geography.

a. Experience shall be acquired in no less than two nor more than four years.

b. Supervisees shall average no less than 15 hours per week in face-to-face client contact for a minimum of 1,380 hours. The remaining hours may be spent in ancillary duties and activities supporting the delivery of clinical services.

3. An individual who does not complete the supervision requirement after four years of supervised experience shall submit evidence to the board showing why the training should be allowed to continue.

C. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least three years of postlicensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a member of his immediate family or provide supervision for anyone with whom he has a dual relationship.

D. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients

assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision; and

7. Maintain documentation, for five years postsupervision, of which clients were the subject of supervision.

E. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

18VAC140-20-60. Education and experience requirements for licensed social worker.

A. Education. The applicant shall hold a bachelor's or a master's degree from an accredited school of social work. Graduates of foreign institutions must establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council on Social Work Education.

B. Master's degree applicant. An applicant who holds a master's degree may apply for licensure as a licensed social worker without documentation of supervised experience.

C. Bachelor's degree applicant. Supervised experience in all settings obtained in Virginia without prior written board approval will not be accepted toward licensure. Supervision begun before November 26, 2008, that met the requirements of this section in effect prior to that date will be accepted until November 26, 2012.

Part III
Examinations

1. Hours. Bachelor's degree applicants shall have completed a minimum of 3,000 hours of ~~full-time supervised~~ post-bachelor's degree experience ~~or the equivalent in part-time experience~~ in casework management and supportive services under supervision satisfactory to the board. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided ~~each week for the period of supervision per 40 hours of work experience~~ for a total of at least 100 hours.

2. Experience shall be acquired in no less than two nor more than four years from the beginning of the supervised experience.

D. Requirements for supervisors.

1. The supervisor providing supervision shall hold an active, unrestricted license as a licensed social worker with a master's degree, or a licensed social worker with a bachelor's degree and at least three years of postlicensure social work experience or a licensed clinical social worker in the jurisdiction in which the social work services are being rendered. If this requirement places an undue burden on the applicant due to geography or disability, the board may consider individuals with comparable qualifications.

2. The supervisor shall:

a. Be responsible for the social work practice of the prospective applicant once the supervisory arrangement is accepted by the board;

b. Review and approve the assessment and service plan of a representative sample of cases assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, assessment, length of service and casework method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor. The supervisor shall be available to the applicant on a regularly scheduled basis for supervision. The supervisor will maintain documentation, for five years post supervision, of which clients were the subject of supervision;

c. Provide supervision only for those casework management and support services activities for which the supervisor has determined the applicant is competent to provide to clients;

d. Provide supervision only for those activities for which the supervisor is qualified; and

e. Evaluate the supervisee in the areas of professional ethics and professional competency.

3. Supervision between members of the immediate family (to include spouses, parents, and siblings) will not be approved.

18VAC140-20-70. Examination requirement.

A. An applicant for licensure by the board as a social worker or clinical social worker shall pass a written examination prescribed by the board.

B. The board shall establish passing scores on the written examination.

C. A candidate approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the candidate has not ~~taken~~ passed the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time.

18VAC140-20-105. Continued competency requirements for renewal of an active license.

A. Licensed clinical social workers shall be required to have completed a minimum of 30 contact hours of continuing education and licensed social workers shall be required to have completed a minimum of 15 contact hours of continuing education for each biennial licensure renewal. Courses or activities shall be directly related to the practice of social work or another behavioral health field. A minimum of two of those hours must pertain to ethics or the standards of practice ~~and for the behavioral health professions or to laws governing the profession practice of social work in Virginia, or the Code of Ethics of one of the social work professional associations listed under subdivision B 1 d.~~

1. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters upon written request from the licensee prior to the renewal date.

B. Hours may be obtained from a combination of board-approved activities in the following two categories:

1. Category I. Formally Organized Learning Activities. A minimum of 20 hours for licensed clinical social workers or 10 hours for licensed social workers shall be documented in this category, which shall include one or more of the following:

a. Regionally accredited university or college academic courses in a behavioral health discipline. A maximum of 15 hours will be accepted for each academic course.

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b. Continuing education programs offered by universities or colleges accredited by the Council on Social Work Education.

c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals.

d. Workshops, seminars, conferences or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

(1) The Child Welfare League of America and its state and local affiliates.

(2) The National Association of Social Workers and its state and local affiliates.

(3) The Association of Black Social Workers and its state and local affiliates.

(4) The Family Service Association of America and its state and local affiliates.

(5) The Clinical Social Work ~~Federation~~ Association and its state and local affiliates.

(6) ~~Individuals or organizations who have been approved as continuing education sponsors by the~~ The Association of Social Work Boards or any state social work board.

(7) Any state social work board.

2. Category II. Individual Professional Activities. A maximum of 10 of the required 30 hours for licensed clinical social workers or a maximum of five of the required 15 hours for licensed social workers may be earned in this category, which shall include one or more of the following:

a. Participation in an Association of Social Work Boards item writing workshop. (Activity will count for a maximum of two hours.)

b. Publication of a professional social work-related book or initial preparation/presentation of a social work-related course. (Activity will count for a maximum of 10 hours.)

c. Publication of a professional social work-related article or chapter of a book, or initial preparation/presentation of a social work-related in-service training, seminar or workshop. (Activity will count for a maximum of five hours.)

d. Provision of a continuing education program sponsored or approved by an organization listed under Category I. (Activity will count for a maximum of two hours and will only be accepted one time for any specific program.)

e. Field instruction of graduate students in a Council on Social Work Education-accredited school. (Activity will count for a maximum of two hours.)

f. Serving as an officer or committee member of one of the national professional social work associations listed under subdivision B 1 d of this section or as a member of a state social work licensing board. (Activity will count for a maximum of two hours.)

g. Attendance at formal staffings at federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals. (Activity will count for a maximum of five hours.)

h. ~~Independent~~ Individual or group study including listening to audio tapes, viewing video tapes, reading, professional books or articles. (Activity will count for a maximum of five hours.)

VA.R. Doc. No. R10-2039; Filed November 4, 2009, 2:41 p.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Final Regulation

Title of Regulation: **18VAC160-20. Board for Waterworks and Wastewater Works Operators Regulations (amending 18VAC160-20-10 through 18VAC160-20-150; repealing 18VAC160-20-85).**

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email waterwasteoper@dpor.virginia.gov.

Summary:

The amendments (i) add continuing professional education (CPE) as a requirement for wastewater works operator license renewal; (ii) specify that safety subjects may not count for more than one-half of the CPE requirement for both waterworks operator licenses and wastewater works operator licenses; (iii) allow the development and teaching of CPE courses to apply toward CPE credit; (iv) clarify the scope of the board's disciplinary authority over fraudulent attempts to obtain or renew a license; (v) delineate the types of waterworks and wastewater works facilities that may be operated by a Class I license holder; (vi) add distance learning to the definition of "structured training activity"; (vii) repeal the restricted Class VI waterworks license provisions; and (viii) make other changes for consistency and clarification purposes.

Changes since the proposed stage: (i) amend definitions to allow licensed operators to complete mandatory continuing education through distance learning, (ii) add a definition of "training credit or education credit" to prevent applicants from using classes completed toward a degree as an experience exemption for a license (because the degree was already taken into account under entry requirements), and (iii) clarify that continuing education requirements for wastewater works operators begin at the start of the next licensing cycle, which begins on March 1, 2010.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I Definitions

18VAC160-20-10. Definitions.

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

"Alternative onsite sewage system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Alternative onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional and alternative onsite sewage systems.

"Alternative onsite sewage system operator" means an individual licensed by the board to operate and maintain conventional and alternative onsite sewage systems.

"Alternative onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effect of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional and alternative onsite sewage systems suitable for the soils.

"Authorized onsite soil evaluator" or "AOSE" means an individual holding an authorized onsite soil evaluator certification issued by the Virginia Department of Health that was valid on June 30, 2009.

"Board" means the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals or any successor agency.

"Category" means waterworks operator, wastewater works operator, onsite soil evaluator, onsite sewage system installer, and onsite sewage system operator.

"Classification" means the divisions of within each category of waterworks and wastewater works operators' licenses into classes where Class "I" represents the highest classification.

"Classified facility" means a waterworks that has been granted a classification by the Virginia Department of Health or a wastewater works that has been granted a classification by the Virginia Department of Environmental Quality.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Continuing Professional Education (CPE)" means participation in a structured training activity that enables a licensee to maintain and increase the competence required to assure the public's protection.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drain field.

"Conventional onsite sewage system installer" means an individual licensed to construct, install, and repair conventional onsite sewage systems.

"Conventional onsite sewage system operator" means an individual licensed by the board to operate and maintain a conventional onsite sewage system.

"Conventional onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional onsite sewage systems suitable for the soils.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervision" means being responsible for the compliance with this chapter by any unlicensed individual who, for the purpose of obtaining the necessary competence to qualify for licensure, is engaged in activities requiring an operator, installer, or evaluator license.

"Direct supervisor" means a licensed operator, installer, or evaluator who undertakes the supervision of an unlicensed individual engaged in activities requiring a license for the purpose of obtaining the competence necessary to qualify for licensure and who shall be responsible for the unlicensed individual's full compliance with this chapter.

["Distance learning" means participation in a training activity, with or without interaction with an instructor, that utilizes DVD's, videos, or other audio/visual materials, or is

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computer-based. Documentation of distance learning must meet the requirements of 18VAC160-20-109 D.]

"Experience" means time spent learning how to physically and theoretically operate the waterworks, wastewater works, or onsite sewage system as an operator-in-training or time spent operating a waterworks or wastewater works for which the operator is currently licensed for the purpose of obtaining the necessary competence to qualify for a specific license. Experience also means the time spent under the direct supervision of an authorized onsite soil evaluator, onsite soil evaluator licensee, onsite sewage system installer licensee or onsite site sewage system operator licensee for the purpose of obtaining the necessary competence to qualify for a specific license.

"Interim license" means a method of regulation whereby the board authorizes an unlicensed individual to engage in activities requiring a specific license provided for in this chapter for a limited time to obtain the necessary competence to qualify for that specific license.

"Interim licensee" means an individual holding a valid interim license.

"Licensed operator" means an operator with a license in the category of onsite sewage systems operator, waterworks operator, or wastewater works operator. For waterworks operators and wastewater works operators, the license classification must be equal to or higher than the classification of the waterworks or wastewater works being operated.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Maintenance" or "maintain" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drain field piping, distribution boxes, or work requiring a construction permit and a licensed onsite sewage system installer.

"Nonclassified facility" means a facility located in Virginia that has not been classified by the Virginia Department of Health or a facility that has not been classified by the Virginia Department of Environmental Quality.

"Onsite sewage system" means a conventional onsite sewage system or an alternative onsite sewage system.

"Operate" means any act of an individual that may impact on the finished water quality at a waterworks, the plant effluent at a wastewater works, or the effluent at an onsite sewage system.

"Operating staff" means individuals employed or appointed by an owner to work at a waterworks or wastewater works.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks, wastewater works operations, or to operate onsite sewage systems. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Operator-in-training" means an individual employed by an owner to work under the direct supervision and direction of an operator holding a valid license in the proper category and classification for the purpose of gaining experience and knowledge in the duties and responsibilities of an operator of a waterworks, wastewater works, or onsite sewage system. An operator-in-training is not an operator.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, or any other entity organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, propose to own, manage, or maintain waterworks, wastewater works, or onsite sewage systems.

"Provisional licensee" means an individual holding a valid provisional license issued by the board.

"Provisional licensure" or "provisional license" means a method of regulation whereby the Commonwealth recognizes an individual as having met specific standards but who is not authorized to operate a classified facility until he has met the remaining requirements for licensure and has been issued a license.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible charge" means the designation by the owner of any individual to have the duty and the authority to operate a waterworks, wastewater works, or onsite sewage system.

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

"Sewage handler" means any person who removes or contracts to remove and transports by vehicle the contents of any septic tank, sewage treatment plant, privy, holding tank, portable toilet, or other treatment or holding device, or any sewage, septage or sewage sludges and who is permitted under the Sewage Handling and Disposal Regulations (12VAC5-610) or successor regulation.

"Sewerage system" means pipelines or conduits, pumping stations and force mains, and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal, as defined in the Sewage Handling and Disposal Regulations (12VAC5-610).

"Structured training activity" means a formal educational process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a course, seminar, conference, [~~distance learning,~~] or other performance-oriented format [~~, or distance learning~~].

["Training credit or education credit" means a unit of board-approved training or formal education completed by an individual that may be used to substitute for experience when applying for a license. Formal education used to meet a specific education requirement for license entry cannot also be used as a training credit for experience substitution.]

"Transportation" means the vehicular conveyance of sewage, as defined in § 32.1-163 of the Code of Virginia.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes including, but not limited to, pumping, power and other equipment and appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluent resulting from such treatment.

"VDH" means Virginia Department of Health.

"Wastewater works" means a system of (i) sewerage systems or sewage treatment works serving more than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia, if so certified by the State Water Control Board; and (iii) facilities for discharge into state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

"Wastewater works operator" means any individual employed or appointed by any owner, who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Superintendents or directors of public works, city engineers, or other municipal or industrial

officials whose duties do not include the actual operation or direct supervision of wastewater works are not included in this definition.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) at least 15 connections or (ii) at least 25 of the same individuals for more than six months out of the year. The term waterworks shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

"Waterworks operator" means any individual employed or appointed by any owner, who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks operations. Superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks are not included in this definition.

~~18VAC160-20-85. Restricted License of Class VI Waterworks. (Repealed.)~~

~~A. The board shall issue a restricted license to operate a Class VI waterworks to the Class VI waterworks owner or the Class VI waterworks owner's designee upon application for such restricted license by the waterworks owner or his designee and provided said application is received by February 15, 2003. Waterworks owners or their designees who fail to apply by February 15, 2003, must apply for a license pursuant to 18VAC160-20-90. A restricted license shall be limited to one license per Class VI waterworks facility. The restricted license is site specific and nontransferable. The restricted license expires three years from the date of issuance and is not subject to renewal.~~

~~B. Each applicant for a restricted license to operate a Class VI waterworks shall apply on the application form provided by the board which establishes that the applicant:~~

- ~~1. Is at least 18 years of age;~~
- ~~2. Has a high school diploma or G.E.D. and six months experience, or has no high school diploma or G.E.D. and has 12 months experience;~~
- ~~3. Is the current operator of a specific Class VI system and does not hold a waterworks license issued by the board; and~~
- ~~4. Understands that the restricted Class VI license that may be issued becomes invalid if he leaves the facility for which the license is sought or is issued a waterworks operator license in any other class.~~

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18VAC160-20-90. Qualifications for licensure of waterworks operators and wastewater works operators.

A. Waterworks operator and wastewater works operator licensure is based upon having applicable experience and demonstrating minimum required knowledge, skills, and abilities through an examination. Education, training, and experience in the other category may be substituted for the required experience as specified in this section.

B. Experience. For purposes of this section, experience requirements are expressed in terms of calendar periods of full-time employment as an operator or as an operator-in-training at a waterworks or wastewater works in the same category as the license being applied for. ~~All experience claimed on the application for licensure must be certified by the individual's immediate supervisor.~~

1. A year of full-time employment is defined as a minimum of 1,760 hours during a 12-month period or a minimum of 220 workdays in a 12-month period. A workday is defined as attendance at a waterworks or wastewater works to the extent required for proper operation. More than 1,760 hours or 220 work days during a 12-month period will not be considered as more than one year of full-time employment.

2. Experience gained as an operator-in-training must be obtained under the direct supervision of an operator holding a valid license of the same category and of a classification equal to or higher than the classification of the waterworks or wastewater works at which the experience is gained. ~~The supervising operator direct supervisor shall certify the experience on the application form as accurate and relevant to the classification and category of license for which the application is being submitted. In the event that a licensed operator is not available to certify the experience on the application, the experience may be certified by a representative of the facility owner, as defined in 18VAC160-20-10, with first-hand knowledge of the applicant's experience.~~

3. Partial credit may be given for actual hours of work or workdays experience if the applicant works as an operator or as an operator-in-training less than full time.

4. Experience solely limited to the operation and maintenance of wastewater collection systems and water distribution systems, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as an operator or as an operator-in-training.

5. Experience limited to water distribution system operation and maintenance shall be considered only when applying for a Class ~~V~~ 5 or Class ~~VI~~ 6 waterworks operator license.

C. Specific requirements for licenses.

1. Specific requirements for a Class ~~VI~~ 6 license. Applicants for licensure as a Class ~~VI~~ 6 waterworks operator shall meet one of the following requirements and pass a board-approved Class 6 examination:

- Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class ~~VI~~ 6, Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks; or
- Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class ~~VI~~ 6, Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks.

2. Specific requirements for a Class ~~V~~ 5 license. Applicants for licensure as a Class ~~V~~ 5 waterworks operator shall meet one of the following requirements and pass a board-approved Class 5 examination:

- Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks; or
- Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks.

3. Specific requirements for a Class ~~IV~~ 4 license. Applicants for licensure as either a Class ~~IV~~ 4 waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 4 examination:

- Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks or wastewater works (as appropriate); or
- Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks or wastewater works (as appropriate).

Experience obtained as a licensed alternative onsite sewage system operator may substitute for the wastewater works operator-in-training experience requirements established under [~~subparts subdivisions~~] a and b of this subdivision.

4. Specific requirements for a Class ~~III~~ 3 license. Applicants for licensure as either a Class ~~III~~ 3 waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 3 examination:

- Have (i) a bachelor's or master's degree with a major in engineering ~~or~~ engineering technology, or in a related physical, biological, environmental, or chemical science;

and (ii) at least one year of experience as an operator-in-training in a Class ~~IV 4~~, Class ~~III 3~~, Class ~~H 2~~, or Class ~~I 1~~ waterworks or wastewater works (as appropriate);

~~b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least one year of experience as an operator or operator-in-training in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate);~~

~~e. b. Have (i) a high school diploma or GED and (ii) at least two years of experience as an operator-in-training in a Class ~~IV 4~~, Class ~~III 3~~, Class ~~H 2~~, or Class ~~I 1~~ waterworks or wastewater works (as appropriate); or~~

~~d. Have (i) a high school diploma or GED, (ii) a Class IV license, and (iii) a total of at least two years of experience as an operator or operator-in-training in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or~~

~~e. c. Have (i) no high school diploma, (ii) a Class ~~IV 4~~ license, and (iii) a total of at least four years of experience as an operator or operator-in-training in a Class ~~IV 4~~ waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~III 3~~, Class ~~H 2~~, or Class ~~I 1~~ waterworks or wastewater works (as appropriate).~~

5. Specific requirements for a Class ~~H 2~~ license. Applicants for licensure as either a Class ~~H 2~~ waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 2 examination:

a. Have (i) a bachelor's or master's degree with a major in engineering ~~or~~ engineering technology, or in a related physical, biological, environmental, or chemical science; and (ii) a total of at least ~~1-1/2 years~~ 18 months of experience, of which at least ~~six~~ nine months without substitutions shall be as an operator-in-training in a Class ~~III 3~~, Class ~~H 2~~ or Class ~~I 1~~ waterworks or wastewater works (as appropriate);

~~b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least 1-1/2 years of experience, of which at least six months without substitutions shall be as an operator-in-training in a Class III, Class II or Class I waterworks or wastewater works (as appropriate);~~

~~e. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class III license; and (iii) a total~~

~~of at least 1-1/2 years of experience, of which at least six months, without substitutions shall be as an operator or operator-in-training in a Class III waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class II or Class I waterworks or wastewater works (as appropriate);~~

~~d. b. Have (i) a high school diploma or GED, (ii) a Class ~~III 3~~ license, and (iii) a total of at least ~~four~~ three years of experience of which at least ~~two years~~ 18 months without substitutions shall be as an operator or operator-in-training in a Class ~~III 3~~ waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~H 2~~ or Class ~~I 1~~ waterworks or wastewater works (as appropriate); or~~

~~e. c. Have (i) no high school diploma, (ii) a Class ~~III 3~~ license, and (iii) a total of at least ~~seven~~ six years of experience of which at least three years without substitutions shall be as an operator or operator-in-training in a Class ~~III 3~~ waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~H 2~~ or Class ~~I 1~~ waterworks or wastewater works (as appropriate).~~

6. Specific requirements for a Class ~~I 1~~ license. Applicants for licensure as either a Class ~~I 1~~ waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 1 examination:

a. Have (i) a bachelor's or master's degree with a major in engineering or engineering technology, or in a related physical, biological, environmental, or chemical science; (ii) a Class ~~H 2~~ license; and (iii) a total of at least 2-1/2 years of experience, of which at least ~~one year~~ 15 months without substitutions shall be as an operator or operator-in-training in a Class ~~H 2~~ waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~I 1~~ waterworks or wastewater works (as appropriate);

b. Have (i) a high school diploma or GED, (ii) a Class ~~H 2~~ license and (iii) a total of at least ~~six~~ five years of experience of which at least ~~two years~~ 30 months without substitutions shall be as an operator or operator-in-training in a Class ~~H 2~~ waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~I 1~~ waterworks or wastewater works (as appropriate); or

c. Have (i) no high school diploma, (ii) a Class ~~H 2~~ license, and (iii) a total of at least 10 years of experience of which at least ~~three~~ five years without substitutions shall be as an operator or operator-in-training in a Class ~~H 2~~ waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~I 1~~ waterworks or wastewater works (as appropriate).

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D. Substitutions for required experience. For the purpose of meeting the experience requirements for Class ~~III~~ 3, Class ~~II~~ 2, and Class ~~I~~ 1 licenses, experience in the other category, relevant training in waterworks and wastewater works operation, and formal education may be substituted for actual hands-on experience in the category being applied for.

1. Category experience substitution. One half of the actual experience gained in the other category may be substituted for required experience in the category of the license being applied for.

2. Education substitution. Education may be substituted for part of the required experience in the category of the license being applied for, subject to the following limitations:

a. Education used to meet the educational requirements for any class of license may not be substituted for experience.

b. Formal education courses at a post-secondary level in a related physical, biological or environmental, or chemical science; engineering or engineering technology; waterworks or wastewater works operation; or public health may be substituted for part of the required experience.

(1) All education substituted for experience must be relevant to the category and classification of the license being applied for.

(2) Education may be substituted for experience at a rate of up to one month experience for each semester hour of college credit approved by the board. One quarter hour of college credit will be considered equal to two thirds of a semester hour.

(3) Substitution of formal education experience will be approved by the board only for applicants who submit a transcript from the institution where the course was taken.

c. Training substitution. Waterworks or wastewater works operator training courses, seminars, workshops, or similar training, specifically approved by the board, may be substituted for part of the required experience.

(1) All training substituted for experience must be relevant to the category and classification of the license being applied for.

(2) Training may be substituted for experience at a rate of one month experience for each training credit approved by the board. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.

(3) All courses used for substitution must be approved by utilizing the criteria set forth in Part VI (18VAC160-20-150) of this chapter.

(4) Substitution of training for experience will be approved by the board only for applicants who submit a copy of an appropriate certificate identifying the subject matter of the course and the training credit value, and signed by a representative of the organization sponsoring the training.

3. Limitations on substitution.

a. Under no circumstances shall category experience, education, and training substitutions exceed 50% of the total experience required under ~~this~~ subsection B of this section.

b. No category experience, education, or training substitutions are permitted for the experience required to obtain a Class ~~VI~~ 6, Class ~~V~~ 5 or a Class ~~IV~~ 4 license as specified in subsection C of this section.

18VAC160-20-95. Provisional licensure – nonclassified facility operation experience only.

A. Each person desiring provisional licensure shall make application in accordance with 18VAC160-20-76 and shall meet all of the requirements of 18VAC160-20-90 except that the experience requirement may be met through experience gained as an operator of a nonclassified facility provided that:

1. The experience is obtained at a nonclassified facility that is comparable in size and in the treatment processes used to those facilities described in 18VAC160-20-120 in the case of waterworks or to those facilities described in 18VAC160-20-130 in the case of wastewater works.

2. The experience is obtained while performing actual nonclassified facility operation duties that provide experience comparable to that obtained at a classified facility. Experience limited solely to the operation and maintenance of wastewater collection systems and water distribution systems, laboratory work, plant maintenance and other nonoperating duties shall not be counted as qualifying experience. ~~Except that experience limited to water distribution system operation and maintenance at a nonclassified facility that is comparable to a facility classified as a Class V or Class VI waterworks may be counted for a provisional Class V or Class VI license~~ for Class 1, Class 2, Class 3, or Class 4 provisional licenses but may be counted for a provisional Class 5 or Class 6 license.

B. Each applicant meeting the requirements of subsection A of this section shall be eligible to sit for the operator examination for the category and class of operator license that is comparable to the nonclassified facility where the experience was obtained. The provisional license shall not be

issued until all applicable requirements have been met and satisfactorily verified.

C. Each individual holding provisional licensure may apply for licensure by submitting evidence of having met 50% of the experience required by 18VAC160-20-90.

Part III
Renewal

18VAC160-20-106. Renewal.

A. Licenses and provisional licenses for waterworks operators shall expire on the last day of February of each odd-numbered year. Licenses and provisional licenses for wastewater works operators shall expire on the last day of February of each even-numbered year. Licenses for onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators shall expire 24 months from the last day of the month wherein issued. Interim licenses shall expire 48 months from the last day of the month wherein issued.

B. Interim licenses shall not be renewed.

C. The Department of Professional and Occupational Regulation shall mail a renewal notice to the licensee and the provisional licensee outlining the procedures for renewal. Renewal notices shall be mailed to the licensee and to the provisional licensee at the last known address of record. Failure to receive written notice shall not relieve the licensee or the provisional licensee of the obligation to renew and pay the required fee outlined in 18VAC160-20-102.

D. Each licensee and provisional licensee applying for renewal shall return the renewal notice and fee prior to the expiration date shown on the license. If the licensee or provisional licensee fails to receive the renewal notice, a copy of the expired license or provisional license may be submitted in place of the renewal notice along with the required fee.

E. By submitting the renewal fee, an applicant for license renewal is certifying his continued compliance with this chapter and compliance with the continuing professional education requirements of this chapter.

F. The date on which the renewal fee and any required forms are actually received by the board or its agent shall determine whether an additional fee is due.

G. If the requirements of subsection D of this section are met more than 30 days but less than 12 months after the expiration date on the license or provisional license, a late penalty fee shall be required as established in 18VAC160-20-102. The date on which the renewal application, any required documentation and the required fees are actually received by the board or its agent shall determine whether the licensee or provisional licensee is eligible for renewal and whether an additional fee is due.

H. Any individual who fails to renew his license or provisional license within 12 months after the expiration date

printed on the license or the provisional license, as appropriate, shall apply for a new license by examination or for a new provisional license in accordance with Part II (18VAC160-20-74 et seq.) of this chapter. Such individual shall be deemed to be eligible to sit for the examination for the same category and class of license as the expired license or provisional license.

I. The board may deny renewal of a license or provisional license for the same reasons as it may refuse initial licensure or provisional licensure or discipline a licensee or provisional licensee.

18VAC160-20-109. Continuing professional education (CPE).

A. Each licensee, provisional licensee, and interim licensee shall have completed the following number of CPE contact hours during each renewal cycle:

1. Class ~~I~~ 1, ~~II~~ 2, and ~~III~~ 3 waterworks and wastewater works operators shall obtain a minimum of 20 contact hours.
2. Class ~~IV~~ 4 waterworks and wastewater works operators shall obtain a minimum of 16 contact hours.
3. Class ~~V~~ 5 waterworks operators shall obtain a minimum of eight contact hours.
4. Class ~~VI~~ 6 waterworks operators shall obtain a minimum of four contact hours.
5. Conventional onsite soil evaluators, conventional onsite sewage system installers, and conventional onsite sewage system operators shall obtain a minimum of 10 contact hours.
6. Alternative onsite soil evaluators, alternative onsite sewage system installers, and alternative onsite sewage system operators shall obtain a minimum of 20 contact hours.
7. All interim licensees shall obtain a minimum of 10 contact hours during the first 24 months that the interim license is valid and shall obtain a minimum of 10 contact hours during the second 24 months that the interim license is valid.

CPE provisions do not apply for the renewal of waterworks operator licenses or provisional licenses that were held for less than two years on the date of expiration. [CPE shall be required for all wastewater works licenses for the license period beginning March 1, 2010, and each license period thereafter.]

B. The subject matter addressed during CPE contact hours shall be limited to the content areas covered by the board's examination appropriate to the license for which renewal is sought. Safety subjects shall not count for more than one-half

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of the total CPE required content hours for waterworks operators and for wastewater works operators.

C. Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in 18VAC160-20-150, shall also be acceptable on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one quarter hour of college credit shall equal 10 CPE credit hours.

D. The following evidence shall be maintained to document completion of the hours of CPE specified in subsection A of this section:

1. Evidence of completion of a structured training activity which shall consist of the name, address and telephone number of the sponsor;
2. The dates the applicant participated in the training;
3. Descriptive material of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

E. Each licensee and provisional licensee shall maintain evidence of the satisfactory completion of CPE for a period of at least ~~one year~~ two years following the end of the license renewal cycle for which the CPE was taken. Such documentation shall be in the form required by subsection D of this section and shall be provided to the board or its duly authorized agents upon request.

F. The licensee or provisional licensee shall not receive CPE credit for the same training course or structured training activity more than once during a single license renewal cycle to meet the CPE requirement ~~unless the same training course or structured training activity is an annual requirement established by Virginia or federal regulations.~~

G. The licensee or provisional licensee may receive CPE credit for a training course or structured training activity which has been mandated by Virginia or federal regulation towards fulfilling the CPE requirement.

H. CPE instructors who hold a license issued by the board may receive CPE credit for the time spent actually instructing subject matter that is pertinent to their license. CPE credit shall not be allowed for instructing the same subject matter more than once during a single renewal cycle.

I. CPE instructors who hold a license issued by the board may be granted two additional hours of CPE credit for the initial development of or the substantial updating of a CPE activity that is pertinent to the license held for each hour spent delivering the initial presentation. CPE credit for the initial development or the substantial updating of a specific CPE activity shall be granted no more than once during a single renewal cycle.

~~H. J.~~ The licensee or provisional licensee may petition the board for additional time to meet the CPE requirement. However, CPE hours earned during a license renewal cycle to satisfy the CPE requirement of the preceding license renewal cycle shall be valid only for that preceding license renewal cycle.

Part IV Classification Requirements

18VAC160-20-120. Waterworks.

A. A Class ~~VI~~ 6 waterworks licensee may operate any waterworks as follows:

1. A waterworks providing no treatment and serving fewer than 400 persons; or
2. A waterworks classified by the Virginia Department of Health as a Class ~~VI~~ 6 waterworks.

B. A Class ~~V~~ 5 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 400 or more persons which (i) provides no treatment or (ii) employs hypochlorination for disinfection; or
2. A waterworks classified by the Virginia Department of Health as either a Class ~~V~~ 5 or Class ~~VI~~ 6 waterworks.

C. A Class ~~IV~~ 4 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 5,000 persons or having a design hydraulic capacity of less than 0.5 MGD, employing one or more of the following (i) disinfection other than with hypochlorination, (ii) corrosion control, (iii) iron and manganese removal, (iv) ion exchange, (v) membrane technology without pretreatment, (vi) slow sand filtration, (vii) aeration, (viii) rechlorination other than with hypochlorination, or (ix) activated carbon contactors; or
2. A waterworks classified by the Virginia Department of Health as ~~either a Class IV, V, or VI~~ 4, 5, or 6 waterworks.

D. A Class ~~III~~ 3 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 5,000 persons or having a design capacity less than 0.5 MGD, employing chemical coagulation or lime softening in combination with one or more of the following (i) sedimentation, (ii) rapid sand filtration with a filtration rate of 2 gpm/square foot or less, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;
2. A waterworks serving 5,000 or more persons or having a design hydraulic capacity of 0.5 MGD, employing one or more of the following; (i) disinfection other than with hypochlorination, (ii) corrosion control, (iii) iron and

manganese removal, (iv) ion exchange, (v) membrane technology without pretreatment, (vi) slow sand filtration, (vii) aeration, (viii) rechlorination other than with hypochlorination, or (ix) activated carbon contactors;

3. A waterworks employing (i) membrane technology requiring pretreatment consisting of pH adjustment; or (ii) diatomaceous earth filtration, coupled with aeration, corrosion control, disinfection, or fluoridation;

4. A waterworks employing fluoridation which is not under a higher classification; or

5. A waterworks classified by the Virginia Department of Health as ~~either a Class III, IV, V or VI~~ 3, 4, 5, or 6 waterworks.

E. A Class ~~H~~ 2 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 5,000 or more persons but fewer than 50,000 persons or having a design hydraulic capacity of 0.5 MGD or more but less than 5.0 MGD employing chemical coagulation or lime softening in combination with one or more of the following: (i) sedimentation, (ii) rapid sand filtration, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;

2. A waterworks serving fewer than 50,000 persons or having a design hydraulic capacity of less than 5.0 MGD which employs chemical coagulation or lime softening coupled with multimedia granular filtration or granular filtration at rates above 2.0 gpm/square foot (high rate filtration) in combination with one or more of the following: (i) sedimentation, (ii) fluoridation, (iii) disinfection, (iv) aeration, or (v) corrosion control;

3. A waterworks employing biological activated carbon contactors or membrane technology requiring pretreatment other than pH adjustment; or

4. A waterworks classified by the Virginia Department of Health as ~~either a Class H, III, IV, V or VI~~ 2, 3, 4, 5, or 6 waterworks.

F. A Class ~~I~~ 1 waterworks licensee may operate ~~any waterworks.~~ any waterworks as follows:

1. A waterworks serving 50,000 or more persons or having a design hydraulic capacity of 5.0 MGD or more employing chemical coagulation or lime softening in combination with one or more of the following: (i) sedimentation, (ii) rapid sand filtration, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;

2. A waterworks serving 50,000 or more persons or having a design hydraulic capacity of 5.0 MGD or more that employs chemical coagulation or lime softening coupled with multimedia granular filtration or granular filtration at

rates above 2.0 gpm/square foot (high rate filtration) in combination with one or more of the following: (i) sedimentation, (ii) fluoridation, (iii) disinfection, (iv) aeration, or (v) corrosion control;

3. A waterworks employing biological activated carbon contactors or membrane technology requiring pretreatment other than pH adjustment; or

4. A waterworks classified by the Virginia Department of Health as a Class 1, 2, 3, 4, 5, or 6 waterworks.

G. The term membrane technologies includes (i) ~~electrical dialysis~~ electrodialysis reversal, (ii) reverse osmosis, (iii) ~~ultra filtration~~ ultrafiltration, (iv) ~~micro-filtration~~ microfiltration, and (v) ~~nano filtration~~ nanofiltration.

18VAC160-20-130. Wastewater works.

A. A Class ~~IV~~ 4 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works employing natural treatment methods (i.e., those not utilizing aerated or mixed flows and not using electrical or outside energy sources to accomplish treatment) with a design hydraulic capacity greater than ~~0.4~~ 0.04 MGD but equal to or less than 1.0 MGD; or

2. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as a Class ~~IV~~ 4 wastewater works.

B. A Class ~~III~~ 3 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electrodialysis) having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.1 MGD;

4. A wastewater works using natural treatment methods (i.e., those not using aerated or mixed flows and not using

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electrical or outside energy sources to accomplish treatment) with a design hydraulic capacity greater than 1.0 MGD; or

5. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as either a Class ~~III or IV~~ 3 or 4 wastewater works.

C. A Class ~~H~~ 2 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having a design hydraulic capacity greater than 0.5 MGD, but equal to or less than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electrodialysis) having a design hydraulic capacity greater than 0.5 MGD, but equal to or less than 5.0 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods, having a design hydraulic capacity greater than 0.1 MGD, but equal to or less than 2.5 MGD; or

4. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as ~~either a Class II, III or IV~~ 2, 3, or 4 wastewater works.

D. A Class ~~I~~ 1 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of, but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having a design hydraulic capacity greater than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of, but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electrodialysis) having a design hydraulic capacity greater than 5.0 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods, having a design hydraulic capacity greater than 2.5 MGD; or

4. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as a Class 1, 2, 3, or 4 wastewater works.

Part V Standards of Practice

18VAC160-20-140. Discipline.

The board has the power to discipline and fine any licensee, interim licensee, or provisional licensee and to suspend or revoke or refuse to renew or reinstate any license, interim license, or provisional license as well as the power to deny any application for a license, interim license, or provisional license under the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter for any of the following:

1. Obtaining ~~or~~ renewing, or attempting to obtain or renew a license, interim license, or provisional license through fraudulent means or misrepresentation;

2. Having been convicted or found guilty by a court in any jurisdiction of any felony or of any misdemeanor involving lying, cheating or stealing; or for activities related to the performance of the licensee's or interim licensee's duties, there being no appeal pending therefrom or the time for appeal having lapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision shall be prima facie evidence of such conviction or discipline. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

3. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill and ability in the performance of the licensee's or interim licensee's duties;

4. Violating or inducing another person to violate any provisions of Chapter 1, 2, 3 or 23 of Title 54.1 of the Code of Virginia, the provisions of any other relevant Virginia or federal regulation, or of any provision of this chapter;

5. Having been found guilty by the board, an administrative body or by a court of any activity related to the performance of the licensee's or interim licensee's duties that resulted in the harm or the threat of harm to human health or the environment;

6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony which resulted in the harm or the threat of harm to human health or the environment. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted of or found guilty, regardless of adjudication, of any felony or of any misdemeanor related to the performance of the licensee's or interim licensee's duties or involving lying, cheating or stealing;

7. Negligence; or a continued pattern of incompetence; in the practice of a licensee or interim licensee; or

8. Having undertaken to perform or performed a professional assignment that the licensee or interim licensee is not qualified to perform by education, experience, or both.

Part VI
Approval of Training

18VAC160-20-150. Approval of training.

A. Training courses may be substituted for some of the experience required for Waterworks and Wastewater Works Class ~~III~~ 3, Class ~~II~~ 2 and Class ~~I~~ 1 licenses and for onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators subject to the limitations in this section. Training courses that may be substituted for required experience must be approved by the board except those provided by federal or state agencies, institutions, schools and universities approved by the State Council of Higher Education for Virginia, for which continuing education units are awarded. Training courses requiring board approval shall be approved by the board prior to commencing in accordance with the following:

B. Training courses for which experience credit may be granted must be conducted in general conformance with the guidelines of the International Association for Continuing Education and Training (Association). The board reserves the right to waive any of the requirements of the association's guidelines on a case-by-case basis. Only classroom, laboratory and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a sponsor who is an identifiable organization with a mission statement outlining its functions, structure, process and philosophy, and that has a staff of one or more persons with the authority to administer and coordinate a training credit (TC) program.

2. TC records. The board will only approve training offered by a sponsor who maintains TC records for all

participants for a minimum of seven years, and who has a written policy on retention and release of TC records.

3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the learning process to be used, and a proven ability to communicate.

4. Objectives. The board will only approve courses that have a series of stated objectives that are pertinent to the tasks performed by a licensee. The training course content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training course, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, oral examination, or other similar assessment technique.

C. The board shall consider the following information, to be submitted by the course sponsor or instructor on forms provided by the board, at least 45 days prior to the scheduled training course:

1. Course information.
 - a. Course title;
 - b. Planned audience;
 - c. Name of sponsor;
 - d. Name, address, phone number of contact person;
 - e. Scheduled presentation dates;
 - f. Detailed course schedule, hour-by-hour;
 - g. List of planned breaks;
 - h. Scheduled presentation location; and
 - i. Relevancy of course to the category of licensure.

2. Instructor qualifications.
 - a. Name of instructor;
 - b. Title, employer; and
 - c. Summary of qualifications to teach this course.

3. Training materials.
 - a. Course objectives. A listing of the course objectives stated in terms of the skills, knowledge, or attitude the participant will be able to demonstrate as a result of the training.
 - b. Course outline. A detailed outline showing the planned activities that will occur during the training course, including major topics, planned presentation sequence, laboratory and field activities, audio-visual presentation, and other major activities.

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c. Course reference materials. A list of the name, publisher and publication date for commercially available publications. For reference materials developed by the course sponsor or available exclusively through the course, a copy of the reference.

d. Audio-visual support materials. A listing of any commercially available audio-visual support material that will be used in the program. A brief description of any sponsor or instructor generated audio-visual material that will be used.

e. Handouts. Identification of all commercially available handout materials that will be used; as well as copies of all other planned handouts.

4. Determination of successful completion. A description of the means that will be used to assess the learning of each participant to determine successful completion of the training program, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques.

D. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the sponsor.

1. The board shall consider all of the information listed above except those items related to specific offerings of the course.

2. Board approval may be granted for a specific period of time or for an indefinite period.

3. Board approval will apply only to those specific offerings certified by the sponsoring organization as having been conducted by instructors meeting the established criteria and in accordance with the board-approved course outlines and objectives.

4. To maintain approval of the program, changes made to the program since its approval must be submitted.

VA.R. Doc. No. R07-792; Filed October 27, 2009, 12:25 p.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and

any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-160).**

21VAC5-80. Investment Advisors (amending 21VAC5-80-200).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: November 15, 2009.

Agency Contact: Al Hughes, Registration Chief, State Corporation Commission, Securities Division, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email al.hughes@scc.virginia.gov.

Summary:

The amendments (i) change the reference of 21VAC5-80-140 to 21VAC5-80-145 in 21VAC5-80-200 A 15 and B 15; and (ii) add a two-year expiration period from the date of taking the required examination referenced in 21VAC5-20-160 B 4 to qualify as a registered agent of the issuer. The adopted regulations had no changes from the proposed version.

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2009-00072

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on July 28, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapters 20 and 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act." On August 5, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to all registrants and applicants as of July 30, 2009. The Order described the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by August 31, 2009, with the Clerk of the Commission ("Clerk"). The Order also directed the Division to file a response to any comments by September 15, 2009, with the Clerk.

No comments were filed in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations, the recommendation of the

Division, and the record in this case, finds that the proposed amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Regulations are attached hereto, made a part hereof, and are hereby ADOPTED effective November 15, 2009.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY of this Order shall be sent to each of the following by the Division to: the Commission's Division of Information Resources and the Office of General Counsel; and such other persons as the Division deems appropriate.

Part III Agents of the Issuer

21VAC5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for purposes of applying for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

1. Form U-4.
2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a NASD exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. All individuals listed on Part 1 of Form ADV in Schedule A as having supervisory or control of the investment advisor shall take and pass the examinations as required in subdivision 3 of this subsection, and register as a representative of the investment advisor. Any individual who has been registered in any state jurisdiction as an agent within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirements of this section.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

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7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or

investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; or

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order

of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of ~~21VAC5-80-140~~ 21VAC5-80-145.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under

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§ 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for

the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

- a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
- b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of ~~21VAC5-80-140~~ 21VAC5-80-145.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the

services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

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D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

VA.R. Doc. No. R09-2050; Filed October 28, 2009, 10:12 a.m.

Final Regulation

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

Title of Regulation: **21VAC5-120. Virginia Trademark and Service Mark Act (amending 21VAC5-120-100).**

Statutory Authority: §§ 12.1-13 and 59.1-92.19 of the Code of Virginia.

Effective Date: November 15, 2009.

Agency Contact: Al Hughes, Registration Chief, Securities Division, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email al.hughes@scc.virginia.gov.

Summary:

The amendment modifies the class of services with which a mark can actually be used to include services for providing food and drink; medical services; veterinary services; hygienic and beauty care services; agricultural, horticulture, and forestry services; legal services; security services for the protection of property and individuals; and personal and social services rendered by others to meet the needs of individuals. Additional minor revisions and updates are also included. The adopted regulation has no change from the proposed.

AT RICHMOND, OCTOBER 26, 2009

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00067

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Trademark and Service Mark Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on July 28, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapter 120 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing Virginia Trademark and Service Mark Act"

("Rules"). On July 31, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to all registrants and applicants as of July 29, 2009, and to all interested parties. The Order described the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by August 31, 2009, with the Clerk of the Commission ("Clerk"). The Order also directed the Division to file a response to any comments by September 15, 2009, with the Clerk.

No comments were filed in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations, the recommendation of the Division, and the record in this case, finds that the proposed amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Regulations are attached hereto, made a part hereof, and are hereby ADOPTED effective November 15, 2009.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY of this Order shall be sent to each of the following by the Division to: the Commission's Division of Information Resources and the Office of General Counsel; and such other persons as the Division deems appropriate.

Part III

Classification of Goods and Services

21VAC5-120-100. Classification of goods and services.

The application for registration or renewal of registration of a mark shall identify the ~~class(es)~~ class or classes of goods or services with which the mark is actually being used. The following classes of goods and services are established for convenience of administration of the Act:

Goods.

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; and adhesives used in industry.
2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; and metals in foil and powder form for painters, decorators, printers, and artists.
3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive

preparations; soaps; ; perfumery, essential oils, cosmetics, hair lotions; and dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; and candles; and wicks for lighting.

5. Pharmaceutical; and veterinary and preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; ; disinfectants; preparations for destroying vermin; and fungicides; and herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; and ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand operated; and incubators for eggs.

8. Hand tools and implements (hand operated); cutlery; side arms; and razors.

9. Scientific, nautical, surveying, ~~electric~~, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating, or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; and fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopedic articles; and suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; and apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; ; and fireworks.

14. Precious metals and their alloys and goods in precious metals or coated ~~therewith~~ in precious metals, not included in other classes; jewelry, precious stones; and horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; ; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); ~~playing cards~~ plastic materials for packaging (not included in other classes); printer's type; and printing blocks.

17. Rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; and flexible pipes not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins; hides; trunks and travelling bags; umbrellas, parasols and walking sticks; and whips, harness and saddlery.

19. Building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; and monuments, not of metal.

20. Furniture; ; mirrors; ; and picture frames; and goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers (~~not of precious metal or coated therewith~~); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semiworked glass (except glass used in building); and glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); and raw fibrous textile materials.

23. Yarns and ~~thread~~ threads for textile use.

24. Textiles and textile goods, not included in other classes; and bed and table covers.

25. Clothing, footwear, and headgear.

26. Lace and embroidery; ribbons and braid; buttons, hooks and eyes, pins and needles; and artificial flowers.

27. Carpets, rugs, mats and matting; linoleum and other materials for covering existing floors; and wall hangings (nontextile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; and decorations for Christmas trees.

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29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, ~~fruit~~ sauces compotes; eggs, milk and milk products; and edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, and artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery; ices; honey; treacle; yeast; baking powder; salt; mustard; vinegar; sauces (condiments); spices; and ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds; natural plants and flowers; foodstuffs for animals; and malt.

32. Beer, mineral and aerated waters and other nonalcoholic drinks, fruit drinks and fruit juices; and syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco, ~~smokers~~ smokers' articles; and matches.

Services.

35. Advertising; business management; business administration; and office functions.

36. Insurance, financial affairs; monetary affairs; and real estate affairs.

37. Building construction; repair, and installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; and travel arrangement.

40. Treatment of materials.

41. Education; providing of: training; entertainment; and sporting and cultural activities.

~~42. Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be placed in other classes~~ Scientific and technological services and research and design relating thereto; industrial analysis and research services; and design and development of computer hardware and software.

~~43. Services for providing food and drink; and temporary accommodations.~~

~~44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; and agriculture, horticulture, and forestry services.~~

~~45. Legal services; security services for the protection of property and individuals; and personal and social services rendered by others to meet the needs of individuals.~~

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (21VAC5-120)

Form TM 1, Application for Registration of a Trademark or Service Mark (eff. ~~7/98~~ 11/09).

Form TM 2, Application for Renewal of Registration of a Trademark or Service Mark (eff. ~~7/98~~ 11/09).

Form TM 3, Certificate of Name Change of an Applicant or Registrant (eff. ~~7/98~~ 11/09).

VA.R. Doc. No. R09-2017; Filed October 28, 2009, 10:12 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Titles of Regulations: **22VAC40-200. Foster Care - Guiding Principles (repealing 22VAC40-200-10, 22VAC40-200-20).**

22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (adding 22VAC40-201-10 through 22VAC40-201-200).

22VAC40-210. Foster Care - Assessing the Client's Service Needs (repealing 22VAC40-210-10 through 22VAC40-210-40).

22VAC40-240. Nonagency Placement for Adoption - Consent (repealing 22VAC40-240-10, 22VAC40-240-20, 22VAC40-240-30).

22VAC40-250. Agency Placement Adoptions - AREVA (repealing 22VAC40-250-10, 22VAC40-250-20).

22VAC40-260. Agency Placement Adoptions - Subsidy (repealing 22VAC40-260-10, 22VAC40-260-20).

22VAC40-280. Nonagency Placements for Adoption - Adoptive Home Study (repealing 22VAC40-280-10, 22VAC40-280-20).

22VAC40-800. Family Based Social Services (repealing 22VAC40-800-10 through 22VAC40-800-170).

22VAC40-810. Fees for Court Services Provided by Local Departments of Social Services (repealing 22VAC40-810-10 through 22VAC40-810-50).

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

Public Hearing Information:

December 15, 2009 - 6 p.m. - Twin Hickory Area Library, 5001 Twin Hickory Road, Glen Allen, VA

Public Comments: Public comments may be submitted until January 22, 2010.

Agency Contact: Phyl Parrish, Policy Team Leader, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7926, FAX (804) 726-7895, TTY 1-800-828-1120, or email phyl.parrish@dss.virginia.gov.

Basis: The legal basis for this action is §§ 63.2-217 and 63.2-319 of the Code of Virginia. Section 63.2-217 authorizes the State Board of Social Services (board) to adopt regulations as may be necessary to carry out the mandated purposes of the Department of Social Services (DSS). Section 63.2-319 directs local departments of social services (LDSS) to provide child welfare services. This regulatory action will provide a comprehensive structure for the provision of these services.

Purpose: This joint action repeals eight regulations and replaces them with one comprehensive new permanency services regulation that will encompass the full range of services for providing a child with a safe and secure living situation that supports family connections. Currently, regulations addressing permanency services for children are contained in eight different regulations that were promulgated at different times. Combining these regulations into one comprehensive regulation will ensure consistency in definitions and language and limit the number of regulations individuals must use when addressing issues related to permanency services for children. Avoiding confusion related to the rules that apply to children and families in the child welfare system is essential to protect the health, safety, and welfare of these children. This regulation is integral to Virginia's compliance with federal child and family services program goals.

Substance: One of the first sections of this regulation addresses the importance of providing services to prevent a child from having to enter the foster care system. It also emphasizes inclusion of the child, birth parents, and significant individuals in the child's life in the decision making process by including them in the initial assessment and development of goals and service plan.

The regulation requires a concurrent planning process to help ensure timely permanence for a child if an initial goal, such as return home, cannot be achieved. The regulation requires a reassessment of the child and the effectiveness of services provided to him and his birth parents or prior custodian in three months if the child's goal is to return home. This timeframe is a change from current practice, which is a reassessment of children in foster care every six months.

The regulation includes language requiring monthly visits to children in foster care at least once each calendar month, reflecting a current federal mandate. The regulation requires initial and annual in-service training for foster care and adoption workers and supervisors. DSS has offered training for foster care service workers for over 10 years through contracts with Virginia Commonwealth University (VCU) and through other venues. Training has been mandated for child protective services workers, but it has not been mandated for foster care and adoptive workers until now.

Issues: The primary advantages of this regulation include: (i) it attempts to keep children from entering the foster care system and supports returning them to their homes or finding another permanent home for them as quickly and safely as possible; (ii) it supports best practices that address children's health, safety, and need for family connections while they are in foster care; and (iii) it supports a well trained workforce.

Combining the eight existing regulations into one comprehensive regulation will ensure consistency in definitions and language and will limit the number of regulations individuals must use when addressing issues related to permanency services for children. Avoiding confusion related to the rules that apply to children and families in the child welfare system is essential to protect the health, safety, and welfare of these children. This regulation is integral to Virginia's compliance with federal child and family services program goals.

There are no disadvantages to the public posed by this regulation. Of concern to the LDSS are (i) the costs associated with visiting children monthly; (ii) increasing the number of individuals participating in the planning process; and (iii) increasing the number of reassessments for some children.

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

Summary of the Proposed Regulation. The State Board of Social Services (Board) proposes to repeal eight regulations which now govern parts of the adoption process as well the disposition of children in foster care and children who are at risk of becoming part of the foster care system. One comprehensive regulation that mandates the shape and scope of permanency services in Virginia will replace those seven that are to be repealed.

The Board proposes to require that:

1. Local Departments of Social Services (LDSS) have a plan for visitation between foster children and their parents and siblings unless such visitation is not in the best interests of the child,
2. The case of each child in foster care be subject to judicial review at set intervals,

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3. LDSS include all affected parties in the service planning process and notify these parties of all judicial and administrative hearings so that they may participate if they wish,¹
4. LDSS have monthly face-to-face contact with children in foster care,
5. LDSS have face-to-face contact with the parents or prior guardians to whom children in the foster care system are expected to be returned,
6. LDSS have contact with all foster care providers as specified (quarterly visits are currently specified) in the State Department of Social Services' (DSS) Resource, Foster and Adoptive Family Home Approval Standards (22 VAC 40-211),
7. New social workers and supervisory staff participate in initial training and ongoing yearly training and
8. Only children 14 years or older be considered eligible for permanent foster care.

The Board also proposes to prohibit local social services personnel from serving as foster, adoptive or resource parents for children in the custody of the locality they work for even if the child and the local worker are relatives.

In addition to bringing Virginia into greater compliance with the requirements of Title IV-E and the Adoption and Safe Families Act (ASFA), the proposed regulation contains requirements that are already DSS policy (DSS Foster Care Policy Manual Volume VII, Section III, Chapter B), but which has not yet been put into regulatory code. These portions of the proposed regulation do not represent a change in DSS practices.

Result of Analysis. The benefits exceed the costs for one proposed regulatory change. The costs likely exceed the benefits for two proposed regulatory changes. There is insufficient data to decide whether benefits exceed costs for all other proposed changes. Detailed analysis can be found in the next section.

Estimated Economic Impact. Most of the provisions of 22 VAC 40-201 do not represent a substantive change in how the foster care system in Virginia operates. As noted above, much of the proposed regulation is a restatement of current DSS policy. There are however substantial costs, mostly labor costs, attached to the proposed regulation provisions that concern visitation between foster children and family members from whom they have been separated, between these children and their case social workers, and between social workers and parents to whom children in foster care will be returned. There will also be costs associated with social worker and supervisor training.

Current regulation contains no specific language obligating DSS to maintain ties between foster care children and their

siblings and parents or former guardians; at this point, various localities have different policies for, and place varying importance on, this type of visitation. In 2003, the US Department of Health and Human Services Children's Bureau (HHS) conducted a review of child and family services in Virginia. Visitation between foster children and their families is one of the areas in which Virginia's foster care system "did not achieve substantial conformity" with the ASFA mandates. In order to avoid threatened monetary penalties, DSS must now bring regulation and practice into compliance with ASFA, which requires that states facilitate this visitation so that families can be more easily reunited at the end of the foster care process.

DSS estimates that implementation of this portion of the proposed regulation will require that LDSS hire the equivalent of 27.8 full time social workers (\$59,778 per worker per year²) in order to implement visitation with parents to whom foster children will likely be returned. This change will likely yield benefits for children in foster care as this visitation will allow LDSS to communicate goals for this parents and assess how well they are meeting those goals. This will likely allow reunification plans to move forward more quickly.

Additionally, DSS estimates that approximately 65 full time social workers are needed to implement mandated monthly face-to-face visitation between social workers and children in foster care placement. This change in policy is identical to, and mandated by, HHS policy. DSS and HHS believe that many situations, like poor placement fit, that might prove harmful to foster children can be caught and fixed more quickly if social workers have face-to-face contact more frequently. Although this portion of the proposed regulation represents a large shift in DSS policy since currently only quarterly visits are required, many LDSS have moved toward monthly visits already in anticipation of this change.

DSS does not currently have funding to cover the increased visitation mandated by the proposed regulation and, so, would have to meet new regulatory requirements using their current staff. This provision, if promulgated without funding, may have a negative effect on social worker retention rates which will, in turn, have a negative economic impact on the Commonwealth as additional funds will be needed for recruiting and hiring replacement workers.

Although DSS anticipates that they already have the resources (training materials, staff to conduct training, etc.) to cover new worker and annual in-service training that will be required by these proposed regulations, there is a cost in using these resources for this purpose rather than using them toward some other end. DSS reports that this newly required training will bring regulation and practice in this area into conformity with Federal standards in order to avoid substantial monetary penalties. While the costs (mainly opportunity costs for resources used) of this training are in

practical terms, unavoidable, they are mitigated, and likely outweighed, by expected decreases in staff turnover. Social workers who are trained before they are assigned cases, and who receive ongoing training, are less likely to become frustrated because they are unprepared to handle the stress of their job. They may, as a consequence, stay in their position longer. If this is the case, DSS will realize savings in the search and hiring costs for new employees. In addition, this portion of the proposed regulation will have non-monetary benefits in that well trained social workers are more likely to make good decisions for the children who they are evaluating or who are already in the care of DSS.

In order to facilitate the training and visitation mandated by the proposed regulation, LDSS will need to hire the equivalent of 15.5 full time supervisors (\$70,919 per supervisor per year) to maintain a supervisor to social worker ratio of 1 to 6. In addition, LDSS will need to hire the equivalent of 6.6 full time case aides (\$51,672 per aide per year) to maintain an aide to social worker ratio of 1 to 14.

DSS estimates that the full (financial) cost for implementing the proposed regulation as it is now written is \$8,198,379 for FY 2010. Of this total, localities will be responsible for \$1,270,749; the Commonwealth's portion will be \$5,738,865 and federal funds will cover \$1,188,765. For FY 2011, DSS reports that these proposed regulations will cost \$7,526,156: \$1,166,554 in local funding, \$5,268,309 in state funding and \$1,091,293 in federal funding.

Other explicit costs generated by implementation of the proposed regulation, cost for printing training materials and any cost attached to gathering specific documentation that must be presented in removal hearings are two examples, are estimated by DSS to be minimal and already covered by pre-existing budgetary allowances. These represent costs to opportunity in that funds used for these things cannot be used for something else, but DSS does not require an increase in their budget to cover them.

In addition to the changes in these proposed regulations that have financial costs attached to them, the Board is proposing several changes to policy that will likely adversely impact some of the children to whom the changes will apply. Current DSS policy allows children 12 years old and older to have a permanency goal of permanent foster care. The Board proposes to change this requirement, so that only children 14 years old or older will be placed in permanent foster care, and to move this requirement from DSS policy, where it served as guidance for LDSS, to Administrative Code. DSS reports that this language is being proposed as part of these replacement regulations to ensure that every child that can be reunified with his or her family, or adopted, has that happen. Having this rule as part of a law that must be implemented, however, will likely adversely affect the chance that sibling groups, that may be as difficult as teenagers to find an adoptive home for, would be able to stay together. While the goal of adoption for

every eligible child is an admirable one, siblings groups may not have their lives improved by being separated because adoption is viewed as always preferable to permanent foster care. Outcomes for children in this situation would likely be improved if this language remains in guidance but does not become a hard and fast rule in the Administrative Code.

The Board also proposes to add language to these regulations that prohibits LDSS personnel from serving as foster, adoptive or resource parent for any child, even a relative, in the custody of the locality for whom they work. If child relative is brought into foster care, LDSS personnel may be certified as a foster, resource or adoptive parent in a locality other than the one he or she works for or the custody of the child can be transferred to another locality and that locality can consider placing the child with the relative who works for some other LDSS. DSS reports that this rule is not a change in policy and is being promulgated to forewarn the possibility that individuals who work for LDSS would use their influence or special knowledge to improperly influence the placement of children or the dispersal of reimbursement funds. DSS also reports that this rule is required by the State and Local Government Conflicts of Interest Act (§ 2.2-3109). While this is likely a sensible rule when dealing with most children, children who have a relative who works for a LDSS may be harmed by it. Affected children who might benefit from being placed in a home with a relative whom they know and love will likely have that placement delayed or denied by this rule. Outcomes for children in this situation would likely be improved if an exception to this rule that allowed easier qualification for relative care were carved out in both administrative code and statute.

Other costs that may be attached to the proposed regulation are harder to judge. For instance, the provision that requires that social workers meet with the parents of children in foster care may be problematic since DSS can dictate practice for LDSS staff but cannot force unwilling parents to meet if that is not their inclination. The cost of this item in man hours could easily add up very quickly as LDSS staff may find that they are spending a good deal more time than anticipated trying to get parents to comply. This may serve as a source of frustration to social workers and may be a factor that increases DSS staff turnover. Additionally, DSS was subject to an audit of their compliance with ASFA. Many of the requirements of the proposed regulation are aimed at fixing the deficiencies that HHS found with Virginia's child and family services. Although there has been no exact dollar amount yet attached to non-compliance, Virginia will be subject to monetary penalties if they do not improve performance in implementing ASFA mandates.

Businesses and Entities Affected. The proposed regulations will affect 169 private placement agencies and child residential institutions, as well as the slightly fewer than 7,000 children in foster care in Virginia.

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Localities Particularly Affected. All 120 local Departments of Social Services will be affected by these new regulations.

Projected Impact on Employment. At least 93 new social workers may be hired to meet the visitation and training requirements of the proposed regulations. Additionally, approximately 22 new support and supervisory positions may be created.

Effects on the Use and Value of Private Property. The use and value of private property should not be affected by the proposed regulations.

Small Businesses: Costs and Other Effects. Only public agencies and non-profit private placing agencies are likely to be affected by the proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Only public agencies and non-profit private placing agencies are likely to be affected by the proposed regulations.

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

¹ Affected parties include parents or prior guardians, foster parents and, when appropriate, children who are the subject of the service plan.

² This figure includes salary, retirement benefits, FICA, insurance, travel expenses, supplies, telephone costs, equipment costs and the one time expenses associated with setting up an office. The same expenses are

included in the per year cost for each new case aide and supervisor. Other accounting methods which recognize, for instance, that office space can be shared would likely yield lower per-worker costs.

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

Summary:

This joint action repeals eight regulations and replaces them with one comprehensive new Permanency Services regulation that will encompass the full range of services for providing a child with a safe home with his family or in the most family-like setting possible while maintaining family connections. The regulation incorporates provisions including: (i) how local departments of social services (LDSS) address the provision of services to prevent children from coming into foster care; (ii) the process for assessing children entering foster care, establishing goals for those children, engaging in concurrent planning, and ensuring children are in the most appropriate and least restrictive placement; (iii) development of service plans, service delivery, court hearings and case reviews; (iv) provision of independent living services, and closing of foster care cases; and (v) adoption processes, adoption assistance and the putative father registry. In addition, the regulation requires LDSS workers and supervisors to attend training in accordance with Department of Social Services (DSS) guidance.

CHAPTER 201

PERMANENCY SERVICES - PREVENTION, FOSTER CARE, ADOPTION AND INDEPENDENT LIVING

22VAC40-201-10. Definitions.

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

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Adoption assistance agreement" means a written agreement between the child-placing agency and the adoptive parents of a child with special needs to provide for the unmet financial and service needs of the child. An adoption assistance agreement may be for a federal, state, or conditional subsidy.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the

juvenile court every six months following termination of parental rights until the adoption is final.

"Adoption search" means interviews and written or telephone inquiries made by a local department to locate and advise the biological parents or siblings of an adult adoptee's request, by Application for Disclosure or petition to the court, for identifying information from a closed adoption record.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption. The adoptive home study is included in the dual approval process.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to the adoption process means any child in the care and responsibility of a child-placing agency who:

1. Is legally free for adoption as evidenced by termination of parental rights.

2. Has one or more of the following individual characteristics that make the child hard to place:

a. A physical, mental, or emotional condition existing prior to adoption in accordance with guidance developed by the department;

b. A hereditary tendency, congenital problem, or birth injury leading to risk of future disability;

c. A physician's or his designee's documentation of prenatal exposure to drugs or alcohol;

d. Is five years of age or older;

e. Has a minority racial or ethnic background;

f. Is a member of a sibling group who is being placed with the same family at the same time;

g. Has significant emotional ties with the foster parents with whom the child has resided for at least 12 months, when the adoption by the foster parent is in the best interest of the child; or

h. Has experienced a previous adoption disruption or dissolution or multiple disruptions of placements while in the custody of a child-placing agency.

3. Has had reasonable but unsuccessful efforts made to be placed without adoption assistance.

4. Had one or more of the conditions stated in subdivision 2 a, b, or c of this definition at the time of adoption, but the condition was not diagnosed until after the entry of the final order of adoption and no more than a year has elapsed from the date of diagnoses.

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team (CPMT)" means a team appointed by the local governing body to receive funds pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Comprehensive Services Act for At-Risk Youth and Families (CSA)" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of

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troubled and at-risk youth and their families in the Commonwealth.

"Concurrent permanency planning" means a sequential, structured approach to case management which requires working towards a permanency goal (usually reunification) while at the same time establishing and working towards an alternative permanency plan.

"Custody investigation" means a method to gather information related to the parents and a child whose custody, visitation, or support is in controversy or requires determination.

"Department" means the State Department of Social Services.

"Dual approval process" means a process that includes a home study, mutual selection, interviews, training, and background checks to be completed on all applicants being considered for approval as a resource, foster or adoptive family home provider.

"Family Assessment and Planning Team (FAPT)" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children placed away from their parents or guardians and for whom the local board has placement and care responsibility. Placements may be made in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. Foster care also includes children under the placement and care of the local board who have not been removed from their home.

"Foster care maintenance payments" means payments to cover federally allowable expenses made on behalf of a child in foster care including the cost of food, clothing, shelter, daily supervision, and other allowable expenses in accordance with guidance developed by the department.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the CPMT where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of prevention, placement, treatment, and community services,

including but not limited to independent living services, as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a non-custodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster family placement" means placement of a child with a family who has been approved by a child-placing agency to provide substitute care for children until a permanent placement can be achieved.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual Family Service Plan (IFSP)" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children (ICPC)" means a uniform law that has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the local department obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs including, but not limited to, attorney fees directly related to the finalization of the adoption; transportation; court costs; and reasonable and necessary fees of child-placing agencies.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Permanency planning indicator (PPI)" means a tool used in concurrent permanency planning to assess the likelihood of reunification. This tool assists the worker in determining if a child should be placed with a resource family and if a concurrent goal should be established.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Reassessment" means a subsequent review of the child's, birth parent's or prior custodian's, and resource parent's circumstances for the purpose of identifying needed services.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Resource parent" means a provider who has completed the dual approval process and has been approved as both a foster and adoptive family home provider.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service plan" means a written document that describes the programs, care, services, and other support which will be offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"Special service payments" means payments for services provided to help meet the adoptive or foster child's physical, mental, emotional, or dental needs.

"SSI" means Supplemental Security Income.

"State pool fund" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse; or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visitation conducted pursuant to § 63.2-1212 of the Code of Virginia subsequent to the entry of an interlocutory order of adoption and the written report compiling the findings of the visitation which is filed in the circuit court.

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"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia.

22VAC40-201-20. Foster care prevention services.

A. The local department shall first make reasonable efforts to keep the child in his home.

B. The local department shall work with the birth parents or custodians to locate and assess relatives or other alternative caregivers to support the child remaining in his home or as placement options if the child cannot safely remain in his home.

C. Services, pursuant to § 63.2-905 of the Code of Virginia, shall be available to birth parents or custodians to prevent the need for foster care placement to the extent that a child and birth parents or custodians meet all eligibility requirements.

D. Any services available to a child in foster care shall also be available to a child and his birth parents or custodians to prevent foster care placement and shall be based on an assessment of the child's and birth parents' or custodians' needs.

E. Any service shall be provided to prevent foster care placement or to stabilize the family situation provided the need for the service is documented in the local department's service plan or in the IFSP used in conjunction with CSA.

F. Children at imminent risk of entry into foster care shall be evaluated by the local department as reasonable candidates for foster care based on federal and state guidelines.

G. The local department shall consider a wrap around plan of care prior to removing a child from his home and document support and services considered and the reasons such support and services were not sufficient to maintain the child in his home.

22VAC40-201-30. Entering foster care.

A. A child enters foster care through a court commitment, entrustment agreement, or non-custodial foster care agreement.

B. The entrustment agreement shall specify the rights and obligations of the child, the birth parent or custodian, and the child-placing agency. Entrustments shall not be used for educational purposes, to make the child eligible for Medicaid, or to obtain mental health treatment.

1. Temporary entrustment agreements may be revoked by the birth parent or custodian or child-placing agency prior to the court's approval of the agreement.

2. Permanent entrustment agreements shall only be entered into when the birth parent and the child-placing agency, after counseling about alternatives to permanent relinquishment, agree that voluntary relinquishment of parental rights and placement of the child for adoption are in the child's best interests. When a child-placing agency enters into a permanent entrustment agreement, the child-placing agency shall make diligent efforts to ensure the timely finalization of the adoption.

C. A child may be placed in foster care by a birth parent or custodian entering into a noncustodial foster care agreement with the local department where the birth parent or custodian retains legal custody and the local department assumes placement and care of the child.

1. A noncustodial foster care agreement shall be signed by the local department and the birth parent or custodian and shall address the conditions for care and control of the child; and the rights and obligations of the child, birth parent or custodian, and the local department. Local departments shall enter into a noncustodial foster care agreement at the request of the birth parent or custodian when such an agreement is in the best interest of the child. When a noncustodial foster care agreement is executed, the permanency goal shall be reunification and continuation of the agreement is subject to the cooperation of the birth parent or custodian and child.

2. The plan for foster care placement through a noncustodial foster care agreement shall be submitted to the court for approval within 60 days of the child's entry into foster care.

3. When a child is placed in foster care through a noncustodial foster care agreement, all foster care requirements shall be met.

22VAC40-201-40. Foster care placements.

A. The local department shall ensure a child in foster care is placed in a licensed or approved home or facility that complies with all federal and state requirements for safety. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in a licensed or approved home or facility:

1. The local department shall make diligent efforts to locate and assess relatives as a foster home placement for the child, including in emergency situations.

2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.

3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation and provide continuity of connections for the child.

4. The local department shall make diligent efforts to place the child with siblings.

5. The local department shall, when appropriate, consider placement with a resource parent so that if reunification fails, the placement is the best available placement to provide permanency for the child.

6. The local department shall not delay or deny placement of a child into a foster family placement on the basis of race, color, or national origin of the foster or resource parent or child.

7. When a child being placed in foster care is of native American heritage and is a member of a nationally recognized tribe, the local department shall follow all federal laws, regulations, and policies regarding the referral of a child of native American heritage. The local department shall contact the Virginia Council on Indians and consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

B. A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

C. Foster, adoptive, or resource family homes shall meet standards established by the Board and shall be approved by child-placing agencies. Group homes and residential facilities shall be licensed by the appropriate licensing agency. Local departments shall verify the licensure status of the facility prior to placement of the child.

D. Local departments shall receive approval from the department's office of the ICPC prior to placing a child out of state.

E. When a child is to be placed in a home in another local department's jurisdiction within Virginia, the local department intending to place the child shall notify the local department that approved the home that the home is being considered for the child's placement. The local department shall also verify that the home is still approved and shall consult with the approving local department about placement of the child.

F. When a foster, adoptive, or resource family is moving from one jurisdiction to another, the local department holding custody shall notify the local department in the jurisdiction to which the foster, adoptive, or resource family is moving.

G. When a child moves with a foster, adoptive, or resource family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

H. A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

I. In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child. The birth parent or prior custodian shall be involved in the decision-making process regarding the placement change prior to a final decision being made.

1. The service worker shall consider the child's best interest and safety needs when involving the birth parent or prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

2. In the case of an emergency placement change, the birth parent with residual parental rights or prior custodian and all other relevant parties shall be notified immediately of the placement change. The child-placing agency shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.

22VAC40-201-50. Initial foster care placement activities.

A. Information on every child in foster care shall be entered into the department's automated child welfare system in accordance with guidance in the initial placement activities section of the Foster Care Manual, August 2009.

B. The local department shall refer the child for all financial benefits to which the child may be eligible, including but not limited to Child Support, Title IV-E, SSI, other governmental benefits, and private resources.

C. The service worker shall ensure that the child receives a medical examination no later than 30 days after initial placement. The child shall be provided a medical evaluation within 72 hours of initial placement if conditions indicate such an evaluation is necessary.

D. The service worker shall enroll the child in school as soon as possible but no more than 72 hours after placement.

1. The child's desire to remain in his previous school setting shall be considered in making the decision about which school the child shall attend. Local departments shall allow a child to remain in his previous school placement when it is in the best interest of the child.

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2. The service worker, in cooperation with the birth parents or prior custodians, foster care providers, and other involved adults, shall coordinate the school placement.

22VAC40-201-60. Assessment.

A. Assessments shall be conducted in a manner that respectfully involves children and birth parents or prior custodians to give them a say in what happens to them. Decision making shall include input from children, youth, birth parents or prior custodians, and other interested individuals.

B. The initial foster care assessment shall result in the selection of a specific permanency goal. In accordance with guidance in the assessment section of the Foster Care Manual, August 2009, the local department shall complete the PPI during the initial foster care assessment to assist in determining if a concurrent goal should be selected.

C. The initial foster care assessment shall be completed within time frames developed by the department but shall not exceed 30 calendar days after acceptance of the child in a foster care placement.

1. When a child has been removed from his home as a result of abuse or neglect, the initial foster care assessment shall include a summary of the Child Protective Services' safety and risk assessments.

2. The history and circumstances of the child, the birth parents or prior custodians, or other interested individuals shall be assessed at the time of the initial foster care assessment to determine their service needs. The initial foster care assessment shall:

- a. Include a comprehensive social history;
- b. Utilize assessment tools designated by the department;
- c. Be entered into the department's automated child welfare system; and
- d. Include a description of how the child, youth, birth parents or prior custodians, and other interested individuals were involved in the decision making process.

D. The service worker shall refer the child; birth parents or prior custodians; and foster, adoptive or resource parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.

E. Reassessments of response of the child; birth parents or prior custodians; and foster, adoptive, or resource parents' to the provided services and the need for additional services shall occur at least every three months as long as the goal is to return home. Reassessments shall occur at least every six months after placement for as long as the child remains in foster care. The reassessments shall be completed in

accordance with guidance in the assessment section of the Foster Care Manual, August 2009.

22VAC40-201-70. Foster care goals.

A. Foster care goals are established in order to assure permanency planning for the child. The establishment of lower ranking goals must include documentation as to why all higher ranking goals were not selected. Foster care goals, in order of priority, are:

1. Return custody to parent or prior custodian.
2. Transfer of custody of the child to a relative other than his prior family.
3. Adoption.
4. Permanent foster care.
5. Independent living.
6. Another planned permanent living arrangement.

B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:

1. Approve the foster care service plan seeking to change the permanency goal to adoption; and
2. Terminate parental rights.

C. The goal of permanent foster care shall only be considered for children age 14 and older in accordance with guidance in the section on choosing a goal in the Foster Care Manual, August 2009.

D. When the goal for the youth is to transition to independent living, the local department shall provide services pursuant to guidance in the section on choosing a goal in the Foster Care Manual, August 2009.

E. The goal of another planned permanent living arrangement may be chosen when the court has found that none of the alternative permanency goals are appropriate and the court has found the child to:

1. Have a severe and chronic emotional, physical, or neurological disabling condition; and
2. Require long-term residential care for the condition.

F. These permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated. Although one goal may appear to be the primary goal, other goals shall be continuously explored and planned for as appropriate.

22VAC40-201-80. Service plans.

A. Every child in foster care shall have a current service plan. The service plan shall specify the assessed permanency goal and when appropriate the concurrent permanency goal, and shall meet all requirements set forth in federal or state

law. The development of the service plan shall occur through shared decision-making between the local department; the child; the birth parents or prior custodians; the foster, adoptive, or resource parents; and any other interested individuals. All of these partners shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

B. A service plan shall be written after the completion of a thorough assessment. Service plans shall directly reference how the strengths identified in the foster care assessment will support the plan and the needs to be met to achieve the permanency goal, including the identified concurrent permanency goal, in a timely manner.

C. A plan for visitation with the birth parents or prior custodians, siblings, grandparents, or other interested individuals for all children in foster care shall be developed and presented to the court as part of the service plan. A plan shall not be required if such visitation is not in the best interest of the child.

22VAC40-201-90. Service delivery.

A. Permanency planning services to children and birth parents or prior custodians shall be delivered as part of a total system with cooperation, coordination, and collaboration occurring among children and youth, birth parents or prior custodians, service providers, the legal community and other interested individuals.

B. Permanency planning for children and birth parents or prior custodians shall be an inclusive process providing timely notifications and full disclosure to the birth parents or prior custodians of the establishment of a concurrent permanency goal when indicated and the implications of concurrent permanency planning for the child and birth parents or prior custodians. Child-placing agencies shall also make timely notifications concerning placement changes, hearings and meetings regarding the child, assessments of needs and case progress, and responsiveness to the requests of the child and birth parents or prior custodians.

C. Services to children and birth parents or prior custodians shall continue until an assessment indicates the services are no longer necessary. Services to achieve concurrent permanency goals shall be provided to support achievement of both permanency goals.

D. In order to meet the child's permanency goals, services may be provided to extended family or other interested individuals and may continue until an assessment indicates the services are no longer necessary.

E. All children in foster care shall have a face-to-face contact with an approved case worker at least once per calendar month regardless of the child's permanency goal or placement and in accordance with guidance in the service delivery section of the Foster Care Manual, August 2009, and

Chapter C of the Adoption Manual, October 2009. The majority of each child's visits shall be in his place of residency.

1. The purpose of the visits shall be to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child.

2. The visits shall be made by individuals who meet the department's requirements consistent with 42 USC § 622(b).

F. Supportive services to foster, adoptive, and resource parents shall be provided.

1. The local department shall enter into a placement agreement developed by the department with the foster, adoptive, or resource parents. The placement agreement shall include, at a minimum, a code of ethics and mutual responsibilities for all parties to the agreement as required by § 63.2- 900 of the Code of Virginia.

2. Foster, adoptive, and resource parents who have children placed with them shall be contacted by a service worker as often as needed in accordance with 22VAC211-100 to assess service needs and progress.

3. Foster, adoptive, and resource parents shall be given full factual information about the child, including but not limited to, circumstances that led to the child's removal, and complete educational, medical and behavioral information. All information shall be kept confidential.

4. Foster, adoptive, and resource parents shall be given appropriate sections of the foster care service plan.

5. If needed, services to stabilize the placement shall be provided.

6. Respite care for foster, adoptive, and resource parents may be provided on an emergency or planned basis in accordance with criteria developed by the department.

7. The department shall make a contingency fund available to provide reimbursement to local departments' foster and resource parents for damages pursuant to § 63.2-911 of the Code of Virginia and according to guidance in the Foster Care Manual (section 12.16 of the Contingency Fund Policy) March 2007. Provision of reimbursement is contingent upon the availability of funds.

22VAC40-201-100. Providing independent living services.

A. Independent living services shall be identified by the youth; foster, adoptive or resource family; local department; service providers; legal community; and other interested individuals and shall be included in the service plan. Input from the youth in assembling the team and developing the services is required.

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B. Independent living services may be provided to all youth ages 14 to 18 and may be provided until the youth reaches age 21.

C. The child-placing agency may offer a program of independent living services that meets the youth's needs such as education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. Child-placing agencies shall assess the youth's independent living skills and needs in accordance with guidance in the service delivery section of the Foster Care Manual, August 2009, and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 may continue to receive independent living services from the child-placing agency between the ages of 18 and 21 if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and

2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the service agreement. The service agreement shall require, at a minimum, that the youth's living arrangement shall be approved by the local department and that the youth shall cooperate with all services; or

3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 and older is eligible to live in an independent living arrangement provided the child-placing agency utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a child-placing agency and chooses to discontinue receiving independent living services after age 18 but prior to his 21st birthday may request a resumption of independent living services within 60 days of discontinuing these services. The child-placing agency shall restore independent living services in accordance with § 63.2-905.1 of the Code of Virginia.

H. Child-placing agencies shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 shall be conducted to assure the effectiveness of service provision.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. File petitions in accordance with the requirements for the type of hearing.

2. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the child-placing agency shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

3. Inform the court of reasonable efforts made to achieve concurrent permanency goals in those cases where a concurrent goal has been identified.

B. An administrative panel review shall be held six months after a permanency planning hearing when the goals of adoption, permanent foster care, or independent living have been approved by the court unless the court requires more frequent hearings. The child will continue to have Administrative Panel Reviews or review hearings every six months until a final order of adoption is issued or the child reaches age 18.

C. The local department shall invite the child; the birth parents or prior custodians when appropriate; the child's foster, adoptive, or resource parents; placement providers; guardian ad litem; court appointed special advocate (CASA); and other interested individuals to participate in the administrative panel reviews.

D. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. All interested individuals, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

E. A supervisory review is required every six months for youth ages 18 to 21.

F. When a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

22VAC40-201-120. Funding.

A. The local department is responsible for establishing a foster child's eligibility for federal, state, or other funding sources and making required payments from such sources.

State pool funds shall be used for a child's maintenance and service needs when other funding sources are not available.

B. The assessment and provision of services to the child and birth parents or prior custodians shall be made without regard to the funding source.

C. Local departments shall reimburse foster or resource parents for expenses paid by them on behalf of the foster child when the expenses are preauthorized or for expenses paid without preauthorization when the local department deems the expenses are appropriate.

D. The child's eligibility for Title IV-E funding shall be redetermined annually or upon a change in situation and in accordance with federal Title IV-E eligibility requirements, the Title IV-E Eligibility Manual, October 2005, and Chapter C of the Adoption Manual, October 2009.

E. The service worker is responsible for providing the eligibility worker information required for the annual redetermination of Medicaid eligibility and information related to changes in the child's situation.

22VAC40-201-130. Closing the foster care case.

A. Foster care cases are closed or transferred to another service category under the following circumstances:

1. When the foster care child turns 18 years of age;
2. When the court releases the child from the local department's custody prior to the age of 18; or
3. When a voluntary placement agreement has expired, been revoked, or been terminated by the court.

B. When the foster care case is closed for services, the case record shall be maintained according to the record retention schedules of the Library of Virginia.

C. Any foster care youth who has reached age 18 has the right to request information from his records in accordance with state law.

22VAC40-201-140. Other foster care requirements.

A. The director of a local department may grant approval for a child to travel out-of-state and out-of-country. The approval must be in writing and maintained in the child's file.

B. Pursuant to § 63.2-908 of the Code of Virginia, a foster or resource parent may consent to a marriage or entry into the military if the child has been placed with him through a permanent foster care agreement which has been approved by the court.

C. An employee of a local department, including a relative, cannot serve as a foster, adoptive, or resource parent for a child in the custody of that local department. The employee can be a foster, adoptive, or resource parent for another local department or licensed child-placing agency or the child's custody may be transferred to another local department.

D. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for service plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the service plan for the foster child (parent).

2. The child is eligible for maintenance payments, services, Medicaid, and child support services based on federal law and in accordance with guidance in the Foster Care Manual, August 2009, and the Adoption Manual, October 2009.

E. When a child in foster care is committed to the Department of Juvenile Justice (DJJ), the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18, the local department shall maintain a connection with the child in accordance with guidance developed by the department.

22VAC40-201-150. Adoption Resource Exchange of Virginia.

A. The purpose of AREVA is to increase opportunities for children to be adopted by providing services to child-placing agencies having custody of these children. The services provided by AREVA include, but are not limited to:

1. Maintaining a registry of children awaiting adoption and a registry of approved parents waiting to adopt;
2. Preparing and distributing a photo-listing of children with special needs awaiting adoption and a photo-listing of parents awaiting placement of a child with special needs;
3. Providing information and referral services for children who have special needs to link child-placing agencies with other adoption resources;
4. Providing on-going adoptive parent recruitment efforts for waiting children;
5. Providing consultation and technical assistance to child-placing agencies in finding adoptive parents for waiting children; and
6. Monitoring local department's compliance with legal requirements, guidance, and policy on registering children and parents.

B. Child-placing agencies shall comply with all of the AREVA requirements according to guidance in Chapter C of the Adoption Manual, October 2009.

22VAC40-201-160. Adoption assistance.

A. An adoption assistance agreement shall be executed by the child-placing agency for a child who has been determined eligible for adoption assistance. Local departments shall use

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the adoption assistance agreement form developed by the department.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs as defined in 22VAC40-201-10 and meet the following criteria:

1. Be under 18 years of age;
2. Be in the placement and care of a child-placing agency at the time the petition for adoption is filed; and
3. Be placed by a child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the child has resided for 18 months with the foster or resource parents who file a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. The types of adoption assistance for which a child may be eligible are:

1. Title IV-E adoption assistance if the child meets federal eligibility requirements.
2. State adoption assistance when the child's foster care expenses were paid from state pool funds.
3. Conditional adoption assistance when payments and services are not needed at the time of placement into an adoptive home but may be needed later and the child's foster care expenses were paid from state pool funds. Conditional adoption assistance allows the adoptive parents to apply for state adoption assistance after the final order of adoption. Conditional adoption assistance shall not require annual certification.

D. Adoption assistance payments shall be negotiated with the adoptive parents taking into consideration the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources shall be explored to help defray the costs of adoption assistance.

E. Three types of payments shall be made on behalf of a child who is eligible for adoption assistance.

1. Adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.
 - a. The total amount of reimbursement is based on actual costs and shall not exceed \$2,000 per child per placement.
 - b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.
 - c. Nonrecurring expenses include:
 - (1) Attorney fees directly related to the finalization of the adoption;

(2) Transportation and other expenses incurred by adoptive parents related to the placement of the child. Expenses may be paid for more than one visit;

(3) Court costs related to filing an adoption petition; and

(4) Reasonable and necessary fees of adoption child-placing agencies.

2. A maintenance payment shall be approved for a child who is eligible for adoption assistance, except those for whom a conditional adoption assistance will be provided, unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed. The amount of maintenance payments made shall not exceed the maximum foster care board rate as established by the appropriation act.

a. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.

b. The basic board rate included as a component of the maintenance payments shall not be reduced below the amount specified in the initial adoption assistance agreement without the concurrence of the adoptive parents or a reduction mandated by the appropriation act.

c. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care board rate and:

(1) The child reaches a higher age grouping, as specified in guidance for foster care board rates; or

(2) Statewide increases are approved for foster care board rates.

3. A special service payment is used to help meet the child's physical, mental, emotional, or nonroutine dental needs. The special service payment shall be directly related to the child's special needs or day care. Special service payments shall be time limited based on the needs of the child.

a. Types of expenses that are appropriate to be paid are included in Chapter C of the Adoption Manual, October 2009.

b. A special service payment may be used for a child eligible for Medicaid to supplement expenses not covered by Medicaid.

c. Payments for special services are negotiated with the adoptive parents taking into consideration:

(1) The special needs of the child;

(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and

(3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.

d. The rate of payment shall not exceed the prevailing community rate.

e. The special services adoption assistance agreement shall be separate and distinct from the adoption assistance agreement for maintenance payments and nonrecurring expenses.

F. When a child is determined eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement:

1. Shall be executed within 90 days of receipt of the application for adoption assistance;

2. Shall be signed before entry of the final order of adoption;

3. Shall specify the amount of payment and the services to be provided, including Medicaid; and

4. Shall remain in effect regardless of the state to which the adoptive parents may relocate.

G. Procedures for the child whose eligibility for adoption assistance is established after finalization shall be the same as for the child whose eligibility is established before finalization except the application shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs. Application for adoption assistance after finalization shall be for state adoption assistance.

H. The adoptive parents shall annually submit an adoption assistance affidavit to the local department in accordance with guidance in Chapter C of the Adoption Manual, October 2009.

I. The local department is responsible for:

1. Payments and services identified in the adoption assistance agreement, regardless of where the family resides; and

2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due.

J. Adoption assistance shall be terminated when the child reaches the age of 18 unless the child has a physical or mental disability or an educational delay resulting from the child's disability which warrants continuation of the adoption assistance. If a child has one of these conditions, the adoption assistance may continue until the child reaches the age of 21.

K. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is no longer receiving financial support from the adoptive parents; or

2. The adoptive parents are no longer legally responsible for the child.

L. Child-placing agencies are responsible for informing adoptive parents in writing that they have the right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. Applicants for adoption assistance shall have the right to appeal adoption assistance decisions related to:

1. Failure of the child-placing agency to provide full factual information known by the child-placing agency regarding the child prior to adoption finalization;

2. Failure of the child-placing agency to inform the adoptive parents of the child's eligibility for adoption assistance; and

3. Decisions made by the child-placing agency related to the child's eligibility for adoption assistance, adoption assistance payments, services, and changing or terminating adoption assistance.

22VAC40-201-170. Child placing agency's responsibilities for consent in non-agency adoptive placements.

A. At the request of the juvenile court, the child-placing agency shall:

1. Conduct a home study of the prospective adoptive home that shall include the elements in § 63.2-1231 of the Code of Virginia and guidance in Chapter D of the Adoption Manual, October 2009; and

2. Provide the court with a written report of the home study.

B. The child-placing agency shall make a recommendation to the court regarding the suitability of the individual to adopt.

C. If the child-placing agency suspects an exchange of property, money, services, or any other thing of value has occurred in violation of law in the placement or adoption of the child, it shall report such findings to the commissioner for investigation. The following exceptions apply:

1. Reasonable and customary services provided by a licensed or duly authorized child-placing agency, and fees paid for such services;

2. Payment or reimbursement for medical expenses directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings and for expenses incurred for medical care for the child;

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3. Payment or reimbursement to birth parents for transportation necessary to execute consent to the adoption;

4. Usual and customary fees for legal services in adoption proceedings; and

5. Payment or reimbursement of reasonable expenses incurred by the adoptive parents for transportation in inter-country placements and as necessary for compliance with state and federal law in such placements.

22VAC40-201-180. Fees for court services.

The local department shall charge fees for the following court ordered services: (i) custody investigations; (ii) adoption searches; (iii) nonagency placement adoptions, investigation and reports; and (iv) visitation and reports. The process for determining and collecting such fees shall be in accordance with guidance developed by the department.

22VAC40-201-190. Virginia Putative Father Registry.

A. The department shall establish and maintain a putative father registry which is a confidential database.

B. A search of the Virginia Putative Father Registry shall be conducted for all adoptions except when the child has been adopted according to the laws of a foreign country or when the child was placed in Virginia from a foreign country for the purpose of adoption in accordance with § 63.2-1104 of the Code of Virginia.

C. Any petitioner who files a petition for termination of parental rights or for an adoption proceeding shall request a search of the Virginia Putative Father Registry. The certificate of search and finding must be filed with the court before an adoption or termination of parental rights proceeding can be concluded.

22VAC40-201-200. Training.

A. Local department foster care and adoption workers and supervisory staff shall attend and complete initial in-service training in accordance with guidance in the Foster Care Manual, August 2009, and Chapter C of the Adoption Manual, October 2009.

B. Local department foster care and adoption workers and supervisory staff shall complete an individual training needs assessment using a method developed by the department.

C. Local department foster care and adoption workers and supervisory staff shall attend and complete annual in-service training in accordance with guidance developed by the department.

DOCUMENTS INCORPORATED BY REFERENCE

Foster Care Manual, August 2009, Department of Social Services (<http://www.dss.virginia.gov/family/fc/manual.cgi>).

Foster Care Manual, Volume VII, Section III, Chapter B, March 2007, Department of Social Services (http://spark.dss.virginia.gov/divisions/dfs/fc/files/procedures/general/contingency_fund_policy.pdf).

Title IV-E Eligibility Manual, October 2005, Department of Social Services (http://spark.dss.virginia.gov/divisions/dfs/permanency/iv_e/eligibility/manual.cgi).

Adoption Manual, October 2009, Department of Social Services (<http://www.dss.virginia.gov/family/ap/manual.cgi>).

VA.R. Doc. No. R08-1019; Filed November 2, 2009, 2:27 p.m.

Fast-Track Regulation

Title of Regulation: 22VAC40-880. Child Support Enforcement Program (adding 22VAC40-880-405).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 23, 2009.

Effective Date: January 7, 2010.

Agency Contact: Alice Burlinson, Regional Senior Assistant Attorney General, Department of Social Services, 4504 Starkey Road, Suite 103, Roanoke, VA 24018, telephone (540) 776-2778, FAX (540) 857-7841, TTY 1-800-828-1120, or email alice.burlinson@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia states that the State Board of Social Services shall adopt regulations, not in conflict with Title 63.2, as may be necessary or desirable to carry out the purpose of Title 63.2.

Purpose: This regulatory action creates a new regulation entitled "Passport Denial Program" to comply with federal law (42 USC § 654), which requires states to develop a procedure for certifying to the federal Office of Child Support Enforcement noncustodial parents who are eligible for the Passport Denial Program as described in 42 USC § 652(k). The regulation is necessary because the Code of Virginia contains no description of the program and consequently offers the noncustodial parent no information on the release from the program or the appeal process.

Rationale for Using Fast-Track Process: The Department of Social Services (DSS) does not believe that the proposed regulation will be controversial. DSS currently has the authority to place noncustodial parents in the Passport Denial Program and the authority, by federal regulation, to set the standards for release from the program. The new regulation will outline the provisions of the Passport Denial Program in Virginia, including how a noncustodial parent is released from the program and the appeal process, neither of which is currently provided for in statute or regulation.

Substance: This regulatory action creates a new regulation entitled "Passport Denial Program" to comply with federal

law (42 USC § 654), which requires states to develop a procedure for certifying to the federal Office of Child Support Enforcement noncustodial parents who are eligible for the Passport Denial Program as described in 42 USC § 652(k). The new regulation outlines the provisions of the Passport Denial Program in Virginia, including how a noncustodial parent is released from the program and the appeal process, neither of which is currently provided for in Code or regulation.

Issues: There are numerous advantages to this regulatory action. The new regulatory section will (i) establish the provisions of the Passport Denial Program in Virginia; (ii) describe how a noncustodial parent will be released from the program and the program's appeal process; and (iii) create statewide consistency in how the Passport Denial Program is administered in Virginia. DSS is aware of no disadvantage to this regulatory action.

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

Summary of the Proposed Amendments to Regulation. The Passport Denial Program for the denial, revocation, or limitation of non-custodial parents' passports where child support arrearages exceed the federally mandated threshold was first implemented in Virginia in 1997. Federal law 42 USC 654 requires states to develop a procedure certifying to the federal Office of Child Support Enforcement which non-custodial parents are eligible for the Passport Denial Program as described in 42 USC 652(k). In order to comply with the federal law, the State Board of Social Services proposes to promulgate a new regulation section to outline the provisions of the Passport Denial Program for Virginia's Department of Social Services, Division of Child Support Enforcement.

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

Estimated Economic Impact. According to the Department of Social Services, the proposal to delineate the provisions of the Passport Denial Program for Virginia's Division of Child Support Enforcement in regulation does not change any requirements or procedures in practice. Thus the proposal will have no impact other than the beneficial effect of helping inform the public of procedures such as how a non-custodial parent is released from the program and the appeal process, neither of which are currently specified in Code or regulation.

Businesses and Entities Affected. The Passport Denial Program affects non-custodial parents who have a need to travel outside the country and owe \$2,500 or more in child support arrearage, as well as the recipients of child support. The Department of Social Services, Division of Child Support Enforcement has averaged between 70 to 100 child support collections per year from passport denial.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

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

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

Summary:

The Passport Denial Program for the denial, revocation, or limitation of noncustodial parents' passports where child support arrearages exceed the federally mandated threshold was first implemented in Virginia in 1997. Federal law (42 USC § 654) requires states to develop a procedure certifying to the federal Office of Child Support

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Enforcement which noncustodial parents are eligible for the Passport Denial Program as described in 42 USC § 652(k). In order to comply with the federal law, the State Board of Social Services proposes to promulgate a new regulation section to outline the provisions of the Passport Denial Program for Virginia's Department of Social Services, Division of Child Support Enforcement.

The regulation describes the program, a noncustodial parent's release from the program, and the appeal process. The regulation requires the Division of Child Support Enforcement to certify to the United States Department of State, through the federal Office of Child Support Enforcement, all individuals who meet the federal threshold for passport denial.

22VAC40-880-405. Passport denial program.

A. The department shall participate in the Passport Denial Program for the denial, revocation, or limitation of noncustodial parents' passports where child support arrearages exceed the federally mandated threshold.

B. The department shall certify the arrearages to the federal Office of Child Support Enforcement, which will then (i) send notice of the certification on behalf of the department to the individual and (ii) certify the arrearage to the Department of State pursuant to the Passport Denial Program.

C. An individual has the right to appeal per the notice to a Department of Social Services' hearing officer. The only issues reviewable on appeal are (i) whether the arrears met the threshold at the time of certification, or (ii) mistaken identity. The decision of the hearing officer is final with no further appeal. The issues in subsections D and E are not reviewable by the hearing officer.

D. An individual's child support arrearages shall be paid in full before the department notifies the federal Office of Child Support Enforcement that the individual is eligible to receive a passport.

E. Exceptions to paying all arrearages prior to release of a passport may be granted by the IV-D agency director upon written request documenting compelling evidence of a life-or-death situation of an immediate family member. Such decision whether to grant an exception shall be in the sole discretion of the IV-D agency director.

VA.R. Doc. No. R10-2057; Filed November 2, 2009, 2:25 p.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Public Hearing on Beach Vitex Temporary Quarantine

Pursuant to § 3.2-703 of the Code of Virginia, the Commissioner of Agriculture and Consumer Services has issued a temporary (90-day) quarantine relating to Beach Vitex (*Vitex rotundifolia*). A copy of the temporary quarantine is printed below. If it appears that a quarantine for more than 90 days will be necessary. Section 3.2-703 provides that the Board of Agriculture and Consumer Services shall hold a public hearing on extending the commissioner's temporary quarantine. The Board of Agriculture and Consumer Services will hold such a public hearing at 10 a.m., December 3, 2009, at the Oliver Hill Building, 102 Governor Street, Room 220, Richmond, Virginia 23219.

For further information, please contact Larry Nichols, Program Manager, Office of Plant and Pest Services, Department of Agriculture and Consumer Services, 102 Governor Street, Room LL55, Richmond, Virginia 23219; (804) 786-3515; hearing impaired (800) 828-1120; FAX (804) 371-7793; or larry.nichols@vdacs.virginia.gov.

Beach Vitex Temporary Quarantine for Enforcement of the Virginia Pest Law

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

§ 10. Declaration of quarantine

A quarantine is hereby established to restrict the movement of the invasive plant Beach Vitex and articles capable of transporting life stages of Beach Vitex unless such articles comply with the conditions specified herein.

§ 20. Purpose of quarantine

Beach Vitex, a deciduous, woody vine native to the Pacific Rim, grows rapidly along dunes and shorelines causing damage to these areas by crowding out native plants and threatening the habitats of various animals, including the endangered loggerhead sea turtle. Although Beach Vitex has been planted in efforts to stabilize dunes, it is less effective than native grasses in controlling dune erosion. Beach Vitex has been detected in several coastal sites in the Commonwealth and it has the potential to spread to other areas through the artificial movement of Beach Vitex by individuals, or through the natural movement of Beach Vitex parts such as seeds and stems that could be carried by water currents to uninfested coastal areas. The purpose of this quarantine is to help prevent the spread of Beach Vitex by prohibiting its artificial movement and the movement of those articles that are capable of transporting it.

§ 30. Definitions

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

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

"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

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

"Compliance agreement" means a written agreement between a person engaged in handling, receiving or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, or the United States Department of Agriculture, or both, wherein the former agrees to fulfill the requirements of the compliance agreement and comply with the provisions of this regulation.

"Beach Vitex" means the live plant, in any life stage, known as Beach Vitex, *Vitex rotundifolia*.

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

"Infested (infestation)" means the presence of the Beach Vitex or the existence of circumstances that make it reasonable to believe that life stages of the Beach Vitex are present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.

"Limited permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.

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

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated area" means the locality or area listed in Section 50 of this quarantine.

"Virginia Pest Law" means the statute set forth in § 3.2-700 et seq. of the Code of Virginia.

§ 40. Regulated articles

The following articles are regulated under the provisions of this quarantine and shall not be moved into, within, or out of

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any regulated area in Virginia, except in compliance with the conditions prescribed in this quarantine:

1. Beach Vitex, in any life stage, including roots, stems and seeds.
2. Any article known to be infested with Beach Vitex, such as sand, soil or mulch containing Beach Vitex in any life stage.
3. Any other article or means of conveyance when it is determined by an inspector that it presents a risk of spread of Beach Vitex.

§ 50. Regulated areas

The following areas in Virginia are quarantined for Beach Vitex:

1. The entire counties of:
 - Accomack
 - Northampton
2. The entire cities of:
 - Norfolk
 - Virginia Beach

§ 60. Conditions governing the intrastate movement of regulated articles

A. Movement Within Regulated Area – Movement of a regulated article solely within the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.

B. Movement From Regulated Area Into Non-Regulated Area – Movement of a regulated article that originates inside of the quarantined area to an area outside of the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.

C. Movement From Non-Regulated Area Into Regulated Area – Movement of a regulated article that originates outside of the quarantined area to an area inside of the quarantined area is prohibited.

D. Movement Outside of the Regulated Area – Movement of a regulated article solely outside of the quarantined area is not restricted.

§ 70. Issuance and cancellation of certificates and limited permits

A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles into, within, or out of any regulated area, to any destination within Virginia when the regulated articles meet the following three conditions:

1. a. The regulated articles are to be moved intrastate to a specified destination under conditions which specify the limited handling, utilization, processing or treatment of the articles, when the inspector determines that such movement will not result in the spread of Beach Vitex because the life

stage of the plant will be destroyed by such specified handling, utilization, processing or treatment; or

b. The regulated articles are to be moved by a state or federal agency, or person authorized by the Department, for experimental or scientific purposes;

2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Beach Vitex;

3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

B. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit, or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the certificate or limited permit holder as promptly as circumstances allow.

§ 80. Assembly and inspection of regulated articles

A. Any person who desires to move a regulated article into, within, or out of any regulated area shall apply for a limited permit as far in advance as practical but no less than five (5) business days before the regulated articles are to be moved.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.

§ 90. Attachment and disposition of certificates and limited permits

A. A certificate or limited permit required for the movement of a regulated article into, within, or out of any regulated area must be attached at all times during the intrastate movement to the outside of the container which contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.

B. The certificate or limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate or the limited permit must be retained by the sender of the regulated article at the place of shipment.

§ 100. Inspection and disposal of regulated articles and pests

Upon presentation of official credentials, an inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of, regulated articles as provided in the Virginia Pest Law.

§ 110. Non-liability of the department

The Department shall not be liable for any costs incurred by third parties, whose costs result from, or are incidental to, inspections required under the provisions of the quarantine.

This Temporary Quarantine becomes effective on October 26, 2009, and shall continue for a period not to exceed 90 days.

Issued on October 19, 2009, in Richmond, Virginia.

/s/ Todd P. Haymore
Commissioner

Agricultural Stewardship Act Guidelines

(Draft Revision)

Section 3.2-408 of the Code of Virginia authorizes the Commissioner of Agriculture and Consumer Services to alter the Virginia Agricultural Stewardship Act Guidelines periodically after proposed changes have been published in The Virginia Register of Regulations and a public comment period has been provided. The revised guidelines are printed below.

Public comments may be submitted until 5 p.m. on January 8, 2010, to Roy E. Seward, Department of Agriculture and Consumer Services, Oliver Hill Building, Room 214, 102 Governor Street, Richmond, VA 23219, or by email to roy.seward@vdacs.virginia.gov.

NATURE OF GUIDELINES

The Agricultural Stewardship Act¹ ("ASA or Act") requires that the Commissioner of Agriculture and Consumer Services ("Commissioner") develop guidelines to assist in the implementation of the ASA. These guidelines are not regulations and no one is required to abide by them. In fact, there are no regulations concerning the ASA. The only document that anyone must abide by is the ASA itself.

These guidelines set out procedures for implementing the ASA. As they are not regulations, they do not have the force of law. Matters addressed in these guidelines that are not required by statute may be waived or changed at the discretion of the Commissioner. In the event of any conflict between the guidelines and the ASA, the ASA will prevail. The Commissioner expects that these guidelines will be reviewed periodically to determine whether changes are needed.

The Commissioner welcomes your questions and requests for information about the ASA Program. All correspondence regarding the ASA guidelines can be directed to the address listed below or you can contact the ASA Program at (804) 786-3538.

Commissioner
Agricultural Stewardship Program
Virginia Department of Agriculture and Consumer Services
P.O. Box 1163
Richmond, Virginia 23218

BACKGROUND ON THE AGRICULTURAL STEWARDSHIP ACT

In response to increased public concerns for a clean environment, Virginia's agricultural leadership sought a way of dealing with agricultural water pollution that was different from the approaches used with other industries, such as manufacturers. Most manufacturing plants must obtain permits and follow strict rules of operation. The agricultural community wanted a different approach that did not rely on permits and strict operating rules, but took into account the wide variety of farming practices used in Virginia.

The ASA offers a positive approach to addressing pollution involving agricultural operations. It provides procedures by which individual agricultural producers can be alerted to areas of their operations that may be causing water pollution. Rather than developing regulations with strict rules governing every type of farming practice, the ASA looks at each farm individually.

BRIEF SUMMARY

AGRICULTURAL STEWARDSHIP ACT (ASA)

The procedures created by the ASA begin with a complaint made to the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS). The Commissioner must accept complaints alleging that a specific agricultural activity is causing or will cause water pollution. However, not all complaints have to be investigated as will be discussed below. After the Commissioner receives a complaint and the complaint is one that must be investigated, he will ask the local soil and water conservation district ("District" or "local district") whether it wishes to investigate the complaint. If the District does not wish to investigate the complaint, the Commissioner will conduct his own investigation. (A copy of the ASA is in Appendix A.)

The purpose of the investigation is to determine whether the agricultural activity (that was the subject of the complaint) is causing or will cause water pollution. If not, the Commissioner will dismiss the complaint.

If the agricultural activity is causing or will cause water pollution, the ASA gives the owner or operator an opportunity to correct the problem. The owner or operator

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will be asked to develop a plan containing "stewardship measures" (often referred to as "best management practices") to prevent the water pollution. The owner or operator then develops the plan, and once the plan is developed, the District reviews it and makes recommendations to the Commissioner. If the Commissioner approves the plan, he will then ask the owner or operator to implement the plan within specified periods of time.

If the owner or operator fails to implement stewardship measures after a plan is approved, enforcement action under the ASA will be taken against the owner or operator.

In some cases, the ASA investigation will not produce sufficient evidence to support the conclusion that the agricultural activity in question is causing or will cause pollution. In those cases, the investigator will offer suggestions on how the owner or operator might improve his practices to prevent complaints in the future. The purpose of the ASA is to solve problems by working one-on-one with the farmers.

SECTION A - WHAT THE ACT COVERS

1. *Activities Covered by the ASA*

The ASA applies to agricultural activities that are causing or will cause water pollution by sedimentation, nutrients or toxins. The only exception is when the agricultural activity in question is already permitted by the State Water Control Board (through the Department of Environmental Quality). The permits are usually: a Virginia Pollution Abatement ("VPA") permit (general or individual) for the storage and land application of animal waste; a Virginia Pollution Discharge Elimination System ("VPDES") permit for certain aquaculture facilities or for mixed production and processing operations; or a permit issued by the Commonwealth of Virginia for the land application of sewage sludge.

The ASA does not apply to forestry activities, odor concerns, or landfills. In terms of waste problems, the ASA would only apply to farm dumps where agricultural products or animal carcasses are disposed of and that have clear water quality impacts. Finally, the ASA does not apply to air pollution, or to water pollution caused by non-agricultural activities.

The Commissioner's staff will use Form 1 to determine whether or not the complaint can be investigated under the ASA. (A copy of Form 1 is in Appendix E.)

2. *Definitions of Sedimentation, Nutrients and Toxins*

Sedimentation is soil material, either mineral or organic matter, that has been transported from its original site by air, water, or ice and has been deposited in another location. The primary focus under the ASA will be on erosion of soil and its deposition in surface water.

Nutrients are dry or liquid materials that provide elements, such as nitrogen, phosphorus, and potassium that can nourish

plants. Commercial fertilizers and animal manure are the two primary sources used to supply nutrients to plants in agricultural operations and will be the focal point of the ASA.

For the purposes of these guidelines, a toxin is any substance or mixture of substances intended to be used to prevent, destroy, repel or mitigate agricultural pests, or to be used as a plant regulator, defoliant or desiccant, commonly called pesticides. In addition, oil, gasoline, diesel fuel and other petroleum products are potentially toxic materials that are usually employed in farming operations.

Soil, nutrients, pesticides, oil, gasoline, and other petroleum products are good and useful when they are kept in their proper places. It is only when any of this material reaches a stream, river, well, lake or other water body that they become a problem.

3. *What the Act Means by "Pollution"*

The ASA defines pollution as "any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins." (Section 3.2-400 of the ASA.) When sediments, nutrients, or toxins enter the water from an agricultural activity, they constitute pollution under the ASA.

However, even if pollution is occurring, the ASA gives the Commissioner the power to dismiss a case if the Commissioner determines that:

" . . . the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses . . ." (From Section 3.2-402 C of the ASA.)

There are two key questions for determining whether pollution is occurring or will occur.

1. Are there any barriers to prevent the sediment, nutrients, or pesticides from reaching the water?
2. Is the owner or operator using any practices designed to prevent the pollutant from reaching the water?

SECTION B - HOW INVESTIGATIONS ARE CONDUCTED

1. *Decision to Investigate*

The ASA is "complaint-driven." There can be no investigation of any farm activity unless the Commissioner receives a complaint. If the person making the complaint gives his name and no valid exception to investigation is identified in the preliminary review, the ASA requires that the Commissioner or the local District investigate the validity of the complaint. If the local District agrees to perform the District investigation, the Commissioner will ask the District to complete the investigation and provide evidence from its

investigation within twenty-one days of the date the complaint was received by the Commissioner. The ASA gives the Commissioner the choice of whether or not to investigate a complaint that was made anonymously with the investigation conducted by the local District, if it wishes, or by himself. After the district and/or the Commissioner's staff submit the evidence to the Commissioner, the Commissioner will make the final determination on the complaint's validity.

The procedures described in the Guidelines are applicable to nonemergency situations. If the Commissioner is made aware of an emergency situation, special procedures may be used, to the extent authorized by law, in order to protect the environment and the public.

2. *Handling of Complaints*

Complaints are accepted by either verbal or written statement. However, when a complainant does not wish to reveal his or her name and address, the Commissioner has discretion whether or not to investigate the alleged concern. In addition, if complaints are unclear and not site specific, the Commissioner may decide not to investigate them.

3. *Who Investigates*

With the exception of the anonymous complaint, the District decides who investigates a complaint. Upon receiving a complaint, the Commissioner must notify the District and give it the option to investigate the complaint. Form 2 shows the standard manner of notification to a District and requests the District's assistance. (A copy of Form 2 is in Appendix E.)

The District has five days to tell the Commissioner whether or not it will investigate the complaint. A District may decide to assist in a joint investigation. This type of investigation would include both District and VDACS staff with the VDACS investigator having the lead role. When the District chooses to conduct the investigation on its own, it may indicate in writing or orally its decision to the Commissioner or his staff. Form 3 is designed to provide a District with sample language that it may use in responding to the Commissioner's requests to investigate. (A copy of Form 3 is in Appendix E.)

A District may choose not to perform any investigations. Once a District has informed the Commissioner that it does not intend to perform ASA investigations, the District does not have to respond in the future to the Commissioner's notification that there is an ASA complaint involving an agricultural activity within its boundaries. As a courtesy, the Commissioner will continue to inform each District of such complaints.

4. *Time Limitations on Investigations*

The ASA requires that, for complaints investigated by a local District, the investigation must be completed within twenty-

one days of the Commissioner's receipt of the complaint. The ASA does not specify a length of time in which the Commissioner or his staff must complete the investigation; however, it is the Commissioner's policy that investigations his staff or he conducts are completed within that time period where possible. If the District conducts the investigation, the District will send its finding to the Commissioner so that he can determine whether a plan is necessary. The Commissioner is responsible for reporting his decision to the owner or operator.

5. *Notice to Owner or Operator of Investigation*

It is the policy of the Commissioner that his staff or the District, when it conducts the investigation, will give the owner or operator notice that the Commissioner has received a complaint, of the owner's or operator's agricultural activity which must be investigated. However, the Commissioner, in his discretion, may waive this policy. To document the notice and the investigation arrangements, the investigator (District or VDACS) will follow-up with a letter to the owner or operator. Form 5 shows the standard manner of a written notification for informing the owner or operator about a complaint. (A copy of Form 5 is in Appendix E.)

In those instances in which a District may not wish to give notice to the owner or operator about the complaint after they have agreed to investigate, VDACS will assist in delivering the initial notice of the investigation. VDACS will explain that a complaint has been received, that an investigation is necessary, and that someone from the District will contact the owner or operator to arrange a time to conduct a site investigation. Form 4 provides a place to document any telephone calls regarding this notice and other case activities. (A copy of Form 4 is in Appendix E.)

Regardless of who makes the initial contact, it is the policy of the Commissioner that the person who sends the written notice of the investigation to the owner or operator also send appropriate written information regarding the ASA. This policy may change at the discretion of the Commissioner. (VDACS will provide this information to the Districts if requested.) This information may provide the owner or operator an opportunity to learn more about the ASA, its procedures, and what the owner or operator can expect regarding resolution of the complaint.

6. *Notice of Findings from Investigation*

The Commissioner will notify the owner or operator of his decision as to whether a plan is necessary. When a District performs an investigation, it shall provide its findings to the Commissioner so that he can make this decision. This includes all materials produced and collected during the investigation period. Form 9 was created to record this type of information. The Commissioner's notice to the owner or operator will either dismiss the complaint or inform the owner or operator that he needs to submit a plan to the

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Commissioner describing conservation measures needed to correct the pollution problem. This plan is due 60 days after the owner or operator receives a written notice informing him that a plan is necessary. Form 6 is the standard manner of written notification to inform the owner or operator that a plan is needed to correct the water pollution problem. Information regarding planning and implementation will be sent with this notification to assist the owner or operator. The owner/operator may seek assistance in developing a plan. (See Section F of these Guidelines). The Commissioner may consider a corrective order if a plan is not submitted within 60 days. (A copy of Forms 6 and 9 are in Appendix E.)

The owner or operator must begin implementing his plan within six months of receiving notice that a plan is necessary. Then, the owner or operator must complete implementation of his plan within a period specified by the Commissioner not to exceed 18 months of receiving the notice. The owner or operator can receive an extension in some cases, as described in Section 7 below.

Upon approving the owner or operator's plan, the Commissioner will inform the owner or operator and the complainant. The District will be copied on this correspondence.

7. Extensions of Deadlines

Sometimes an owner or operator may need more time to complete implementation of his plan because of circumstances beyond his control. The ASA provides that the Commissioner may grant an extension of up to six months (180 days) if a hardship exists and if the owner or operator has made a request for an extension at least 60 days prior to the date he was supposed to have completed implementing his plan. The Commissioner will determine that a situation constitutes a hardship if it was caused by circumstances beyond the owner's or operator's control, and if the owner or operator has been making a good faith effort to implement his plan. Hardship can include financial problems. In his response the Commissioner will explain to the requestor of an extension the basis for his choosing to approve or reject such a request.

8. Notification of Landowner, if Different from Operator

The Commissioner will make a good faith effort to notify the landowner as well as the operator when the Commissioner determines that the complaint involves an agricultural activity on land that the operator rents from someone else or when the operator manages the agricultural activity for the owner of the land. If the investigation shows that no pollution problem exists, or if the problem is easily corrected by the operator's change in field management, the Commissioner may determine that notification of the landowner is unnecessary. If the problem involves an old feature (e.g., an old gully) that was created before the present operator began renting the land, or if correcting the problem requires construction, the

Commissioner may determine that the landowner needs to be notified.

9. Right of Entry

It is the Commissioner's policy that entry onto the land to conduct an investigation will be made with the consent of the owner or operator. However, it should be noted that the ASA gives the Commissioner, his designee, or a District the right to enter the land to determine whether or not the complaint is valid. In addition, the Commissioner, his designee, or the District may enter the same land to check implementation of stewardship measures specified in a corrective order and maintenance of stewardship measures. This entry onto private property must be handled in accordance with constitutional requirements.

It is the Commissioner's policy that if a complaint alleges water pollution created by erosion coming from a specific field on the farm, then the ASA investigator will not enter other fields. If the complaint is made more broadly to say that erosion is coming from the farm as a whole into X stream, then the investigation will cover all of the farm that drains into X stream. If the complaint is made even more broadly to say that erosion is coming from the farm as a whole without naming the water body, then the investigation will cover the whole farm.

With the owner's or operator's consent, the ASA investigator may enter fields not covered by the complaint, examine or do other things that are relative to the investigation.

It is the policy of the Commissioner that the owner or operator of a farm that is subject of a complaint will be given notice of intended entry to investigate the complaint. A phone call or statement to the owner or operator is sufficient. After a call, written notice to the owner or operator will confirm the investigator's oral statements. Form 5 shows the standard manner of written notification to the owner or operator before entering land that is the subject of a complaint. (A copy of Form 5 is in Appendix E.)

If an owner or operator denies the Commissioner's representative entry onto the land or later withdraws his or her consent regarding entry, the investigator will leave the property immediately and report this to the Commissioner as soon as possible. The ASA authorizes the Commissioner to obtain a court order allowing entry.

10. Purpose and Scope of Investigation

The principal purpose of the investigation is to determine if there is substantial evidence that the agricultural activity in question is causing or will cause water pollution from sedimentation, nutrients or toxins, as alleged in the complaint. When performing an investigation, information to answer this question can be recorded on Form 9. (A copy of Form 9 is in Appendix E.)

It is the Commissioner's policy that activities that are causing or will cause pollution that were not the subject of the complaint should be pointed out to the owner or operator as areas that should be voluntarily addressed, even though these areas are not covered by the ASA complaint. It is also the Commissioner's policy that the ASA's jurisdiction is "complaint-driven" and limited to the terms of the complaint.

11. *Evidence*

The ASA requires that there be "substantial evidence" that the agricultural activity is causing or will cause water pollution.

12. *Sample Collection Techniques*

To maintain uniformity in the state's system of collecting water samples, VDACS will use the procedures developed by the State Water Control Board (SWCB), as set forth in the applicable sections of VWCB's "Water Quality Assessment Operating Procedures Manual".

Due to the complexity and cost of water and fecal sampling and analysis, samples should be taken only when they are absolutely necessary to prove a case. When an investigator can see that pollutants are entering or will enter the water body in question, he will not need to take samples because the case can be proven through photographs, maps, eye-witness testimony, and other general evidence. The experience of other states that have programs similar to the ASA suggests that sampling is only necessary in a few cases. For scientific analysis of any water or other evidence, the District investigator should contact a VDACS Agricultural Stewardship Coordinator for specific instructions. VDACS will pay for the scientific analysis of any water or other evidence collected by the District during the investigation period.

SECTION C - CONFIDENTIALITY OF INFORMATION

The law requires the Commissioner of Agriculture and Consumer Services to hold records of active investigations in confidence. These records of active investigations include those records of active investigations created or held by the Districts pursuant to the Agricultural Stewardship Act. The owner or operator may review whatever notes and records the investigator has made after an ASA investigation is concluded. An investigation is concluded when the Commissioner has decided whether an agricultural activity is creating or will create pollution that requires an agricultural stewardship plan.

A District could receive a request under the Virginia Freedom of Information Act ("FOIA") (Chapter 37 (Sections 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia) to disclose records regarding an active investigation. Any request made to the District for records of active investigations under the Agricultural Stewardship Act should be referred immediately to the attorney who represents the District.

SECTION D - SUBSEQUENT VISITS TO FARM TO CHECK IMPLEMENTATION

In most cases, after the site investigation has been completed, no further on-site reviews are necessary once the Commissioner has sent a notice advising that a stewardship plan will be required. However, subsequent on-site reviews are necessary when an ASA plan is required. The purpose of the subsequent on-site review is to determine whether the owner or operator is implementing his ASA plan in accordance with his implementation schedule.

Subsequent on-site reviews have enforcement implications, which are the Commissioner's responsibility; so, Districts should not undertake subsequent visits without VDACS' express agreement. (This need for agreement from the Commissioner does not apply to a District's best management practices "spot-check" to determine compliance with a District cost-share agreement, even for a practice installed to meet ASA requirements.)

SECTION E - APPEALS AND FACT FINDING CONFERENCES

If an owner or operator who has been issued a notice under the Act fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

The Commissioner shall issue a corrective order only after an informal fact-finding conference. Informal fact-finding conferences are used to determine the factual basis for the Commissioner's decisions under the Agricultural Stewardship Act.

ASA gives "persons aggrieved" the right to appeal decisions of the Commissioner to the Virginia Soil and Water Conservation Board.

If the owner or operator fails to implement the corrective order, the Commissioner may seek a court order from the appropriate Circuit Court requiring the owner or operator to implement a plan developed by VDACS, or authorizing VDACS to enter the property to take action necessary to implement the plan itself. This will result in the owner or operator losing the ability to choose the best plan.

SECTION F - SOURCES OF ASSISTANCE FOR OWNER OR OPERATORS

There are several sources of assistance available to owners or operators to address pollution problems and to develop stewardship measures and plans. Areas of assistance and possible sources are listed below:

1. *Technical Assistance*

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Planning and, if necessary, engineering assistance is often available through:

- Local Soil and Water Conservation District
- Department of Conservation and Recreation
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services
- Private businesses
- Consultants

2. Cost-Sharing

Cost-Share assistance that may be available to implement plans is offered by:

- Local Soil and Water Conservation District
- U. S. Department of Agriculture, Farm Service Agency
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Department of Environmental Quality

3. Financial Planning

Financial planning is always a consideration when making decisions that affect a farming operation. These organizations can be of assistance to the farmer in his financial planning:

- Virginia Cooperative Extension (e.g., Farm Management Agents)
- Private financial institutions (e.g., commercial banks, agricultural financing organizations)

SECTION G - DEVELOPING PLAN THAT COMPLIES WITH ASA

The plan must include the following minimum requirements under the ASA:

- Stewardship measures needed to prevent the pollution, and
- Implementation schedule.

The plan should also include:

- A map showing area of concern and affected water feature- Statement of pollution problem
- Signature page for the owner or operator, local district director and Commissioner

The owner or operator will have received a letter from the Commissioner notifying the owner or operator of the results of the investigation. This letter specifies the components of

the agricultural activity that are causing or will cause water pollution. (A copy of this letter is in Appendix E, labeled as Form 6.) All of these components must be addressed in the plan.

If necessary, simple plans can be converted into more sophisticated formats after this deadline has been met. Planners should be sensitive to the fact that the owner or operator has a second deadline to meet: the owner or operator must begin implementing the plan within six months of receiving the official notice that the plan has been approved. Form 10 provides an example format of an ASA plan. (A copy of Form 10 is in Appendix E.)

Amendments to plans are acceptable as long as the amendments prevent or eliminate the pollution. Amendments must be reviewed by VDACS before the plan completion date. An amendment that necessitates an extension of time will not be denied simply because the time of completion will be delayed; however, the Commissioner may consider whether the additional time is needed because of the actual change in plans or because of any lack of due diligence by the owner or operator.

To make the planning process most effective, owners or operators should be given options for solving their pollution problem whenever possible. In terms of appropriate options, the ASA defines stewardship measures as "the best available nonpoint source control methods, technologies, processes, siting criteria, operating methods or other alternatives." There are often a variety of best management practices that can be employed to solve a single pollution problem. Thus, the planner will often have a wide variety of options from structural practices to changes in operating methods that can be offered to the owner or operator as solutions to the pollution problem. These options need not be the most expensive or employ the most sophisticated technology; they only need to prevent the pollution in question within the timeframe of the plan to be the "best". A plan that merely substitutes one form of pollution for another, however, is not acceptable.

SECTION H - VIOLATIONS AND PENALTIES

Under the ASA, the Commissioner issues a corrective order when the owner or operator fails to comply with the ASA {Section 3.2-403}. Further, if the owner or operator fails to allow the Commissioner or the investigator entry onto the property to investigate, implement stewardship measures, or ensure stewardship measures are being maintained, the Commissioner may seek a court order from the appropriate circuit court authorizing such entry onto the property.

A person who is subject to a corrective order issued by the Commissioner has the right to go to the Soil and Water Conservation Board to appeal that corrective order. Further, that person has the right to appeal the decision of the Board to the appropriate circuit court.

If an owner or operator fails to comply with the ASA, he or she may be subject to civil penalties and orders issued by the Commissioner {Section 3.2-406}. The ASA does not create any crime -- only civil violations. (See Appendix B, Civil Penalty Matrix for the Agricultural Stewardship Act Program.)

SECTION I - INTERGOVERNMENTAL COOPERATION

The ASA requires that agricultural activities that are causing or will cause water pollution be corrected. It is very important that agencies of local, state and federal government work together in a cooperative effort using a common-sense approach to assist owners or operators in effectively correcting these problems. Some of the agencies, besides the local Soil and Water Conservation Districts and Soil and Water Conservation District Board, that work in cooperation with the Commissioner and VDACS on water quality issues include the Department of Environmental Quality, the Department of Conservation and Recreation, the Natural Resources Conservation Service of the United States Department of Agriculture, and Virginia Cooperative Extension.

Section 3.2-409 of the ASA makes it clear that any local government may, subject to certain conditions, adopt an ordinance establishing a process for filing complaints, investigating them, and creating agricultural stewardship plans where necessary to correct pollution problems.

Likewise, Section 3.2-410 seeks to address potential conflicts with Chesapeake Bay Preservation Act (Bay Act) regulations. This section states that nothing in the ASA shall be interpreted to duplicate the agricultural requirements in the regulations adopted pursuant to the Bay Act.

VDACS serves as the primary coordinating agency for administering the ASA. VDACS' ASA staff assists the Commissioner with investigations and enforcement, and with communicating the results of the investigations with complainants. In addition to developing these guidelines, VDACS initiates the reporting and assessment processes annually. The purposes of the annual reporting and assessment process is to identify trends and needs and to seek means of addressing any problems that develop in the system of administering the ASA.

In some cases, VDACS provides technical and planning assistance to owners or operators in the wake of a complaint. VDACS' other main role is to coordinate the administration of the ASA with the Districts and other partners. VDACS' main goal in administering the ASA is to institute a "farmer-friendly" set of mechanisms by which owners or operators can address water pollution problems on a case-by-case basis, without the necessity of further overall regulation.

APPENDIX A

Agricultural Stewardship Act

Code of Virginia ("Agricultural Stewardship Act")

§ 3.2-400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Board" means the Soil and Water Conservation Board.

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1.

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with § 2.2-4019.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land where an agricultural activity occurs.

"Pollution" means any alteration of the physical, chemical, or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

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

"Stewardship measures" or "measures" means measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution that reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods, or other alternatives.

"Stewardship measures" or "measures" includes: (i) agricultural water quality protection management measures described in the Virginia Agricultural Best Management

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Practices Manual; and (ii) agricultural water quality protection management measures contained in the U.S. Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

(1996, c. 773, § 10.1-559.1; 2000, c. 973; 2008, c. 860.)

§ 3.2-401. Exclusions from chapter.

This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1; or (ii) a permit issued by the State Water Control Board, applies.

(1996, c. 773, § 10.1-559.2; 2008, c. 860.)

§ 3.2-402. Complaint; investigation; agricultural stewardship plan.

A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district where the land lies determine the validity of the information within 21 days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.

B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.

C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances that could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district where the agricultural activity is located. The notice shall state that, within 60 days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan that includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within 30 days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date that the owner or operator received the notice that the agricultural activity is creating or will create pollution.

D. The plan shall include an implementation schedule, and implementation of the plan shall be completed within a period specified by the Commissioner, based upon the seasons and other temporal considerations so that the period is that during which the possibility of success in establishment or construction of the measures required in the plan is the greatest, which shall not exceed 18 months from receipt of notice. The Commissioner may grant an extension of up to 180 days if: (i) a hardship exists; and (ii) the request for an extension was made not later than 60 days before the scheduled completion date. The Commissioner shall, within 30 days of receiving the request, inform the owner or operator whether or not an extension has been granted.

E. After implementing the approved plan according to the provisions of this chapter, the owner or operator shall maintain the stewardship measures established pursuant to the plan. The owner or operator may change the agricultural activity so long as the Commissioner is notified.

F. If the Commissioner determines that substantial evidence does not exist to prove that an agricultural activity is creating or will create pollution or that any pollution was caused by unusual weather events or other exceptional circumstances or that the pollution is not a threat to human health, animal health, or aquatic life or recreational or other beneficial uses, he shall inform the complainant and the owner or operator of his determination. Upon approving the owner's or operator's agricultural stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved.

(1996, c. 773, § 10.1-559.3; 2000, c. 973; 2008, c. 860.)

§ 3.2-403. Issuance of corrective orders.

A. If any owner or operator who has been issued a notice under § 3.2-402 fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures as provided in § 3.2-402, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

B. A corrective order issued pursuant to subsection A shall be issued only after an informal fact-finding conference, with reasonable notice being given to the owner or operator, or both, of the time, place, and purpose thereof, and shall become effective not less than five days after date of delivery to the last known address as provided in subsection C. The corrective order shall be suspended pending appeal by the recipient made within five days after delivery of such order to the last known address of the owner or operator.

C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt requested, sent to the

last known address of the owner or operator, or by personal delivery by an agent of the Commonwealth.

D. Notwithstanding other provisions of this chapter, if the Commissioner determines that a recurring polluting condition that is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity that is causing or is likely to cause an imminent or substantial danger to: (i) the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other beneficial uses, the Commissioner may issue, without advance notice, informal fact-finding conference, or hearing, an emergency corrective order. Such order may direct the owner or operator of the agricultural activity, or both, to cease immediately all or part of the agricultural activity and to implement specified stewardship measures or any necessary emergency measures within a stated period of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending, or canceling the emergency corrective order.

E. The Commissioner shall not issue a corrective order to any land owner or operator if the person is:

1. Actively implementing the agricultural stewardship plan that has been reviewed by the district where the agricultural activity is located and approved by the Commissioner, or
2. Actively implementing stewardship measures that have failed to prevent pollution, if the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(1996, c. 773, § 10.1-559.4; 2000, c. 973; 2008, c. 860.)

§ 3.2-404. Right of entry; court enforcement.

A. The district or the Commissioner may enter land that is the subject of a complaint, after notice to the owner or operator, to determine whether the agricultural activity is causing or will cause pollution of state waters.

B. Upon failure of any owner or operator to allow the Commissioner entry in accordance with subsection A, to implement stewardship measures in the time specified in a corrective order, or to maintain stewardship measures in accordance with subsection E of § 3.2-402, the Commissioner may present to the circuit court of the county or city where the land is located, a petition asking the court to require the owner or operator to allow the Commissioner entry or to carry out such measures within a specified time. If the owner or operator fails to implement the stewardship measures specified in the court order, the Commissioner may enter the

land involved and implement the measures. The Commissioner may recover the costs of implementing the stewardship measures from the owner or operator.

(1996, c. 773, § 10.1-559.5; 2000, c. 973; 2008, c. 860.)

§ 3.2-405. Appeal.

Decisions of the Commissioner may be appealed by persons aggrieved to the Board and thereafter to the circuit court in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

(1996, c. 773, § 10.1-559.6; 2008, c. 860.)

§ 3.2-406. Penalties; injunctions; enforcement actions.

A. Any person violating § 3.2-403 or 3.2-404 shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner or Board. Each day the violation continues is a separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, factors to be considered shall include the willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this chapter.

(1996, c. 773, § 10.1-559.7; 2008, c. 860.)

§ 3.2-407. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board

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may collect civil penalties that are owed in the same manner as provided by law in respect to judgment of a circuit court.

(1996, c. 773, § 10.1-559.8; 2008, c. 860.)

§ 3.2-408. Guidelines to be published by Commissioner; report.

A. In consultation with the districts, the Department of Conservation and Recreation, and interested persons, the Commissioner shall develop guidelines for the implementation of this chapter. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within 90 days of the effective date of this section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for publication in the Virginia Register of Regulations. At least 30 days shall be provided for public comment after the publication of the proposed guidelines. After the close of the public comment period, the Commissioner shall consider the comments that he has received and may incorporate any changes into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall submit final guidelines for publication in the Register. The guidelines shall become effective on April 1, 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been published in the Register and a public comment period has been provided.

B. The Commissioner shall compile a report by August 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties that may have been assessed. The Commissioner shall have the discretion to exclude and keep confidential specific information regarding ongoing investigations. The Commissioner shall: (i) provide the report to the Board, the Department of Conservation and Recreation, and to every district; (ii) publish notice in the Virginia Register that the report is available; and (iii) make the report available to the public upon request.

(1996, c. 773, § 10.1-559.9; 2008, c. 860.)

§ 3.2-409. Ordinances.

A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural stewardship plan development program. Ordinances adopted hereunder may contain only provisions that parallel §§ 3.2-401 and 3.2-402. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in § 3.2-402.

B. This section shall not apply to any ordinance: (i) in existence on July 1, 1996; or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

(1996, c. 773, § 10.1-559.10; 2008, c. 860.)

§ 3.2-410. Construction of chapter.

Nothing in this chapter shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act.

(1996, c. 773, § 10.1-559.11; 2008, c. 860.)

APPENDIX B

Civil Penalties Matrix for the Agricultural Stewardship Act Program

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Civil Penalties Matrix for the Agricultural Stewardship Act Program (Authority: Section 3.2-406 of the Code of Virginia)

VIOLATION

"Any person violating Section 3.2-403 or Section 3.2-404 shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner of Agriculture and Consumer Services. Each day the violation continues shall constitute a separate offense." (Section 3.2-406(A) of the Code of Virginia)

The following are violations of Section 3.2-403 of the Code of Virginia:

1. The owner or operator fails to submit an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia);

(Base civil penalty-\$200)

2. The owner or operator fails to begin actively implementing an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia);

(Base civil penalty-\$500)

3. The owner or operator fails to complete the implementation of an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia);

(Base civil penalty-\$500)

4. The owner or operator fails to maintain the required stewardship measures after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia); and

(Base civil penalty-\$250)

5. The owner or operator fails to comply with an Emergency Corrective Order (Authority: Section 3.2-403(D) of the Code of Virginia).

(Base civil penalty-\$500)

The following are violations of Section 3.2-404 of the Code of Virginia:

The owner or operator denies the Commissioner or his designee the right of entry (Authority: Section 3.2-404(A) of the Code of Virginia).

(Base civil penalty-\$500)

The following factors shall be considered in determining the amount of any civil penalty:

1. If there is willfulness of violation, add \$500 to the base civil penalty;
2. If there is history of noncompliance with Agricultural Stewardship Act, add \$1000 to the base civil penalty;
3. If there is failure of owner in notifying, containing and cleaning up any discharge, add \$1000 to the base civil penalty;
4. If there is damage or injury to state waters or the impairment of its uses, add \$1500 to the base civil penalty; and
5. When the injury is of such a nature and degree as to interfere with general health, welfare and property, add \$1500 to the base civil penalty.
6. As stated in Section 3.2-406, the maximum civil penalty the Commissioner may assess per violation is \$5,000.
7. If any combination of applicable penalties under this matrix exceeds \$5,000 for a single violation, \$5,000 is the maximum amount that will be assessed for that violation.

APPENDIX C

Steps In Addressing Agricultural Stewardship Act Complaints

STEPS IN ADDRESSING AN ASA COMPLAINT

1. Commissioner's Office receives complaint:

- Commissioner's Office reviews complaint and determines if the ASA has jurisdiction.
 - If not under ASA's jurisdiction, Commissioner dismisses complaint.
 - If under the ASA's jurisdiction, Commissioner determines whether investigation is necessary.

2. Commissioner's Office determines whether the investigation is necessary:

- In cases with non-anonymous complaints, an investigation is required.
- In cases with anonymous complaints, the Commissioner has the option to investigate.

3. If investigation is needed:

- Commissioner's Office contacts local Soil and Water Conservation District and informs it of the complaint.
- District has five days to notify the Commissioner's Office whether or not it will investigate.

4. Contact the owner/operator to inform him or her of complaint and the need to investigate, followed by a letter.

- If farmer denies request to enter land, the Commissioner may seek a court order.

5. Investigate complaint and report findings to Commissioner's Office within 21 days of receiving complaint.

6. Commissioner's Office reviews investigation report and, if needed, gathers more information. Commissioner's Office then makes decision as to whether complaint is founded, then contacts farmer with findings (via registered mail, return receipt requested) and the District within 30 days of receiving investigation report.

- If complaint is unfounded
 - Action on complaint complete
 - Complainant contacted and informed on reasons why complaint was unfounded.
- If complaint is founded – Finding is reviewed and discussed with farmer
 - Farmer accepts decision, or
 - Farmer appeals decision to the Virginia Soil and Water Conservation Board
 - Farmer may appeal Board's decision to local Circuit Court

7. Farmer develops plan to address pollution and sends copy to the Commissioner's Office and District within 60 days after receiving notice of investigation findings and of the need to develop a plan.

- If farmer fails to develop own plan, Commissioner may seek court order requiring farmer to implement plan developed by VDACS.

8. District reviews plan and sends its recommendations to the Commissioner's Office.

9. Commissioner's Office reviews plan; District recommendations and notifies farmer.

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- Plan approved, and/or amended with conditions
- Plan rejected
 - Farmer develops new plan and repeats submittal process, or
 - Farmer appeals through the process described in item 6.

10. Commissioner's Office contacts complainant, informs him or her of action taken, and plan implementation completion date.

11. Six months after farmer is notified that plan is necessary, Commissioner's Office will check to ensure that farmer has begun implementing plan.

- Implementation has begun, or
- Implementation has not begun
 - Commissioner institutes an informal fact-finding conference with the owner / operator
 - ASA requires Commissioner to issue a corrective order (via certified mail, return receipt requested) to farmer at this point
 - Owner/operator may appeal through same process as described in item 6.

12. By the completion date, a site review will be conducted to ensure complete plan implementation.

- Once plan is implemented, farmer is required to maintain
- Hardship cases can receive a 180-day extension if farmer's request is received 60 days prior to completion date and is approved by the Commissioner's Office.
- Farmer can appeal through the same process described above in item 6.

APPENDIX D

Steps to Consider During An Agricultural Stewardship Act Investigation

When beginning an investigation, it is likely to help if you keep several key questions in the back of your mind. These questions are:

1. What pollutant (sediment, nutrient, pesticide or petroleum product) was the subject of the complaint?
2. What water body (stream, river, well, etc.) was the subject of the complaint?
3. Is there a physical barrier (e.g., buffer, berm, slope, etc.) that would help prevent the pollutant in question (soil,

nutrients, pesticides or petroleum products) from reaching the stream, river or well?

4. Is the farmer using any BMPs that are designed to help prevent the pollutant in question from reaching the stream, river or well?

With these questions in mind, begin to assess the physical layout and the farmer's operation of the field, feedlot or pasture that is the subject of your investigation. Some things to assess are as follows (Use the ones that would be applicable to the pollutant that was the subject of the complaint):

- ❖ Is there evidence of erosion?
- ❖ What sources of nutrients are used or produced in the operation?
- ❖ What types of pesticides and petroleum products are used in the operation?
- ❖ If pesticides are used, are they water-soluble, evaporative or do they tend to bind to soil?
- ❖ What are the characteristics of the topography in relation to the water body?
 - Slope
 - Sink holes
 - Soil Types
 - Etc.
- ❖ Is there a buffer or other barrier between the site where the problem is alleged to be occurring and the water body?
- ❖ If there is a buffer, what are the characteristics for the buffer?
 - Mixed vegetation (trees and shrubs, etc.)
 - Grass
 - Etc.
- ❖ What condition is the buffer in?
 - Well vegetated
 - Killed areas
 - Eroded
 - Etc.
- ❖ Does the farmer use nutrient management practices, and if so what are they?
- ❖ Are stream banks eroded, and if so, what was the cause?
 - Natural causes

- Livestock
- Etc.
- ❖ Are BMPs used on the land, such as residue management, conservation tillage, sod waterways, animal waste system, hardened access, etc.?
- ❖ Are BMPs well maintained?
 - Is sod waterway or filter strip being filled with sediment?
 - Is animal waste storage facility emptied on schedule?
 - Etc.
- Can the alleged pollution even be a product of this farming operation?
- Is there a route from the field, feedlot or pasture that the pollutants would travel easily (e.g., unobstructed by a physical barrier) to the water body?
- Given the management of the field, feedlot or pasture and other factors, how large is the level of pollution that could be occurring (e.g., large, medium, minimal, none)?
- If there is a pollution occurring, could the pollution in question be occurring from natural causes (e.g., natural stream bank erosion)?
- If there is pollution occurring, was it caused by circumstances beyond the farmer's control?

This is not an all-inclusive list because there may be other site-specific and complaint-specific circumstances that you'll want to consider, but this gives you an idea of what to assess.

Taking what you've learned about this operation in your assessment, begin to answer the following questions:

Using your answers to these questions, you can begin to write up your investigation report and formulate your opinion regarding this case. If you have questions during this process, please contact one of the Agricultural Stewardship Coordinators at (804) 786-3538.

APPENDIX E

Forms for the Agricultural Stewardship Act Program

Today's Date _____

Complaint No. _____

FORM 1

**COMPLAINT TRACKING FORM
AGRICULTURAL STEWARDSHIP ACT**

Name of person receiving complaint: _____

1. Was the complaint made anonymously? Yes No
 If "Yes," what reason (if any) did complainant give for not wanting to give (his/her) name?

Note: If complainant would not give his/her name, Commissioner must make decision regarding whether or not to investigate.

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If "No," complainant's name and mailing address and phone number are:

2. Does this complaint concern an agricultural activity? Yes No

If "Yes," go to question 3. If "No," inform complainant that we have no jurisdiction over non-agricultural activities.

3. What was the agricultural activity? *Circle:* Beef Dairy Poultry Hogs

Horses Cropland

list additional activities: _____

4. Is the agricultural activity is causing; or, will the agricultural activity cause water pollution?

Yes **No** **Uncertain**

If "Yes," go to question 5. If "No," inform complainant that we have jurisdiction only over complaints concerning water pollution.

5. What is the nature of the alleged water pollution?

6. What is the cause of this alleged water pollution? *Circle:* sedimentation

nutrient enrichment toxins

list additional causes: _____

If additional causes are given then dismiss complaint and inform complainant that we have jurisdiction only over complaints alleging water pollution caused by sedimentation nutrient enrichment and toxins coming from agricultural activities.

7. Is this specific agricultural activity covered by a government permit (e.g, VPA, VPDES, etc.)?

Yes No Uncertain

If "No" OR "Uncertain" go to question 8. If "Yes," inform complainant that we have no jurisdiction over complaints concerning water pollution from activities that are covered by a government permit .

8. Name and address of owner or operator whose operation is subject of complaint:

Phone Number(s): _____

9. County Name: _____

10. Directions to complaint site: _____

11. Name of the local soil and water conservation district in which this agricultural activity is located:

(VDACS Letterhead)

FORM 2

*[NOTIFICATION TO DISTRICT OF COMPLAINT
AND REQUEST TO INVESTIGATE]*

TO: Directors, *[list district name]* Soil & Water Conservation District

FROM: Commissioner of Agriculture and Consumer Services

THROUGH: *[Coordinator's name]*
Agricultural Stewardship Coordinator

DATE: *[current date]*

RE: Water Pollution Complaint from Agricultural Activity in Your District
(Complaint No. *[number]*)

We have received a complaint alleging that an agricultural activity in your District is causing or will cause water pollution. That agricultural activity is described in greater detail on the attached Complaint Tracking Form. Pursuant to Section 3.2-402 of the Code of Virginia, I hereby request that you determine the validity of the information in the complaint.

According to Section 3.2-402, you must advise me by the end of the fifth (5th) calendar day following the day on which you receive this request of your decision regarding whether or not you wish to determine the validity of the information in this complaint. (Our standard response form #3 can be used.)

The Agricultural Stewardship Act gives the District] only 21 days to complete investigations to determine the validity of complaints, so if you choose to investigate to determine the validity of the information in the complaint, I will need to receive your decision by the date of [five days from current date]. If you choose to investigate, the standard investigation form #9 can be used.

Thank you for your consideration of this request. If you have any questions, please feel free to call me at 804/786-3501 or my staff at 804/786-3538.

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[District letterhead]

FORM 3

*[DISTRICT'S DECISION REGARDING
REQUEST TO INVESTIGATE VALIDITY OF COMPLAINT]*

TO: Commissioner of Agriculture and Consumer Services

FROM: *[district name]*
Soil & Water Conservation District

DATE: *[current date]*

RE: Water Pollution Complaint from Agricultural Activity in Our District
(Complaint No. *[number]*)

We have received your request regarding a complaint alleging that an agricultural activity in our District is causing or will cause water pollution by sedimentation, nutrient enrichment or toxins. That agricultural activity is described in greater detail on the attached copy of the first page of the corresponding Complaint Tracking Form. Pursuant to Section 3.2-402 of the Code of Virginia, I hereby notify you that this Soil & Water Conservation District *[insert the words will investigate, will not investigate or will assistance in a joint investigation with the Virginia Department of Agriculture and Consumer Services]* to determine the validity of the information in that complaint.

Copy: Agricultural Stewardship Coordinator

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(VDACS Letterhead)

FORM 5

[Letter to notify the owner or operator about the complaint]

[current date]

[name and address of owner or operator]

Re: Water Pollution Complaint from
Agricultural Activities (Complaint *[number]*)

Dear *[last name]*:

This letter is to notify you that on *[date]* the Virginia Department of Agriculture and Consumer Services (VDACS) received a complaint alleging that an agricultural activity involving a *[describe activity and location]* is causing water pollution. This complaint falls under the jurisdiction of the Agricultural Stewardship Act (Act) and needs to be investigated within 21 days. During our phone conversation today, you indicated that you would be available to meet with me on *[date and time]*. At that time I will investigate the alleged water pollution concern.

During this investigation, evidence will be collected to determine if your *[activity description]* is allowing *[describe type of pollution]* to enter state waters. If the Commissioner of Agriculture determines that a sufficient amount of evidence is present to cause a threat to human health, animal health, aquatic life, water quality or recreational uses, a plan to correct the water pollution would be required. Then, you would be required to begin implementing this plan within six months. Once the stewardship measures within the plan are completed, the Commissioner of Agriculture will send a letter to document that you have completed your obligations under the Act.

I have enclosed additional information regarding the Agricultural Stewardship Act requirements for your review. If you have any questions, I can be reached at my office by calling *[list phone number]*.

Sincerely,

Agricultural Stewardship Coordinator

Copy: *[local soil and water conservation district]*

(VDACS Letterhead)

FORM 6

[Notification to owner or operator of investigation findings]

[current date]

[name and address of owner or operator]

Re: Notification to owner or operator pursuant to the Agricultural Stewardship Act regarding the complaint involving [farming activity] (COMPLAINT [number])

Dear [last name]:

After I received a complaint alleging that an agricultural activity on your farm is causing or will cause water pollution by [list type(s) of pollution], an investigation was performed on [date] by [list investigator(s) and agency name(s)].

The findings from this investigation are as follows:

- ◆ [describe the location and specific agricultural activity that is or will cause water pollution]

Several factors that contribute to this problem are:

- ◆ [describe factors that contribute to the specific agricultural activity]

In conclusion, this agricultural activity was found to be one that is causing and will cause water pollution and measures must be taken to correct the water pollution problem according to the Agricultural Stewardship Act. **You need to submit an Agriculture Stewardship Plan that addresses the water pollution problem within 60 days of receiving this notice [approximately date] to the Commissioner of Agriculture and Consumer Services and a copy to the [local Soil and Water Conservation District].** A list of possible sources of assistance and the requirements for this plan are attached.

Best Management Practices that will correct the water pollution problem

- ◆ An implementation schedule to begin within six months of receiving this notice [approximate date].
- ◆ Complete implementation within twelve months of receiving this notice [approximate date].

Possible assistance in plan development and cost-share

- ◆ [Local Soil and Water Conservation District and phone number]
- ◆ [Local USDA Natural Resources Conservation Services and phone number]
- ◆ [Local County Cooperative Extension and phone number]
- ◆ Virginia Department of Agriculture and Consumer Services
[Agricultural Stewardship Coordinator and phone number]
- ◆ Private consultants in your area

[include information about the appeal process] If you have questions, please contact [name of the Agricultural Stewardship Coordinator and phone number].

Sincerely,

Commissioner

Copy: [Local Soil and Water Conservation District]

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(VDACS Letterhead)

FORM 7

[Notification to owner or operator of Agricultural Stewardship Plan status]

[current date]

[name and address of owner or operator]

Re: Notification to owner or operator

pursuant to the Agricultural Stewardship Act regarding the approval of a Agricultural Stewardship Plan involving [farming activity]

(Complaint [number])

Dear [last name]:

This letter is to notify you that I have approved your Agricultural Stewardship Plan [indicate who developed the plan and list any conditions that may go with the approval]. Please be mindful of the implementation schedule to ensure that all dates are met. In your case, the Agriculture Stewardship Act (ASA) requires you to begin correcting the identified water pollution problem before [date].

[Explain any specific conditions about the plan or the use of state or federal assistance]. The best management practices identified in your Agricultural Stewardship Plan to address [specific agricultural activity] are needed to prevent the water pollution identified in my letter dated [Form 6 date]. If you have any questions, please call my office at [phone number].

Thank you for cooperating with the Agricultural Stewardship Program. Through cooperation from producers like you, agriculture can address water pollution problems without the need for more stringent legislation and regulations.

Copy: [Local Soil and Water Conservation District]

(VDACS Letterhead)

FORM 8

[Response to complainant regarding status of their complaint]

[current date]

[name and address of complainant]

Re: Status of [name of farmer or operation]
complaint pursuant to the Agricultural
Stewardship Act (Complaint [number])

Dear [last name]:

An investigation was conducted after receiving your complaint alleging that an agricultural activity on [name of farmer or operation] is causing or will cause water pollution by [list the type(s) of pollution], an investigation was performed on [date] by [list investigator(s) and agency name(s)].

[Explain the findings during the investigation and the Commissioner's decision].

[Describe the obligations of the owner or operator as it relates to the Agricultural Stewardship Act].

Thank you for making us aware of this situation and for being patient as we address water pollution problems caused by agricultural activities.

Copy: [Local Soil and Water Conservation District]

General Notices/Errata

Today's date _____

Complaint Number _____

FORM 9

COMPLAINT INVESTIGATION FOR AGRICULTURAL STEWARDSHIP ACT

Investigator(s) Name/Agency: _____

List of all present during investigation: _____

Date of complaint and description: _____

Did you find that the complained-of agricultural activity is subject to a VPA or VPDES permit?

Yes No

If yes, stop here and return this form to the Commissioner's Office.

Description of the site during the investigation. *(Attach additional sheets if necessary):*

In your opinion, does the evidence support the claim that this agricultural activity is causing or will cause water pollution? Yes No

If no, please list reasons for your conclusion. *(Use additional sheets, if necessary.):* _____

Stop here and return this form to the Commissioner's Office or continue.

If yes, list all evidence that was collected on site and other supporting data (e.g., pictures, water samples, aerial photographs with stream, topographical maps and technical drawings of the problem areas).

FORM 10

[Farm or operation name and address]

Agricultural Stewardship Plan

[date]

Objective: *[state the objective of the plan]*

Statement of water pollution problem: [describe each activity or structure that was identified in Form 6 as causing, or that will cause, water pollution. Then describe each solution to correct the water pollution problem.]

Implementation schedule:

As directed by the Virginia Department of Agriculture and Consumer Services, the implementation of these corrective conservation measures will begin prior to *[use date found on Form 6 under plan requirements]*.

[list each solution and indicate implementation dates]

Solution(s)	Implementation Date(s)
_____	_____
_____	_____
_____	_____
_____	_____

ATTACHMENTS

- *[Use aerial photographs from USDA Farm Service Agency]*
 - *[Use a technical drawing to indicated the affected water feature, problem area, and the corrective conservation measures.]*
-

SIGNATURES:

Owner or Operator _____ Date _____

Soil and Water Conservation
District Representative _____ Date _____

Commissioner of Agricultural
and Consumer Services _____ Date _____

[This planning form is only a guide. Other types of plans are acceptable providing the plan meets Agricultural Stewardship Act requirements.]

General Notices/Errata

INVESTIGATION TRACKING CALENDAR REGARDING THE AGRICULTURAL STEWARDSHIP ACT

Complaint No. _____

Completion Date	Required Completion Date	STEPS IN ADDRESSING COMPLAINTS
		1. Commissioner's office receives complaint (use Form 1)
		2. Letter from Commissioner's office to inform District of complaint (use Form 2)
		3. District sends response back within five days to Commissioner to inform if they will investigate the complaint (use Form 3)
		4. Phone calls to owner/operator to inform them of the complaint and inform of intent to investigate (use Form 4)
		5. Letter sent to owner/operator to follow-up on phone call as well as provide information on the Act (use Form 5)
		6. Investigate and report to Commissioner within 21 days (use Form 9)
		7. Commissioner's decision to owner/operator (via certified mail) and District within 30 days (use Form 6)
		8. Agricultural Stewardship Plan to Commissioner's Office within 60 days (can use Form 10)
		9. Agricultural Stewardship Plan reviewed by SWCD
		10. Agricultural Stewardship approval letter to owner/operator within 30 days (use Form 7)
		11. Letter to Complainant informing them of complaint status (use Form 8)
		12. Implementation of plan (begin within six months) <input type="checkbox"/> yes <input type="checkbox"/> no Site visit after six months to insure compliance If not implementing, Commissioner sends a corrective action by certified mail
		13. Implementation completion not to exceed 18 months. Hardship cases can be extended by Commissioner for 180 days only if request is received 60 days before the final implementation or after a natural disaster occurs. Request received: _____ Granted date: _____ New Implementation Completion Date: _____
		14. Plan implementation complete
		15. Site inspection review

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 3, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00117

Ex Parte: In the matter of considering § 532 (b) of the Energy Independence and Security Act of 2007

ORDER ESTABLISHING PROCEEDING

Section 303 (a) of the Public Utility Regulatory Policies Act of 1978 ("PURPA")¹ requires each state regulatory authority, with respect to each gas utility for which it has ratemaking authority, to consider certain federal standards established by PURPA. Each such state regulatory authority is required to determine whether it is appropriate, to the extent consistent with otherwise applicable state law, to adopt these standards.² The State Corporation Commission ("Commission") has conducted various proceedings concerning energy standards since PURPA's adoption in 1978.³

On December 19, 2007, President George W. Bush signed the Energy Independence and Security Act of 2007⁴ ("Energy Independence and Security Act" or "Act") into law. The stated purposes of this Act include moving the United States toward greater energy independence; increasing the production of clean renewable fuels; promoting research on the capture and storage of greenhouse gases; increasing energy efficiency in buildings, vehicles, and other products; improving the energy performance of the federal government; and protecting consumers.

Section 532 (b) of the Energy Independence and Security Act amends § 303(b) of PURPA⁵ by adding the following standards for consideration:

(5) Energy efficiency

Each natural gas utility shall—

(A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and

(B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

(6) Rate design modifications to promote energy efficiency investments

(A) In general

The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.

(B) Policy options

In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

(i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;

(ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;

(iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and

(iv) adopting rate designs that encourage energy efficiency for each customer class.

For purposes of applying the provisions of this subtitle to this paragraph, any reference in this subtitle to the date of enactment of this Act [November 9, 1978], shall be treated as a reference to the date of enactment of this paragraph [December 19, 2007].

Section 532 (c) of the Energy Independence and Security Act also amends § 303 (a) of PURPA by adding the following conforming amendment: "Section 303 (a) of the Public Utility Regulatory Policies Act of 1978 (15 U.S.C. 3203(a)) is amended by striking 'and (4)' inserting '(4), (5), and (6)'."

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that, notwithstanding the Commission's reservations as to its legal propriety,⁶ a proceeding will be established to consider for implementation in the Commonwealth the two federal standards enumerated in Section 532 (b) of the Energy Independence and Security Act. This action shall not constitute a waiver of any right of the Commission or the Commonwealth of Virginia, including hereafter any right to claim immunity or to challenge or object to any actions that may be taken by any person, federal authority, or other entity in relation to the Energy Independence and Security Act.

The Commission will direct that notice be given to the public and that interested persons have an opportunity to comment on the issues raised herein. The Staff has developed lists of individuals, organizations, and companies that may be interested in this proceeding. We will direct the Staff to provide copies of this Order Establishing Proceeding by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies on these lists. We will also direct that a copy of this Order Establishing Proceeding be forwarded to the Virginia Register for publication.

Therefore, the Commission invites interested persons to comment on any of the following issues: (1) whether the Commission has the authority to consider these two federal standards; (2) whether the implementation of such standards

General Notices/Errata

would be consistent with otherwise applicable Virginia law; (3) whether any Virginia laws presently address the issues presented in these two federal standards; (4) whether the energy efficiency requirements set forth in § 532 (b) (5) of the Energy Independence and Security Act should be adopted by this Commission; and (5) whether the rate design modifications to promote energy efficiency investments set forth in § 532 (b) (6) of the Energy Independence and Security Act should be adopted by this Commission. If an interested person advocates implementing either of the standards listed in § 532 (b) of the Energy Independence and Security Act, such person should describe in their comments how such standards would best be implemented.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00117.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulation for publication in the Virginia Register.
- (3) Within five business days of the filing of this Order with the Clerk of the Commission, the Staff shall transmit electronically or mail copies of this Order to interested persons and organizations as discussed in this Order.
- (4) On or before November 20, 2009, the Staff shall file with the Clerk of the Commission a certificate of the transmission or mailing required by Ordering Paragraph (3) and include a list of the names and addresses of persons to whom the Order was transmitted or mailed.
- (5) On or before December 2, 2009, any interested person may file an original and fifteen (15) copies of comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2009-00117 and address the specific issues raised in this Order. 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>.
- (6) On or before December 8, 2009, the Staff may file comments with the Commission presenting its findings and recommendations, or responding to any comments filed by interested persons in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; the natural gas public utilities subject to the Commission's jurisdiction set forth in Appendix A to this Order; and the Commission's Divisions of Economics and Finance and Energy Regulation.

¹ 15 U.S.C.S. § 3203 (a) (2006).

² Id.

³ Such proceedings include, for example: Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Consideration of standards for integrated resource planning and investments in conservation and demand management for natural gas utilities, Case No. PUE-1994-00030 (Final Order) (Oct. 14, 1994).

⁴ Pub. L. 110-140, 121 Stat. 1492.

⁵ 15 U.S.C.S. § 3203 (b) (2006).

⁶ The Commission notes that developments in the law subsequent to the original adoption of PURPA raise doubt about the constitutionality of the co-opting of state regulatory agencies to implement a federal regulatory scheme. See, e.g., *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice to Restore Water Quality for Portions of Assamoosick Swamp

Public meetings: Public meetings will be held on Wednesday, December 2, 2009, from 2 p.m. to 4 p.m. and 6 p.m. to 8 p.m. at the Newsome Human Services Building located at 20103 Princeton Road, Sussex, VA 23884. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality for portions of Assamoosick Swamp, unnamed tributary to Assamoosick Swamp, Seacorrie and unnamed tributary to Seacorrie Swamp, Black Swamp, and German Swamp located within Sussex and Southampton counties. This notice also announces the first public meetings and a public comment opportunity.

Meeting description: Overview and summary of the research to date of the water quality impairments of the recreation/swimming use for portions of Assamoosick Swamp and tributaries (mentioned above), which are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination for portions of the Assamoosick Swamp and its tributaries. This impairment spans approximately 34 miles. These waterways are impaired for failure to meet the recreational (swimming) designated use due to exceedances of the bacterial water quality standard.

Waterbody	Location	Impaired Length (mi)	Impairment
Assamoosick Swamp	Sussex, Southampton	15.76	Recreational Use (Swimming)
Tributary to Assamoosick Swamp	Southampton	2.06	
Seacorrie Swamp	Sussex	6.91	

Tributary to Seacorie Swamp	Sussex	1.46	
German Swamp	Sussex	3.65	
Black Swamp	Sussex	3.76	
Total Impaired Length		33.60	

The study reports on the current status of the Assamoosick Swamp and its tributaries via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the above impairments. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacteria levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which expires December 31, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email margaret.smigo@deq.virginia.gov.

Total Maximum Daily Load for Beaver Creek

Virginia's Region 2000 Local Government Council and the Virginia Department of Environmental Quality (DEQ) will host a public meeting on Thursday, December 3, 2009, in Rustburg, Virginia, to provide information and hear public comment on a water quality study for a portion of Beaver Creek and its tributaries, which drain from portions of Campbell County.

Thursday, December 3, 2009, a public meeting will be held at 6 p.m. in the Agricultural Building, 163 Kabler Lane, Rustburg, Virginia. Kabler Lane is located just off of Route 24/Village Highway across from the Campbell County Administrative Offices.

Virginia agencies are working to identify sources of bacteria contamination in a portion of Beaver Creek within the James River Watershed in Central Virginia. This stream is listed on the federal § 303 D list of impaired waters and has been targeted for the development of a total maximum daily load (TMDL) study. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels for a specified pollutant have to be reduced to the TMDL amount.

The December 3 meeting will be the first of two public meetings that will be held during the TMDL study. At this first public meeting, the public will be provided an overview of (i) what a TMLD is and how a TMDL is developed, (ii) initial data about the streams and surrounding watershed, (iii) how the public can provide comment and input to the study over the coming year. In addition, the public will be given an overview of how the TMDL development is used within the state.

The public comment period on the materials presented at the public meeting will extend from December 3, 2009, until 11:59 p.m. on January 4, 2010. Comments may be submitted via email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received during the comment period. Please send all comments to the contact listed below.

For more information, please contact Kelly Hitchcock, Senior Planner, Virginia's Region 2000 Local Government Council at (434) 845-5678 ext 218 or at khitchcock@region2000.org.

Restore Water Quality for Portions of the Blackwater River

Public meetings: Public meetings will be held on Thursday, December 3, 2009, from 2 p.m. to 4 p.m. and 6 p.m. to 8 p.m. at the Disputanta Community Center located at 10010-B County Drive, Disputanta, VA 23974. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality for portions of the Blackwater River, Blackwater Swamp, tributary to Coppahaunk Swamp, Warwick Swamp, Second Swamp, and Otterdam Swamp within the City of Petersburg, and Prince George, Dinwiddie, Surry, and Sussex counties. This notice also announces the first public meetings and a public comment opportunity.

Meeting description: Overview and summary of the research to date of the water quality impairments of the recreation/swimming use for portions of the Blackwater River and tributaries (mentioned above), which are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination for portions of the Blackwater River and its tributaries. This impairment spans approximately 82 miles. These waterways are impaired for failure to meet the recreational (swimming) designated use due to exceedances of the bacterial water quality standard.

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Waterbody	Location	Impaired Length (mi)	Impairment
Blackwater Swamp	Petersburg, Prince George, Surry, Sussex	22.53	Recreational Use (Swimming)
Blackwater River	Sussex, Surry	24.59	
Warwick Swamp	Dinnwidde, Prince George	12.89	
Second Swamp	Petersburg, Prince George	15.24	
Otterdam Swamp	Surry	5.57	
Tributary to Coppahaunk Swamp	Sussex	0.89	
Total Impairment Length		81.71	

comments on the revised draft document for 30 days that will expire on December 22, 2009.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in the waters of the James River and its tributaries in the following jurisdictions:

Stream	County/City	Length (mi.)	Impairment
Bernards Creek	Chesterfield, Powhatan	6.97	Recreation Use (Swimming) due to Bacteria
Powwhite Creek	Chesterfield, Richmond City	8.12	
Reedy Creek	Richmond City	3.68	
James River	Richmond City	2.99	
Gillies Creek	Richmond City, Henrico	5.79	
Almond Creek	Henrico	2.26	
Goode Creek	Richmond City	1.23	
Falling Creek	Chesterfield	3.81	
No Name Creek	Chesterfield	1.83	
	Chesterfield, Henrico, Richmond City	10.84	
James River			

The study reports on the current status of the river and its tributaries via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the above impairments. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacteria levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which expires January 1, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email margaret.smigo@deq.virginia.gov.

Notice of Revised Water Quality Restoration Study: James River – City of Richmond, Tributaries in Richmond City, Chesterfield, Henrico, and Powhatan Counties, Virginia

Purpose of notice: The Virginia Department of Environmental Quality is announcing a comment period for the revised final draft document as a result of requests by the public. As of this notice, November 23, 2009, DEQ will accept public

These streams are impaired due to bacterial standard violations and failure to meet the primary contact (recreational) designated use. The study describes the sources of bacterial contamination and recommends total maximum daily loads (TMDLs) for these impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to meet Virginia's bacterial water quality standards. Please visit: <http://www.deq.virginia.gov/tmdl/mtgppt.html> to review the March 10, 2009, final public meetings presentations. The revised draft TMDL report is available for review at <https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.aspx>

Also at this site is a "Revision Summary" document, provided to indicate the tables, graphs, and sections that have undergone significant change from the original version of the report. Due to the revision and requests made during the most recent public comment period that ended April 10, 2009, DEQ is holding this additional public comment opportunity for 30 days for the revised draft report.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address, and telephone number of the person

commenting and be received by DEQ during the comment period, which will end on December 22, 2009.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

Restore Water Quality for Meherrin River

Public meeting: December 9, 2009, at the Southside Virginia Community College, Workforce Development Center, Room 108, at the corner of US Rt.1 and Rt.46, 109 Campus Drive, Albemarle, VA 23821. An afternoon public meeting will be held from 2 p.m. to 4 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are presenting the final draft report of a study to restore water quality, a public comment opportunity, and a public meeting.

Meeting description: Final public meeting on a study to restore water quality of the recreation/swimming use of portions of the Meherrin River and its tributaries to include Briery Branch, Genito Creek, and Great Creek that are impaired for the recreational use (swimming) due to exceedances of the bacteria water quality standard.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in portions of the Meherrin River and its tributaries. The bacterial impairments span a total of approximately 70 miles.

Stream	County	Impairment Length (mi)	Impairment
North Meherrin River	Lunenburg	7.55	Recreational (swimming) Use
Meherrin River	Brunswick	26.14	
Briery Branch	Brunswick	3.97	
Genito Creek	Brunswick	7.89	
Great Creek	Brunswick	24.34	
Total Impaired Length		69.89	

The study reports the current status of these waterways via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired river and creek segments. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person

commenting and be received by DEQ during the comment period, which will expire on January 7, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email margaret.smigo@deq.virginia.gov.

Total Maximum Daily Load for Implementation Plan for Middle River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) Implementation Plan for Middle River and its tributaries in Augusta County. The Upper Middle River, Lower Middle River, Moffett Creek, and Polecat Draft were originally listed as impaired in the 1996 § 303d report. All streams were listed for violations of the water quality standard for bacteria and the Upper Middle River segment and Moffett Creek were additionally listed for the general aquatic life (benthic) standard. TMDLs for bacteria were developed to address the bacterial impairments in all streams. A TMDL for sediment in Upper Middle River and Moffett Creek were developed to address the benthic impairments. These TMDLs were approved by EPA on August 10, 2004, and are available on DEQ's website at http://gisweb.deq.virginia.gov/tmdlapp/tmdl_report_search.cfm.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

DEQ and DCR will hold a final public meeting on Thursday, December 10, 2009, at 7 p.m. to inform the public of the IP development and to solicit comments on the draft document. The meeting will be held in the Board Room of the Augusta County Government Center in Verona.

The draft implementation plan will be available for review on the web no later than December 10, 2009, at <http://www.deq.virginia.gov/tmdl/iprpts.html>. The public comment period for this final public meeting will end on Monday, January 11, 2010. Questions or information requests should be addressed to Nesha McRae, DCR. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Conservation and Recreation, 44 Sangers Lane, Suite 102, Staunton, VA 24401, telephone (540) 332-9238, or email nesha.mcrae@dcr.virginia.gov.

General Notices/Errata

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 November 2, 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-Seven \(09\)](#)

Virginia's Twenty-Second On-Line Game "Virginia's New Year Millionaire Raffle" (effective 10/30/09)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

The Virginia State Plan for Family Medical Insurance Security (FAMIS)

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Family Medical Insurance Security (FAMIS), specifically, the FAMIS MOMS program and the FAMIS Select program. The department intends to implement a number of changes for these programs as directed by the federal authority of the Centers for Medicare and Medicaid Services (CMS). CMS oversees state Children's Health Insurance Program (CHIP) as established by § 2101 of the Social Security Act 42 USC § 1397aa. DMAS is renewing the federal waivers for these programs and anticipates changes based upon input from CMS. The FAMIS MOMS and FAMIS Select programs are authorized by CMS under a § 1115(a) demonstration waiver that expires June 30, 2010. DMAS may request continuation and expansion of the demonstration beyond this date. One requirement for continuation is to obtain input from all interested parties regarding the possibility of continuation of the demonstration program. CMS is expected to require some changes as a condition of continuation of the waiver.

FAMIS Select is an optional program available to children determined eligible for Family Access to Medical Insurance Security (FAMIS), whereby the Department of Medical Assistance Services (DMAS) provides premium assistance to the family to cover the child through a private or employer-sponsored health plan instead of directly through the FAMIS program. No changes to this program are anticipated. Wrap-around coverage will continue to be provided for immunizations only.

FAMIS MOMS provides health care coverage for pregnant women without creditable insurance coverage in families with income above the Medicaid limit of 133% of the federal

poverty level (FPL) up to and including 200% FPL. DMAS anticipates no change in the following policies:

- FAMIS MOMS will continue to provide coverage with federal reimbursement at the Title XXI rate for pregnant women without creditable insurance coverage in families with income above the Medicaid limit of 133% FPL up to and including 200% FPL.
- FAMIS MOMS will continue to use Medicaid methodology for determining income eligibility.
- FAMIS MOMS will continue to provide benefits that are identical to benefits provided to pregnant women under the Medicaid state plan.

DMAS anticipates the following changes to the FAMIS MOMS program:

- Applicants will be required to provide documentation of citizenship and identity. DMAS plans to implement this requirement through a separate regulatory action effective January 1, 2010, as mandated in Section 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Public Law 111-3).
- Applicants will be required to provide their Social Security number in order to facilitate compliance with the new requirement to document citizenship.
- Infants born to FAMIS MOMS will be deemed eligible for FAMIS coverage for the first year of life.

This notice is intended to satisfy the State Notice Procedures set forth in Vol. 59, No. 186 of the Federal Register (September 27, 1994). A copy of this notice is available for public review from Molly Carpenter at Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, email molly.carpenter@dmas.virginia.gov and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted in writing within 30 days of this notice publication to Ms. Carpenter and such comments are available for review at the same address.

Contact Information: Molly Carpenter, Maternal and Child Health Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961.

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/cumulstab.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

VIRGINIA DEPARTMENT OF TRANSPORTATION

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

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

Correction to Final Regulation:

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

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

VA.R. Doc. R09-1410

