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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: **John S. Edwards**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **William R. Janis**; **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>).

June 2010 through June 2011

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
27:1	August 25, 2010	September 13, 2010
27:2	September 8, 2010	September 27, 2010
27:3	September 22, 2010	October 11, 2010
27:4	October 6, 2010	October 25, 2010
27:5	October 20, 2010	November 8, 2010
27:6	November 3, 2010	November 22, 2010
27:7	November 16, 2010 (Tuesday)	December 6, 2010
27:8	December 1, 2010	December 20, 2010
27:9	December 14, 2010 (Tuesday)	January 3, 2011
27:10	December 29, 2010	January 17, 2011
27:11	January 12, 2011	January 31, 2011
27:12	January 26, 2011	February 14, 2011
27:13	February 9, 2011	February 28, 2011
27:14	February 23, 2011	March 14, 2011
27:15	March 9, 2011	March 28, 2011
27:16	March 23, 2011	April 11, 2011
27:17	April 6, 2011	April 25, 2011
27:18	April 20, 2011	May 9, 2011
27:19	May 4, 2011	May 23, 2011
27:20	May 18, 2011	June 6, 2011
27:21	June 1, 2011	June 20, 2011

*Filing deadlines are Wednesdays unless otherwise specified.

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

Proposed Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to § 3.2-5206 of the Code of Virginia.

Title of Regulation: 2VAC5-490. Regulations Governing Grade "A" Milk (amending 2VAC5-490-10, 2VAC5-490-15, 2VAC5-490-32, 2VAC5-490-35, 2VAC5-490-36, 2VAC5-490-37, 2VAC5-490-40, 2VAC5-490-50, 2VAC5-490-73, 2VAC5-490-105, 2VAC5-490-131, 2VAC5-490-138, 2VAC5-490-140; adding 2VAC5-490-30.1).

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

Public Comment Deadline: September 20, 2010.

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

Summary:

The proposed amendments adopt the provisions of the 2009 revision of the Pasteurized Milk Ordinance (PMO). The PMO is a federal model regulation for states to adopt to govern the production, processing, distribution, and sale of grade A milk and milk products. The requirements in the PMO are established under a cooperative state and federal program operated in cooperation with the National Conference on Interstate Milk Shipment (NCIMS). NCIMS is composed of dairy industry representatives, state milk regulatory personnel, representatives from the federal Food and Drug Administration, and members of academia. The NCIMS holds a conference every two years for the purpose of considering changes to the requirements of the PMO. The PMO establishes minimum standards for individual dairy farms, dairy plant processors, and state regulatory programs to comply with interstate milk shipment (IMS) ratings. Milk from grade A farm suppliers and dairy processors must achieve acceptable IMS rating scores to be shipped in interstate commerce. IMS ratings

provide the mechanism for the orderly marketing of milk and milk products in the United States. Compliance with IMS rating requirements is essential to maintain the ability of Virginia dairy farms and plants to market their products outside of Virginia.

The most important change concerns the definition of "grade A milk product" because this definition determines which milk products will fall under the grade A regulation. For the first time, the definition establishes a clear line between those milk products that will be regulated as grade A and those that will not. The new definition establishes that grade A milk products must be composed of at least 65% by weight milk and milk products and contain at least 2% milk protein. This definition will cause some cultured milk products currently produced in nongrade A plants in Virginia and other states to fall under the grade A regulations once adopted. The proposed amendments include an exemption for Virginia processors currently making these cultured milk products to continue to do so after the regulation goes into effect. The exemption will allow these Virginia processors to market their cultured milk products in Virginia, but the cultured milk products will still be considered in violation if found in interstate channels.

Numerous changes to definitions are proposed, including (i) amending the definition of "dairy farm" to clarify that only milk or milk products offered for sale for human consumption are included; (ii) deleting the definition for "evaporated milk"; (iii) changing references to the 2005 PMO to the 2009 PMO under definitions for "grade A condensed and dry whey," "grade A condensed milk," "grade A dry milk product," and "grade A dry milk and whey product"; (iv) adding a definition for "lowfat dry milk"; (v) amending the definition of "milk product" to reference 2VAC5-490-15; and (vi) amending the definition of "pasteurization" to be consistent with the definition of "pasteurization" in the PMO.

The following changes and new requirements also are included:

2VAC5-490-15 defines which milk and milk products are included under the grade A regulation.

2VAC5-490-30.1 establishes an exemption allowing restaurants to make and serve yogurt in their facility.

2VAC5-490-32 was amended to clarify the regulatory authority's ability to impound milk and milk products found in violation of the regulation.

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2VAC5-490-35 was amended to reference the 2007 version of the "Evaluation of Milk Laboratories."

2VAC5-490-36 was amended to reference the most recent revision of M-I-96-10 (Revision #7) dated January 4, 2010.

2VAC5-490-37 was amended to reference the 2007 version of the "Evaluation of Milk Laboratories" and to delete language referencing the initial compliance date for industry labs under the regulation.

2VAC5-490-40 was amended to include labeling requirements for dry milk products.

2VAC5-490-50 was amended to:

1. Allow the process of filtration or bactofugation to be used on grade A milk and milk products;
2. Raise the somatic cell standard for goat's milk to 1,500,000 cells per milliliter from 1,000,000 cells per milliliter;
3. Include quality standards for nonfat dry milk;
4. Reference the 2009 version of the PMO;
5. Include temperature storage requirements for whey and whey products being held for condensing or drying;
6. Include an exemption for immediate cooling of milk and milk products to 45°F when they are intended to be dried or condensed immediately after processing or for certain cultured dairy products based on specific pH values for each product;
7. Include extended cooling times for cultured sour cream and acidified sour cream with a pH of 4.70 or 4.60 respectively;
8. Include specific cooling times for yogurt products and cultured butter milk;
9. Require indicating thermometers in each room where milk products are stored;
10. Provide the regulatory authority access to certain plant records pertaining to cleaning and product storage temperatures;
11. Eliminate the allowance for cottage cheese to be packaged outside the plant where it was pasteurized and processed;
12. Include packing, storage, and transport requirements for dry milk products; and
13. Clarify the minimum facilities requirements for each milk processing plant.

2VAC5-490-73 was amended to clarify the intent to regulate only those milk products offered for sale for human consumption.

2VAC5-490-105 was amended to allow the regulatory authority the discretion to extend agreements beyond two years for purposes of studying new or test equipment and facilities installed on Virginia dairy farms.

2VAC5-490-131 and 2VAC5-490-140 were amended to reference the 2009 version of the PMO.

Part I

Definitions and Standards of Identity

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

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

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

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

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

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

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

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

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

"Aseptically processed milk product" means any milk or milk product that is hermetically sealed in a container and so thermally processed before or after packaging in conformance with 21 CFR Part 113 and the provisions of this chapter so as

to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution and that is free of viable microorganisms (including spores) capable of causing disease in humans.

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

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

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

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

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

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

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

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

"CFR" means the Code of Federal Regulations.

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

"Coffee cream" means "light cream."

"Commercially sterile" means (i) the food has been thermally processed by the application of heat to render the food free of viable microorganisms (including spores) of

public health significance and microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution; or (ii) the food has been processed with the application of heat and the water activity of the food has been controlled to render the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Cultured sour cream" means "sour cream."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Grade A condensed and dry whey" means condensed or dry whey which complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, ~~2005~~ 2009 Revision" and this chapter.

"Grade A condensed milk" means condensed milk which complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, ~~2005~~ 2009 Revision" and this chapter.

"Grade A dry milk product" means any dry milk product which complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, ~~2005~~ 2009 Revision" and this chapter.

"Grade A dry milk and whey product" means any dry milk or whey product which has been produced for use in any grade A pasteurized, ultra-pasteurized, or aseptically processed milk product; and which has been manufactured

under the provisions of the "Grade "A" Pasteurized Milk Ordinance, ~~2005~~ 2009 Revision" and this chapter.

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

"HACCP" means hazard analysis critical control point.

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

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

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

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

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

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

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

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

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

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

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

"Lowfat dry milk" means "lowfat dry milk" as defined in 21 CFR 131.123.

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

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

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

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

"Market milk" means milk.

"Market milk product" means milk product.

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

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

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

"Milkfat" means the fat of milk.

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

"Milk plant" means any place, premises, or establishment where any milk or milk product is collected, handled,

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processed, stored, pasteurized, ultra-pasteurized, aseptically processed, condensed, dried, bottled, or prepared for distribution.

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

"Milk product" means: ~~(i) acidified lowfat milk, acidified nonfat milk, acidified milk, acidified milk product, acidified reduced fat milk, acidified skim milk, acidified sour cream, acidified sour half and half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese, cottage cheese dry curd, cream, cultured half and half, cultured milk, cultured lowfat milk, cultured nonfat milk, cultured reduced fat milk, cultured skim milk, cultured sour cream, cultured sour half and half, dry curd cottage cheese, eggnog, eggnog flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half and half, heavy cream, heavy whipping cream, lactose reduced lowfat milk, lactose reduced nonfat milk, lactose reduced milk, lactose reduced reduced fat milk, lactose reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low sodium lowfat milk, low sodium nonfat milk, low sodium milk, low sodium reduced fat milk, low sodium skim milk, milk, nonfat milk, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, reduced fat milk, sheep milk, skim milk, sour cream, sour half and half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Nothing in this definition shall be deemed to include any evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), infant formula, ice cream or other dessert, dietary product, dry milk product (except as defined herein), canned eggnog in a rigid metal container, or butter or cheese, except when butter or cheese is combined with other substances to produce any pasteurized or aseptically processed food as specified in this definition grade A milk and grade A milk products meeting the requirements of 2VAC5-490-15.~~

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

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

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

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

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

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

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

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

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

Temperature	Time	Equipment
145°F*	30 minutes	Vat Pasteurization
161°F*	15 seconds	High Temperature Short Time
191°F	1.0 second	High Temperature Short Time
194°F	0.5 second	High Temperature Short Time
201°F	0.1 second	High Temperature Short Time
204°F	0.05 second	High Temperature Short Time
212°F	0.01 second	High Temperature Short Time

*If: (i) the fat content of the milk or milk product is 10% or ~~more~~ greater; (ii) the total solids content of the milk or milk product is 18% or greater; ~~or~~ ~~(ii)~~ (iii) the milk or milk product contains added sweeteners; ~~(iii) the product is condensed milk; or (iv) the milk product is a condensed milk product,~~ then pasteurization means increasing the specified temperature by 5°F.

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

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

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

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

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

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

"Public" means any person in the Commonwealth.

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

"Raw milk" means: (i) any milk or any milk product which has not been pasteurized, ultra-pasteurized, or aseptically processed; or (ii) any milk or any milk product which has been pasteurized, ultra-pasteurized, or aseptically processed and which has been exposed to microbiological contamination before, during, or after packaging.

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

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

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

milk nonfat solids requirements for the milk product designated on the food's container.

"Reconstituted milk" means "recombined milk."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part II Grade A Milk and Milk Products

2VAC5-490-15. Grade A milk and milk products.

~~Grade A milk, milk products, and condensed and dry milk products shall comply with the specific standard of identity established for each milk product, condensed milk product or dry milk product and the requirements of this chapter.~~

A. Grade A milk and milk products regulated under this chapter include:

1. All milk and milk products with a standard of identity provided for in 21 CFR Part 131, with the exception of 21 CFR 131.120 sweetened condensed milk;

2. Cottage cheese as defined by 21 CFR 133.128 and dry curd cottage cheese as defined by 21 CFR 131.129;

3. Whey and whey products as defined in 21 CFR 184.1979, 21 CFR 184.1979a, 21 CFR 184.1979b, and 21 CFR 184.1979c; whey product; dry whey product; and grade A condensed and dry whey and whey products;

4. Modified versions of these foods listed in subdivisions 1 and 2 of this subsection, pursuant to 21 CFR 130.10 – Requirements for foods named by use of a nutrient content claim and a standardized term;

5. Milk and milk products as defined in subdivisions 1, 2, 3, and 4 of this subsection, packaged in combination with other food or foods not included in this section that are appropriately labeled with a statement of identity to describe the food in final package form (e.g. "cottage cheese with pineapple" or "fat free milk with plant sterols"); and

6. Products not included in subdivisions 1 through 5 of this subsection shall be grade A milk products if they contain a minimum of (i) 2.0% milk protein as determined by total kjeldahl nitrogen (TKN) X 6.38; and (ii) 65% by weight milk, milk product, or a combination of milk products.

B. Safe and suitable nongrade A dairy ingredients may be utilized in the production of grade A milk and milk products included under 2VAC5-490-15 A when added to a level needed for a functional or technical effect; limited by good manufacturing practices (GMPs); and are either (i) prior sanctioned or otherwise approved by the federal Food and Drug Administration, (ii) generally recognized as safe (GRAS), or (iii) an approved food additive listed in the Code of Federal Regulations with the exception that for those grade

A milk and milk products for which a federal standard of identity has been established only ingredients provided for under the standard of identity for each grade A milk or milk product may be utilized. Nongrade A dairy ingredients shall not be used to increase the weight or volume of grade A milk or milk products or to displace any grade A dairy ingredients nor shall using nongrade A dairy ingredients to increase the weight or volume of grade A milk or milk products be considered a suitable functional or technical effect.

C. Grade A milk and milk products shall also include those milk and milk products included under 2VAC5-490-15 A and 2VAC5-490-15 B that have been aseptically processed and then packaged.

D. Grade A milk and milk products shall not include:

1. A milk or milk product in which the milkfat of the milk or milk product has been substituted in part or in whole by any other animal or vegetable fat; provided that other fat sources may be included when they are used for purposes currently accepted in any other grade A milk or milk product, such as carriers for vitamins and as an ingredient in emulsifiers and stabilizers;

2. Coffee based products where coffee or water is the primary ingredient as indicated in the ingredient statement;

3. Tea based products where tea or water is the primary ingredient as indicated in the ingredient statement;

4. Dietary products (except as defined in 21 CFR 130.10);

5. Infant formula;

6. Ice cream or other frozen desserts;

7. Butter;

8. Standardized cheese with the exception of cottage cheese as defined under 21 CFR 133.128 and dry curd cottage cheese as defined under 21 CFR 131.129 and non-standardized cheese; or

9. Puddings.

E. Milk and milk products which have been retort processed after packaging, or which have been concentrated (condensed) or dried shall conform to the requirements of 2VAC5-490-15 A and 2VAC5-490-15 B if they are utilized as an ingredient in any grade A milk or milk product or if they are labeled as grade A under 2VAC5-490-15 A 4.

F. Powdered dairy blends may be labeled grade A and used as ingredients in grade A milk and milk products, such as cottage cheese dressing mixes or starter media for cultures used to produce various grade A cultured milk and milk products, if they meet the requirements of this chapter. If powdered dairy blends are used as an ingredient in grade A milk and milk products, blends of dairy powders must be blended under conditions which meet all applicable grade A powdered dairy blends requirements. Grade A powder blends

must be made from grade A powdered milk and milk products, except that small amounts of functional ingredients not to exceed 10% by weight of the finished blend which are not grade A are allowed in grade A blends when the finished ingredient is not available in grade A form (e.g., sodium caseinate).

G. Grade A milk and milk products, ~~and condensed and dry milk products~~ include: ~~(i) (a)~~ acidified lowfat milk, acidified nonfat milk, acidified milk, acidified milk product, acidified reduced fat milk, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, boiled custard, buttermilk, coffee cream, concentrated milk, concentrated milk product, condensed buttermilk, cottage cheese, cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured nonfat milk, cultured reduced fat milk, cultured skim milk, cultured sour cream, cultured sour half-and-half, dry buttermilk, dry buttermilk product, dry cream, dry curd cottage cheese, dry whole milk, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, heavy whipping cream, lactose-reduced lowfat milk, lactose-reduced nonfat milk, lactose-reduced milk, lactose-reduced reduced fat milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat dry milk, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium nonfat milk, low-sodium milk, low-sodium reduced fat milk, low-sodium skim milk, milk, nonfat milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, reduced lactose whey, reduced fat milk, reduced minerals whey, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin A milk, vitamin A milk product, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, ~~or and~~ yogurt; ~~(b)~~ any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or ~~(c)~~ any food made with a food specified in clause (i) (a) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification; and ~~(ii)~~ grade A condensed milk, grade A condensed whey, grade A dry whey, grade A dry milk product, grade A dry milk and grade A dry whey product. Nothing in this section shall be deemed to include any evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), infant formula, ice cream or other dessert, dietary product, dry milk product (except as defined herein), canned eggnog in a rigid metal container, or butter or cheese, except when butter or cheese is combined with other substances to produce any pasteurized or aseptically processed food as specified in this definition.

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H. Persons holding a valid permit on January 1, 2011, to receive and process milk for manufacturing purposes pursuant to 2VAC5-531-50 of the Regulations Governing Milk for Manufacturing Purposes and who have manufactured dairy products not previously considered to be grade A dairy products prior to January 1, 2011, may continue to manufacture and sell those specific dairy products they produced prior to January 1, 2011, after [the effective date of these regulations]; however, this limited exemption shall not apply to any new or revised dairy products the permit holder wishes to manufacture if the new or revised dairy product is considered to be grade A.

2VAC5-490-30.1. Permit exemption for restaurants making yogurt.

Restaurants as defined in § 35.1-1 of the Code of Virginia shall be exempt from the requirements of this chapter for the manufacturer of yogurt provided (i) the restaurant manufactures the yogurt from pasteurized milk and milk products and cultures obtained from an approved source; and (ii) all of the yogurt is utilized by the restaurant or sold on site to the final consumer either as an ingredient in other foods or as yogurt.

2VAC5-490-32. Authority to impound milk and milk products.

The State Regulatory Authority may impound any condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product ~~if the condensed milk, condensed milk product, dry milk, dry milk product, milk or milk product~~ if it is in violation of any requirement of this chapter.

2VAC5-490-35. The examination of milk and milk products.

A. The State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra-pasteurization, or aseptic processing from each dairy farm that holds a grade A permit.

B. After receipt of the milk by the milk plant and prior to pasteurization, ultra-pasteurization or aseptic processing the State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra-pasteurization, or aseptic processing from each milk plant located within the Commonwealth that holds a grade A permit.

C. The State Regulatory Authority shall collect during any consecutive six-month period at least four samples of each

heat-treated, pasteurized, ultra-pasteurized, and aseptically processed milk product, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days, from each milk plant located in the Commonwealth and holding a grade A permit.

D. The State Regulatory Authority shall, except when the production is not on a yearly basis, during each month collect from each milk condensing plant, milk drying plant, whey condensing plant or whey drying plant holding a grade A permit at least one sample of raw milk for pasteurization, after receipt of the milk by the plant and before pasteurization, and at least one sample of each grade A condensed milk product, grade A dry milk product, grade A condensed whey, and grade A dry whey manufactured. If the production of grade A dry milk products or grade A dry whey is not on a yearly basis, the State Regulatory Authority shall collect at least five samples within a continuous production period.

E. The State Regulatory Authority may collect samples of milk and milk products as it deems necessary from retail establishments selling milk or milk products to determine compliance with 2VAC5-490-20, 2VAC5-490-40, 2VAC5-490-50 and 2VAC5-490-80. Each person who operates the retail establishment shall furnish the State Regulatory Authority, upon the request of the State Regulatory Authority, with the names of all distributors from whom the person has obtained milk or milk products.

F. The State Regulatory Authority shall provide the remaining portion of the original raw milk sample from each grade A dairy farm which has been screened positive for animal drug residues by a milk plant, receiving station, or transfer station to the grade A dairy farms' milk marketing organization upon request.

G. Each grade A permit holder operating a milk plant within the Commonwealth shall provide to the State Regulatory Authority laboratory determinations of the quantity of vitamin A and vitamin D present in each of the milk plant's milk and milk products to which vitamin A or vitamin D has been added. Each grade A permit holder who operates a milk plant shall provide these laboratory determinations at least annually from a laboratory certified to determine the amount of vitamin A and vitamin D in milk and milk products under the requirements established in "Evaluation of Milk Laboratories," ~~2005~~ 2007 revision, available from the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Field Programs, Division of HACCP, Laboratory Quality Assurance Branch, HFH-450, 6502 South Archer Road, Summit-Argo, Illinois 60501, USA. Each grade A permit holder who operates a milk plant shall pay for the cost of the laboratory determinations.

2VAC5-490-36. Drug residue monitoring, farm surveillance and follow up.

A. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall:

1. Prior to processing any raw milk from bulk tanks on farms, test for residues of beta lactam drugs all raw milk that the milk plant, receiving station, or transfer station receives for pasteurization, ultra-pasteurization, or aseptic processing;

2. Test each shipment of bulk tank raw milk received for pasteurization, ultra-pasteurization, or aseptic processing by screening tests methods which have been Association of Official Analytical Chemists- (AOAC)-reviewed and Food and Drug Administration- (FDA)-accepted. In lieu of any test specified in this subdivision a grade A permit holder may use AOAC first-action and AOAC final-action tests methods. Nothing in this subdivision shall be deemed to require the testing of individual raw milk samples prior to processing collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, or aseptic processing;

3. Implement a random-sampling program when the Commissioner of the Food and Drug Administration determines that a potential problem exists with animal drug residues or other contaminants in the milk supply. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall analyze the samples for the contaminant by a method determined by FDA to be effective in determining compliance with actionable levels or established tolerances. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall continue the random-sampling program until such time that the Commissioner of the Food and Drug Administration is reasonably assured that the problem has been corrected. The sampling program shall represent and include during any consecutive six months, at least four samples collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days.

4. Retain each sample found to be positive for drug residues for a period of 120 hours after the sample test result is positive for drug residues for the use of the State Regulatory Authority unless directed otherwise by a representative of the State Regulatory Authority;

5. Abstain from selling or offering for sale any pasteurized, ultra-pasteurized, or aseptically processed milk, milk product, or condensed and dry milk product processed from raw milk for pasteurization, ultra-pasteurization, or aseptic processing before results of drug screening tests are available and which raw milk later tests positive for drug residues. All of the grade A permit holder's milk commingled with any raw milk which tests positive for

drug residues shall be deemed adulterated. Any grade A permit holder operating a milk plant, receiving station, or transfer station shall report to the State Regulatory Authority instances of adulteration immediately;

6. Record the results of tests on samples of raw milk and retain such records for a period of six months; report records of all results of tests on samples of raw milk to the State Regulatory Authority by the fifteenth day of each month for the preceding month; and maintain and make available to the State Regulatory Authority for inspection and review at the permitted facility records of results of tests on samples of raw milk. Each record of results of tests on samples of raw milk required by this subdivision shall include:

a. The analyst's signature, date, time, and place where the test was performed;

b. The registration identification of each pickup tanker of bulk raw milk or raw milk sampled;

c. The test method used;

d. The Interstate Milk Shipper Bulk Tank Unit identification number of each grade A milk supply included on each pickup tanker of bulk raw milk tested; and

e. A statement as to whether the test results were positive or negative. If the results were positive, the grade A permit holder shall also record:

(1) The identity of each producer contributing to the load from which the positive sample of raw milk was taken;

(2) The name of the person notified at the State Regulatory Authority of the positive test results;

(3) The date and time of day the person at the State Regulatory Authority was notified of the positive test results; and

(4) The method of notification of the State Regulatory Authority;

7. Immediately notify the State Regulatory Authority and the milk marketing cooperative or broker of any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, or aseptic processing when the shipment of bulk tank raw milk is found to be positive for drug residues. Nothing in this subdivision shall be deemed to include individual raw milk samples collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, or aseptic processing;

8. Test each producer sample of raw milk to determine the farm of origin represented by any sample of raw milk which tests positive for drug residues and immediately report to the State Regulatory Authority the result of each

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producer sample representing the raw milk for pasteurization, ultra-pasteurization, or aseptic processing found to be positive for drug residues;

9. Provide by facsimile machine or other electronic means to the Virginia Department of Agriculture and Consumer Services copies of load manifests, producer weight tickets, laboratory worksheets where the results of laboratory tests are originally recorded, and records from electronic readers documenting the results for samples tested for all positive loads; and

10. Immediately discontinue receiving shipments of raw milk from the grade A permit holder whose milk tests positive for drug residues, until subsequent tests are no longer positive for drug residues.

B. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall be responsible for the collection and testing of follow-up milk samples for animal drug residues required for permit reinstatement and resumption of milk shipment from the dairy farm each time the grade A dairy farm permit holder's milk test positive for animal drug residues.

C. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall comply with the following when following up on a producer's dairy farm after a positive animal drug residue:

1. Only person's who hold valid permits to weigh, sample and collect milk issued by the Virginia Department of Agriculture and Consumer Services shall collect and deliver follow-up milk samples to laboratories for official testing for the purpose of permit reinstatement and the resumption of milk shipments from the dairy farm;

2. Reports of laboratory testing shall be provided from officially designated laboratories for each milk sample tested for animal drug residues and shall include the following information:

- a. The name of the grade A dairy farm permit holder;
- b. The patron number of the grade A dairy farm permit holder;
- c. The date, time and temperature of the milk sample when collected;
- d. The name of the person who collected the milk sample;
- e. The name of the test method used to test the milk sample; and
- f. The test result for the milk sample; and

3. Only confirmation test methods approved under M-I-96-10 (Revision #5) #7) dated ~~March 10, 2004~~ January 4, 2010, and titled "Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial

Producer Traceback" may be used for follow-up milk sample testing.

2VAC5-490-37. Laboratory certification.

A. Each grade A permit holder operating a dairy plant that receives any milk that could require load confirmation or producer trace-back as a result of a positive animal drug residue on a load of milk delivered at the plant shall provide to the Virginia Department of Agriculture and Consumer Services results of animal drug residue tests from an officially designated laboratory. Each officially designated laboratory shall maintain a listing in the IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples. All laboratory results from officially designated laboratories shall be reported to the Virginia Department of Agriculture and Consumer Services within six hours of the initial presumptive positive result at the plant. ~~Existing dairy plants holding permits on May 23, 2007, shall have until December 31, 2007, to comply with this section.~~

B. Each officially designated laboratory shall comply with the requirements contained in the "Evaluation of Milk Laboratories, 2005 2007 revision" for certification and listing in the "IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers."

Part V Labeling

2VAC5-490-40. Labeling.

No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth or, bring, send into, or receive into the Commonwealth any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products which are not labeled in compliance with the following:

1. Each grade A permit holder's bottles, containers, and packages enclosing any milk or milk products shall be labeled in accordance with the requirements of the Federal Food, Drug and Cosmetic Act, as amended, the Nutrition Labeling and Education Act (NLEA) of 1990, and regulations developed thereunder;
2. The grade A permit holder shall label or mark all bottles, containers, and packages enclosing any milk or milk products with:
 - a. The name of a defined milk product, if there is a definition, and if there is no definition, a name that is not false or misleading;
 - b. The word "reconstituted" or "recombined" if the milk product is made by reconstitution or recombination;

c. The term "grade A" located on the exterior of the package on the principal display panel, the secondary or informational panel, or the cap or cover;

d. The identity of the plant where the grade A permit holder's milk or milk product is pasteurized, ultra-pasteurized, or aseptically processed by specifying:

(1) The street address, city, state, and zip code of the plant; or

(2) The code assigned the plant under the National Uniform Coding System for Packaging Identification of Milk and Milk Product Processing Plants.

e. In the case of concentrated milk or concentrated milk products the volume or proportion of water to be added for recombining;

f. The name of the milk product that the concentrated milk product will produce, which name shall be preceded by the term "concentrated." In the case of flavored milk or flavored reconstituted milk, the grade A permit holder shall substitute the name of the principal flavor for the word "flavored";

g. In the case of aseptically processed milk and milk products the words "keep refrigerated after opening;"

h. In the case of aseptically processed and packaged milk or milk products, the term "UHT" ultra-high-temperature;

i. The term "ultra-pasteurized" if the milk or milk product has been ultra-pasteurized;

j. The term "goat" preceding the name of the milk or milk product when the milk or milk product is goat milk or is made from goat milk;

k. The term "sheep" preceding the name of the milk or milk product when the milk or milk product is sheep milk or is made from sheep milk;

l. The term "water buffalo" preceding the name of the milk or milk product when the milk or milk product is water buffalo milk or is made from water buffalo milk;

m. As in the case of cow's milk, goat's milk, sheep's milk, and water buffalo's milk, the common or usual name of the mammal from which the milk was obtained shall precede the name of the milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;

n. The information appearing on the label of any bottle, container, or package of milk or milk product shall contain no marks, pictures, graphics, or words which are misleading;

o. The "pull date" which shall not interfere with the legibility of other labeling required for the milk or milk

product and shall be expressed by: the first three letters in the name of the month, followed by or preceded by the numeral or numerals constituting the calendar date after which the product shall not be sold or expressed numerically by the number of the month followed by the number of the day. For example, June 1 shall be expressed "JUN 1," "1 JUN," "06 01," or "06-01";

p. The grade A permit holder who operates a milk plant and offers for sale milk or milk product within the Commonwealth shall file and certify with the State Regulatory Authority the maximum number of days after manufacturing or processing the grade A permit holder's milk or milk products which will be used to determine the "pull date." The grade A permit holder shall establish a "pull date" that under normal storage the milk or milk product meets for a minimum of 96 hours after the "pull date," standards set by this chapter;

q. No person may sell or offer for sale any packaged grade A pasteurized milk, grade A pasteurized milk product, or milk product after the date of the "pull date" on the package;

r. No person may sell or offer for sale any grade A pasteurized milk, grade A pasteurized milk product, or milk product in a package that does not bear the "pull date"; ~~and~~

s. Nothing in this chapter shall apply to containers of grade A pasteurized milk, grade A milk products, or milk products which are not to be sold in the Commonwealth; and

t. In the case of condensed or dry milk products the label shall also contain (i) the identity of the State Regulatory Authority issuing the processing plant's permit; (ii) the identity of the distributor if the condensed or dry milk products are distributed by a party other than the processing plant; (iii) the code or lot number identifying the contents with a specific date, run, or batch of the product; and (iv) a statement of the quantity of the contents of the container.

Part VI

Standards for Milk and Milk Products

2VAC5-490-50. Quality standards for milk and milk products.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or, bring, send, or receive into the Commonwealth, any milk, milk product, condensed milk product or dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products which do not comply with the following:

1. Grade A raw milk for pasteurization or ultra-pasteurization or aseptic processing and all grade A

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pasteurized, ultra-pasteurized, or aseptically processed milk or milk products shall be produced, processed, and pasteurized or ultra-pasteurized, or aseptically processed to conform with the following chemical, bacteriological, somatic cell, cryoscope, and temperature standards, and with the requirements of this chapter;

2. No process or manipulation other than (i) pasteurization; (ii) ultra-pasteurization; (iii) aseptic processing; or (iv) processing methods integral with pasteurization, ultra-pasteurization, or aseptic processing; and refrigeration may be applied to milk or milk products for the purpose of removing or deactivating microorganisms provided that filtration, bacto-fugation, or filtration and bacto-fugation may be performed in the plant in which the milk or milk product is pasteurized, ultra-pasteurized, or aseptically processed. Nothing in this chapter is deemed to prohibit any grade A permit holder who operates a milk plant from preparing bulk shipments of cream, skim milk, or lowfat milk labeled as "heat treated"; if the raw milk, raw cream, skim milk, or lowfat milk is heated, one time, to a temperature warmer than 125°F but cooler than 161°F for separation purposes;

3. Grade A raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall comply with the following standards:

a. The temperature of the raw milk shall be cooled to 40°F or cooler, but not frozen, within two hours after milking and the temperature after the first or any subsequent milking shall not be warmer than 50°F;

b. The bacteria count of the raw milk shall not exceed 100,000 bacteria per milliliter prior to commingling with any other milk; and the bacteria count of the raw milk that is commingled shall not exceed 300,000 bacteria per milliliter prior to pasteurization;

c. Raw milk shall freeze at or below -0.530° Hortvet;

d. Raw milk shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

e. The somatic cell count of raw cow's milk, water buffalo's milk or raw sheep's milk shall not exceed 750,000 somatic cells per milliliter. The somatic cell count of raw goat's milk shall not exceed ~~1,000,000~~ 1,500,000 somatic cells per milliliter;

f. Raw milk shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in: 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589. In the event that no actionable level, tolerance level,

or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589, the tolerance level shall be deemed to be zero; and

g. Raw milk shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method.

4. Grade A pasteurized or ultra-pasteurized, milk and milk products shall comply with the following standards:

a. The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained at that temperature;

b. The bacteria count for any milk or milk products (except cultured products) shall not exceed 20,000 bacteria per milliliter;

c. Except for commingled milk shipped in a transport tank the coliform count for any milk or milk products shall not exceed 10 coliform organisms per milliliter. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per milliliter;

d. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by: (i) any phosphatase test method prescribed in the Official Methods of Analysis, 18th Edition, 2005, published by the Association of Official Analytical Chemists; (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services. A phenol value greater than the maximum specified for the particular product shall mean that the product was not properly pasteurized. A phenol value less than the maximum specified for the particular product shall not be deemed to mean that the product was properly pasteurized, unless there is evidence of proper pasteurization equipment in conformance with this chapter and records to determine an adequate pasteurization process has been completed for each separate batch or lot of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product;

e. Milk or milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

f. Milk or milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in: 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133,

170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589, the tolerance level shall be deemed to be zero; and

g. Milk or milk products shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method.

5. Grade A aseptically processed milk and milk products shall comply with the following standards:

a. Aseptically processed milk and milk products shall be commercially sterile;

b. Aseptically processed milk and milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

c. Aseptically processed milk and milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589, the tolerance level shall be deemed to be zero; and

d. Aseptically processed milk and milk products milk shall not contain aflatoxin residues equal to or greater than 0.05 parts per billion.

6. Grade A nonfat dry milk shall comply with the following standards:

a. The butterfat content shall not be greater than 1-1/4%;

b. The moisture content shall not be greater than 4.0%;

c. The titratable acidity shall not exceed 0.15%;

d. The solubility index shall not exceed 1-1/4 milliliters;

e. The bacteria count shall not exceed 30,000 bacteria per gram;

f. The coliform count shall not exceed 10 coliform organisms per gram; and

g. The amount of scorched particles shall not exceed 15 particles per gram.

7. Grade A whey for condensing or drying shall be maintained at a temperature of 45°F (7°C) or less, or 135°F (57°C) or greater; provided that, acid-type whey with a titratable acidity of 0.40% or above or a pH of 4.6 or below shall be exempt for the requirements of this subdivision;

8. Grade A pasteurized condensed whey and whey products shall be cooled to 50°F (10°C) or less during crystallization and within 72 hours of condensing. The coliform count of grade A pasteurized condensed whey and whey products shall not exceed 10 coliform organisms per gram; and

9. The coliform count of grade A dry whey, grade A dry whey products, grade A dry buttermilk, and grade A dry buttermilk products shall not exceed 10 coliform organisms per gram.

B. Sanitation requirements for grade A raw milk.

1. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall comply with:

a. The following administrative procedures contained in the "Grade A Pasteurized Milk Ordinance ~~2005~~ 2009 Revision": Section 4. – Labeling; ~~Section 7. - Standards for Grade "A" Raw Milk for Pasteurization, Ultra-Pasteurization or Aseptic Processing~~, Items 1r, 2r, 3r, 4r, 5r, 6r, 7r, 8r, 9r, 10r, 11r, 12r, 13r(1), 13r(2), 13r(4), 13r(5), 14r, 15r, 16r, 17r, 18r(2), 19r; Section 8. – Animal Health; Section 10. – Transferring; Delivery Containers; Cooling; and Section 13. – Personnel Health;

b. The following appendices contained in the "Grade A Pasteurized Milk Ordinance ~~2005~~ 2009 Revision": Appendices A, B, C, D, F, G, N, Q and R; and

c. Item 1r. Abnormal milk. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals which show evidence of the secretion of abnormal milk in one or more quarters (based upon bacteriological, chemical, or physical examination) and discard the milk obtained from cows, sheep, goats, water buffalo, or other mammals which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination; and

(2) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals treated with, or which have consumed, chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which may be deleterious to human health; and dispose of in a manner which will not pollute the environment or any human food the milk obtained from cows, sheep, goats, water buffalo, or other mammals

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treated with, or which have consumed, chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which may be deleterious to human health;

d. Item 2r. Milking barn, stable, or parlor-construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide on the person's dairy farm a milking barn, stable, or parlor in which the milking herd shall be housed during milking time;

(2) Provide on the grade A permit holder's dairy farm a milking barn, stable, or parlor which, milking barn, stable, or parlor shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling which are smooth, painted, or finished in an approved manner, and in good repair and have a ceiling which is dust tight;

(c) Have separate stalls or pens for horses, calves, and bulls;

(d) Have natural or artificial light, well distributed for day or night milking;

(e) Have sufficient air space and air circulation to prevent condensation and excessive odors;

(f) Have dust-tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed; and

(g) Not be overcrowded; and

(3) Provide and use only an "automatic milking installation" that complies with the requirements of Appendix Q of the "Grade A Pasteurized Milk Ordinance" if the person milks any cows, goats, sheep, water buffalo, or other mammals (except humans) using robots or other automated means in the absence of any human;

e. Item 3r. Milking barn, stable, or parlor-cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Keep the interior of the milking barn, stable, or parlor clean;

(2) Keep the floors, walls, windows, pipelines, and equipment in the milking barn, stable, or parlor free of filth or litter and clean;

(3) Keep swine and fowl out of the milking barn, stable, and parlor; and

(4) Keep surcingles, belly straps, milk stools and antikickers clean and stored above the floor;

f. Item 4r. Cow yard, sheep yard, goat yard, water buffalo yard or other milking mammal yard. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide and maintain the cow yard, sheep yard, goat yard, water buffalo yard or other milking mammal yard, to be graded and drained, and to have no standing pools of water or accumulations of organic wastes;

(2) In the cow loafing, goat loafing, sheep loafing, water buffalo loafing or other milking mammal loafing, cattle-housing, sheep-housing, goat-housing, water buffalo-housing, or other milking mammal-housing areas remove cow droppings, sheep droppings, goat droppings, water buffalo droppings, and other milking mammal droppings and remove soiled bedding or add clean bedding at sufficiently frequent intervals to prevent the soiling of the cow's, sheep's, goat's, water buffalo's, or other milking mammal's udder and flanks;

(3) Assure that waste feed does not accumulate in the goat yard, cow yard, sheep yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle-housing, sheep-housing, goat-housing, water buffalo-housing, or other milking mammal-housing area;

(4) Maintain any manure packs so as to be properly drained and so as to provide a reasonably firm footing; and

(5) Keep swine and fowl out of the cow yard, sheep yard, goat yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle-housing, sheep-housing, goat-housing, water buffalo-housing, or other milking mammal-housing area.

g. Item 5r. Milkhouse or room-construction and facilities. Each who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted except as provided under subdivision 1 n of this subsection;

(2) Provide a milkhouse with a smooth floor, constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

- (3) Dispose of in a sanitary manner all liquid waste generated in the milkhouse;
- (4) Provide one or more floor drains in the milkhouse, which floor drains shall be accessible, and if connected to a sanitary sewer system trapped;
- (5) Provide in the milkhouse walls and ceilings constructed of a smooth material, in good repair, well painted, or finished in an equally suitable manner;
- (6) Provide adequate natural or artificial light and ventilation in the milkhouse;
- (7) Use the milkhouse for no other purpose than milkhouse operations;
- (8) Provide no direct opening from the milkhouse into any barn, stable, or into any room used for domestic purposes, other than a direct opening between the milkhouse and milking barn, stable, or parlor provided with a tight-fitting, self-closing, solid door, which door has been hinged to be single or double acting;
- (9) Provide in the milkhouse water under pressure which has been piped into the milkhouse;
- (10) Provide in the milkhouse a two-compartment wash vat and adequate hot water heating facilities;
- (11) Except as provided for under subdivision 1 g (12) of this subsection provide a suitable shelter for the receipt of milk when the grade A permit holder uses a transportation tank for the cooling or storage of milk on the grade A permit holder's dairy farm, which shelter adjacent to, but not a part of, the milkroom; and with the requirements of the milkroom shall comply with respect to construction, light, drainage, insect and rodent control, and general maintenance. In addition to providing a suitable shelter as required by this subsection, the grade A permit holder shall:
 - (a) Install an accurate, accessible temperature-recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank;
 - (b) Install an indicating thermometer as close as possible to the temperature-recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:
 - (i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;
 - (ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;
 - (iii) Have an accuracy within plus or minus 2°F throughout the scale range; and
 - (iv) Have the stem fitting installed in a pressure-tight seat or other sanitary fitting with no threads exposed;
 - (c) Provide an effective means to agitate the transport tank or an approved in-line sampling device in order to collect a representative milk sample;
- (12) If the State Regulatory Authority determines conditions exist whereby the milk transport tank may be adequately protected and sampled without contamination, a shelter need not be provided if the grade A permit holder:
 - (a) Provides a means to make all milk hose connections to the transport tank accessible from within the milkhouse;
 - (b) Provides a means to completely protect the milk hose connection to the transport tank from the outside environment;
 - (c) Ensures he utilizes only milk transport tanks the manholes of which have been sealed after cleaning and sanitizing;
 - (d) Ensures he utilizes only milk transport tanks that have been washed and sanitized at permitted dairy plants or a permitted milk tank truck cleaning facilities acceptable to the State Regulatory Agency;
 - (e) Installs an accurate, accessible temperature-recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank;
 - (f) Installs an indicating thermometer as close as possible to the temperature-recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:
 - (i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;
 - (ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;
 - (iii) Have an accuracy within plus or minus 2°F throughout the scale range; and
 - (iv) Have the stem fitting installed in a pressure-tight seat or other sanitary fitting with no threads exposed;
 - (g) Provides an effective means to agitate the transport tank or an approved in-line sampling device in order to collect a representative milk sample; and

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(h) Provides a self-draining concrete or equally impervious surface on which the transport tank can be parked during filling and storage;

h. Item 6r. Milkhouse or milkroom-cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Keep clean the floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, equipment, and other milkroom equipment in the milkroom;

(2) Place in the milkroom only those articles directly related to milkroom activities; and

(3) Keep the milkroom free of trash, animals, and fowl;

i. Item 7r. Toilets. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide on the person's grade A dairy farm one or more toilets, which shall be conveniently located and properly constructed, and operated, and maintained in a sanitary manner;

(2) Prevent the access of flies to the waste contained in or from the toilet;

(3) Prevent the waste contained in or from the toilet from polluting the soil surface or contaminating any water supply; and

(4) Assure that there is no direct opening from the toilet into any milkroom;

j. Item 8r. Water supply. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide water for milkhouse and milking operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, and of a safe, sanitary quality;

(2) Assure that any well casing which is part of a water supply that provides water for any milkhouse or milking operation is not located closer to any source of contamination which may contaminate the water supply than is specified as follows:

(a) No grade A permit holder may locate a well casing closer than 10 feet to a pit;

(b) No grade A permit holder may locate a well casing closer than 10 feet to any sewer pipe, floor drain, or other pipe which may back up;

(c) No grade A permit holder may locate a well casing closer than 50 feet to any above-ground gas, oil, petroleum, or chemical storage tank;

(d) No grade A permit holder may locate a well casing closer than 50 feet to any accumulated animal manure;

(e) No grade A permit holder may locate a well casing closer than 50 feet to any area to which livestock has access; or animal-holding area, feedlot, or loafing area on dirt;

(f) No grade A permit holder may locate a well casing closer than 50 feet to any pit not drained to the surface of the ground. Nothing in this requirement shall apply to a residential basement;

(g) No grade A permit holder may locate a well casing closer than 100 feet to any pit privy. Existing well casings located on grade A dairy farms holding valid permits issued by the State Regulatory Authority on September 1, 1993, shall be exempt from the 100 foot distance requirement of this subdivision until the existing permit is canceled or revoked;

(h) No grade A permit holder may locate a well casing closer than 100 feet to any animal-manure disposal area;

(i) No grade A permit holder may locate a well casing closer than 100 feet to any cess pool;

(j) No grade A permit holder may locate a well casing closer than 100 feet to any dry well;

(k) No grade A permit holder may locate a well casing closer than 100 feet to any structure which stores animal manure;

(l) No grade A permit holder may locate a well casing closer than 100 feet to any septic tank or drain field; and

(m) No grade A permit holder may locate a well casing closer than 100 feet to any underground or partially-buried gas, oil, petroleum, or chemical storage tank;

(3) Construct the water supply so that the well casing terminates at least two feet above the highest-known flood plane for the location in which the water supply is located; and

(4) Construct the water supply so that no potable water supply pipe attached to the water supply is located closer than 10 feet measured horizontally to any sewer pipe, soil pipe, or drain;

k. Item 9r. Utensils and equipment-construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk, which multiuse containers, equipment, and utensils, shall be made of smooth, nonabsorbent, corrosion-resistant, and nontoxic materials; constructed as to be easily cleaned; and in good repair;

(2) Provide milk pails which are constructed to be seamless and of the hooded type if the grade A permit holder does hand milking and stripping;

(3) Abstain from using multiple-use woven material for straining any milk;

(4) Use only single-service articles which have been manufactured, packaged, transported, stored, and handled in a sanitary manner and that comply with the requirements of subdivision C 1 of this section;

(5) Abstain from reusing any article intended for single-service use; and

(6) Provide farm holding or cooling tanks, welded sanitary piping, and transportation tanks which comply with the requirements of subdivisions C 1 l and C 1 m of this section on any grade A dairy farm;

l. Item 10r. Utensils and equipment; cleaning. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Clean after each use the product-contact surfaces of all multiuse containers, multiuse equipment, and multiuse utensils used in the handling, storage, or transportation of any milk; and

(2) Offer for sale or sell no milk which has passed through any equipment, if the milk-contact surfaces of the equipment are no longer visible, or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds or other soils. Any milk which passes through equipment, the milk-contact surfaces of which are no longer visible, or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils shall be deemed adulterated;

m. Item 11r. Utensils and equipment; sanitization. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall sanitize before each use the product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of any milk;

n. Item 12r. Utensils and equipment; storage. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall store containers, utensils, and equipment used in the handling, storage, or transportation of any milk in a sanitizing solution or store the containers, utensils, and equipment used in the handling, storage, or transportation of any milk to assure complete drainage, and protected from contamination prior to use. Nothing in this requirement shall be deemed to prohibit a grade A permit holder from storing in a milking barn or milking

parlor a milk pipeline, or the following pipeline milking equipment: milker claw, inflation, weigh jar, meter, milk hose, milk receiver, tubular cooler, plate cooler, or milk pump; if the milk pipeline or pipeline milking equipment specified in this subdivision is designed for mechanical cleaning; and designed, installed, and operated to protect the milk product and solution-contact surfaces from contamination at all times;

o. Item 13r. Milking; flanks, udders, and teats. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Milk all cows, sheep, goats, water buffalo, and other mammals in a milking barn, stable, or parlor;

(2) Trim the hair from the udder and tail of all milking cows, sheep, goats, water buffalo, and other mammals to facilitate cleaning of the udder and tail;

(3) Keep the flanks, udders, bellies, and tails of all milking cows, sheep, goats, water buffalo, and other mammals free of visible dirt;

(4) Keep the hair on the udders of all milking cows, sheep, goats, water buffalo and other mammals to a length that the hair on the udder of any cow, sheep, goat, water buffalo, or other mammal cannot be incorporated with the teat in the inflation during milking;

(5) Abstain from milking any cow, sheep, goat, water buffalo, or other mammal whose udder or teats is not clean and dry;

(6) Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, sheep, goat, water buffalo, and other mammal and dry the teats of each milking cow, sheep, goat, water buffalo, and other mammal before milking; and

(7) Milk all cows, sheep, goats, water buffalo, and other mammal with dry hands;

p. Item 14r. Protection from contamination. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Locate and operate the milking and milk house operations, equipment, and facilities to prevent any contamination of the milk, equipment, containers, or utensils;

(2) Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;

(3) Strain, pour, transfer, or store any milk unless it is protected from contamination;

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(4) Handle all containers, utensils and equipment that have been sanitized in such a manner as to prevent contamination of any product-contact surfaces;

(5) Transport from the grade A permit holder's dairy farm to a milk plant or receiving station all milk in cans, using vehicles which are constructed and operated to protect the milk from sun, freezing, and contamination;

(6) Keep clean the inside and outside of each vehicle used to transport from the grade A permit holder's dairy farm to a milk plant or receiving station any milk in cans; and

(7) Transport no substance capable of contaminating the milk when transporting milk;

q. Item 15r. Drug and chemical control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any milk or the milk product-contact surface of any equipment, containers or utensils;

(2) Abstain from using unapproved or improperly labeled medicinals or drugs to treat any dairy animals or store unapproved or improperly labeled medicinals or drugs in the milkhouse, milking barn, stable or parlor. Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products a drug or medicinal is properly labeled only if the drug or medicinal is labeled with the following:

(a) For over-the-counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra-label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;

(b) Directions for use of the drug or medicinal and the prescribed holding time;

(c) Any cautionary statement for the drug or medicinal, if needed; and

(d) The active ingredient or ingredients in the drug or medicinal;

(3) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, segregate all medicinals and drugs used for lactating dairy animals from any medicinals and drugs used for nonlactating dairy animals;

(4) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat),

vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals separate from those medicinals or drugs used for lactating dairy animals; and

(5) Store topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage-form vitamins and mineral products in a manner that does not contaminate any milk or the milk-product surfaces of any containers or utensils;

r. Item 16r. Personnel; hand-washing facilities. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall provide hand-washing facilities that are convenient to the milkhouse, milking barn, stable, or parlor, and flush toilet and that include separate hot and cold running water; soap or detergent; and individual sanitary towels;

s. Item 17r. Personnel; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Wash clean and dry with an individual sanitary towel the person's hands immediately before milking, before performing any milkhouse function, and immediately after the interruption of milking or performing any milkhouse function; and

(2) Wear clean outer garments while milking or handling any milk, milk containers, utensils, or equipment. Bulk milk haulers shall wear clean outer garments while handling any milk, milk containers, utensils, or equipment;

t. Item 18r. Cooling. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Cool to 40°F or cooler (but not freeze), all raw milk for pasteurization, ultra-pasteurization, or aseptic processing, within two hours after the grade A permit holder completes milking; and assure that the temperature of the grade A permit holder's raw milk is not warmer than 50°F after the first milking or any subsequent milking. Raw milk for pasteurization which is warmer than a temperature of 50°F after the first milking or any subsequent milking shall be deemed a public health hazard and shall not be offered for sale or sold; and

(2) Agitate all raw milk for pasteurization for not less than five minutes at least once every hour; assure that the milk in the farm's bulk milk cooling or holding tank covers the agitator paddle sufficiently to facilitate proper

cooling and sampling after the completion of the first milking; and abstain from selling or offering for sale milk which does not cover the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking;

u. Item 19r. Insect and rodent control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Take effective measures to prevent the contamination of any milk, containers, equipment, and utensils by insects, rodents, and other animals, and by chemicals used to control insects, rodents, and other animals;

(2) Maintain the milkroom free of insects, rodents and other animals;

(3) Keep the areas surrounding the: milkhouse; milking barn; milking stable; milking parlor; cattle, sheep, water buffalo, other mammal, or goat housing; cattle, sheep, water buffalo, other mammal, or goat loafing; water supply; or other facilities on the grade A permit holder's dairy farm neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents; and

(4) Store all feed in such a manner that the feed will not attract birds, rodents or insects.

C. Sanitation requirements for grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products.

1. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products shall comply with:

a. The following administrative procedures contained in the "Grade A Pasteurized Milk Ordinance ~~2005~~ 2009 Revision": Section 7. Standards for Grade "A" Pasteurized, Ultra-pasteurized and Aseptically Processed Milk and Milk Products, Items 1p, 2p, 3p, 4p, 5p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 13p, 14p, 15p, 16p, 17p, 18p, 19p, 20p, 21p, and 22p;

b. The following appendices contained in the "Grade A Pasteurized Milk Ordinance-- ~~2005~~ 2009 Revision:" Appendices D, F, G, H, I, J, K, L, N, O and R;

c. Item 1p. Floors; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Except as specified in subdivision C 1 c (2) of this section, provide floors, for all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment, or utensils are washed constructed of concrete or other equally impervious and easily cleaned material and which are smooth, properly

sloped, provided with trapped drains, and kept in good repair;

(2) The floor in any cold-storage room used for storing milk and milk products need not be provided with floor drains if the floors are sloped to drain to one or more exits from the cold-storage room. The floor in any storage room used for storing dry ingredients or packaging materials need not be provided with drains and the floor in any storage room used for storing dry ingredients or packaging materials may be constructed of tightly joined wood;

d. Item 2p. Walls and ceilings; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide walls and ceilings of rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, or equipment are washed, that have a smooth, washable, light-colored surface, and that are in good repair;

e. Item 3p. Doors and windows. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide:

(1) Effective means to prevent the access of flies and rodents to any part of a milk plant, receiving station, or transfer station; and

(2) Solid doors or glazed windows for all openings to the outside of any milk plant, receiving station, or transfer station and keep the doors and windows closed during dusty weather;

f. Item 4p. Lighting and ventilation. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide rooms in which any milk or milk products are handled, processed, or stored or in which any milk containers, equipment, or utensils are washed, that are well lighted and well ventilated;

g. Item 5p. Separate rooms. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Provide separate rooms for: (i) pasteurizing, processing, cooling, and packaging milk and milk products; (ii) cleaning milk cans, bottles, and cases; (iii) the fabrication of containers and closures for milk and milk products; (iv) cleaning and sanitizing facilities for bulk milk transport tanks if the grade A permit holder receives any milk or milk product in bulk milk transport tanks; and (v) receiving cans of milk and milk products separate from clauses (i), (ii) and (iii) of this subdivision,

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unless all of the grade A permit holder's milk or milk products are received in bulk milk transport tanks;

(2) Not use any room with a direct opening into any stable or room used for domestic purposes to handle, process, or store any milk or milk products or; wash or store any milk containers, utensils, or equipment;

(3) Use rooms of sufficient size so as not to be crowded to handle, process, or store any milk or milk products or wash or store any milk containers, utensils, or equipment; and

(4) Provide designated areas or rooms for the receiving, handling and storage of returned packaged milk and milk products if the permit holder receives any returned packaged milk or milk products;

h. Item 6p. Toilet-sewage disposal facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide each milk plant with toilet facilities conforming with the regulations of the Commonwealth and the following requirements: no toilet room may open directly into any room in which milk or milk products are processed; the toilet room shall be completely enclosed and shall have tight-fitting, self closing doors; the dressing room, toilet room, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and well lighted; and sewage and other liquid wastes from the toilet room shall be disposed of in a sanitary manner;

i. Item 7p. Water supply. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Provide water for each milk plant from a supply which is properly located, protected, and operated; and

(2) Provide water from a supply which is easily accessible for inspection by the State Regulatory Authority, adequate, and of a safe, sanitary quality;

j. Item 8p. Hand-washing facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Provide hand-washing facilities, including separate hot and cold running water, mix valve, soap, and individual sanitary towels or other approved hand-drying devices, convenient in any area where milk or milk products are handled, processed, or stored, and any area where containers, utensils, or equipment, are washed or stored; and

(2) Keep the hand-washing facilities clean and in good repair;

k. Item 9p. Milk plant cleanliness. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Keep clean, neat, and free of any evidence of animals, insects or rodents, all rooms in which milk or milk products are handled, processed, or stored or in which containers, utensils, or equipment are washed or stored; and

(2) Permit only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, in pasteurizing, processing, cooling, packaging, or bulk milk storage rooms;

l. Item 10p. Sanitary piping. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Use only sanitary piping, fittings, and connections consisting of smooth, impervious corrosion-resistant, nontoxic, easily cleanable materials that are exposed to any milk or milk products, or from which liquids may drip, drain, or be drawn into any milk or milk products;

(2) Keep all piping in good repair;

(3) Except as specified in subdivision 1 l of this subsection, use only sanitary piping to transfer any pasteurized or ultra-pasteurized milk or milk products from one piece of equipment to another piece of equipment; and

(4) Transport cottage cheese, cheese dressings, or cheese ingredients by methods which protect the product from contamination;

m. Item 11p. Construction and repair of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Use only multiuse containers and equipment, that may come in contact with any milk or milk products constructed of smooth, impervious, corrosion-resistant, and nontoxic materials; constructed for ease of cleaning; and kept in good repair;

(2) Use only single-service containers, closures, gaskets, and other articles, that may come in contact with any milk or milk products, that are nontoxic and have been manufactured, packaged, transported, and handled in a sanitary manner;

(3) Abstain from using more than once any articles intended for single-service use; and

(4) Use only single-service containers, closures, caps, gaskets, and similar articles manufactured, packed,

transported, and handled in a manner which complies with the requirements of Appendix J, "Standards for the Fabrication of Single-Service Containers and Closures for Milk and Milk Products"; contained in the "Grade A Pasteurized Milk Ordinance, ~~2005~~ 2009 revision";

n. Item 12p. Cleaning and sanitizing of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Effectively clean and sanitize before each use the product-contact surfaces of all multiuse containers and equipment, utensils, and equipment used in the transportation, processing, handling, and storage of any milk or milk products;

(2) Use only multi-use containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count on multi-use containers may not exceed one per milliliter of capacity when the rinse test is used, or the residual bacteria count on multi-use containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product-contact surface, when the swab test is used; in three-out-of-four samples taken at random on a given day; and (ii) all multi-use containers shall be free of coliform organisms; and

(3) Use only single-service containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count of single-service containers shall not exceed 50 per container, when the rinse test is used, except that in containers less than 100 milliliters, the count shall not exceed 10, or the residual bacteria count of single-service containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product contact surface, when the swab test is used; in three-out-of-four samples taken at random on a given day; and (ii) all single-service containers shall be free of coliform organisms;

o. Item 13p. Storage of cleaned containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products, shall after cleaning any multiuse milk or milk product containers, utensils, or equipment, transport or store the multiuse milk or milk product containers, utensils, or equipment in a manner that assures complete drainage and in a manner that protects the multiuse milk or milk product containers, utensils, or equipment from contamination before use;

p. Item 14p. Storage of single-service containers, utensils, and materials. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Purchase all single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products, in sanitary tubes, wrappings, or cartons;

(2) Store in a clean dry place until used, single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products;

(3) Store single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons; and

(4) Handle single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in a sanitary manner;

q. Item 15p. Protection from contamination. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Locate the person's equipment and facilities and conduct milk plant operations to prevent any contamination of any milk or milk products, ingredients, equipment, containers, or utensils;

(2) Discard all milk, milk products, or ingredients which have been spilled, overflowed, or leaked;

(3) Perform the processing and handling of products other than milk and milk products in the person's milk plant to preclude the contamination of any milk or milk products;

(4) Store, handle, or use any toxic material to preclude the contamination of any milk, milk product, or ingredient, and the milk product contact surfaces of all equipment, containers, or utensils; and

(5) Clean, prior to use, all multi-use cases used to encase packaged milk or milk product containers;

r. Item 16p. Pasteurization and ultra-pasteurization. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Perform pasteurization or ultra-pasteurization as defined in 2VAC5-490-10; and

(2) Perform aseptic processing in compliance with the provisions of 21 CFR Part 113, 21 CFR Part 108, and the Administrative Procedures of Item 16p, 16p(C), 16p(D), and 16p(E) of the "Grade A Pasteurized Milk Ordinance, ~~2005~~ 2009 revision";

s. Item 17p. Cooling of milk. Each person who holds a grade A permit to produce grade A pasteurized, ultra-

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pasteurized, or aseptically processed milk, or milk products shall:

(1) Maintain all raw milk and milk products at a temperature of 45°F or cooler, but not frozen, until processed;

(2) Maintain all whey and whey products for condensing, drying, or condensing and drying at a temperature of 45°F (7°C) or cooler; or 135°F (57°C) or greater until processed, except that acid-type whey with a titratable acidity of 0.40% or above, or a pH of 4.6 or below, is exempted from these temperature requirements;

~~(2)~~ (3) Immediately cool, except for the following milk or milk products ~~to be cultured~~, all pasteurized or ultra-pasteurized milk or milk products prior to filling or packaging in approved cooling equipment to a temperature of 45°F or cooler, but not frozen unless drying is commenced immediately after condensing;

(a) Those milk or milk products to be cultured;

(b) Cultured sour cream at all milkfat levels with a pH of 4.70 or below;

(c) Acidified sour cream at all milkfat levels with a pH of 4.60 or below;

(d) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling;

(e) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below; and

(f) All condensed whey and whey products shall be cooled during the crystallization process to 50°F (10°C) or less within 72 hours of condensing, including the filling and emptying time, unless filling occurs above 135°F (57°C), in which case, the 72 hour time period begins when cooling started;

~~(3)~~ (4) Store, transport, and deliver at a temperature of 45°F or cooler, but not frozen, all pasteurized or ultra-pasteurized milk or milk products with the following exceptions:

(a) Cultured sour cream at all milkfat levels with a pH of 4.70 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(b) Acidified sour cream at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(c) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling and with a subsequent pH of 4.60 or below within 24 hours after filling shall be cooled to 45°F (7°C) or cooler within 96 hours after filling; and

(d) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 24 hours after filling; and

(5) Store all pasteurized milk and milk products to be condensed, dried, or condensed and dried at a temperature of 50°F (10°C) or cooler until further processed;

~~(4)~~ (6) Equip with an accurate indicating thermometer each of the rooms or tanks in which any milk, ~~or~~ milk products, whey, or whey products are stored; and

(7) Provide ready access at the plant to cleaning records and product storage temperature records stored electronically for review by the State Regulatory Authority. Electronic records of cleaning shall comply with the applicable provisions of Appendix H, Sections IV and V of the "Grade A Pasteurized Milk Ordinance, 2009 revision";

t. Item 18p. Bottling and packaging. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Bottle or package all milk or milk products ~~(except for cottage cheese, dry curd cottage cheese and lowfat cottage cheese)~~ at the place of pasteurization in the grade A permit holder's milk plant and in approved mechanical equipment; and

(2) Transport all cottage cheese, dry curd cottage cheese, or lowfat cottage cheese not creamed or packaged in the grade A permit holder's milk plant in sealed containers and in a protected, sanitary manner from the grade A permit holder's milk plant to another grade A permit holder's milk plant for creaming or packaging; Package and store in a sanitary manner all dry milk products in new containers, which protect the contents from contamination; and

(3) Transport and store in a sanitary manner all condensed and dry milk products in sealed containers from one milk plant to another milk plant for further processing or packaging;

u. Item 19p. Capping. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Cap or close all milk or milk product containers in a sanitary manner by use of approved mechanical capping or closing equipment; and

(2) Use only caps or closures for all milk or milk products, which protect the pouring lip of a milk or milk product container to at least its largest diameter and, use with respect to fluid product containers, only caps or

closures that the removal of the cap or closure cannot be made without detection;

v. Item 20p. Personnel; cleanliness. No person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Permit any person in a milk plant to commence any plant function before the person has thoroughly washed the person's hands to remove soil and contamination or to permit any person in a milk plant to continue any plant function if the person's hands are not clean;

(2) Permit any person in a milk plant to resume work after the person has visited the toilet room before the person has thoroughly washed the person's hands;

(3) Permit any person in a milk plant to engage in the processing, pasteurization, handling, storage, or transportation of any milk, milk products, containers, equipment or utensils, unless the person is wearing clean outer garments;

(4) Permit any person in a milk plant, to engage in the processing of any milk or milk products unless the person wears adequate hair covering; or

(5) Permit any person in a milk plant, to engage in the processing of any milk or milk products if the person is using tobacco;

w. Item 21p. Vehicles. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall use vehicles to transport pasteurized and ultra-pasteurized milk and milk products that are constructed and operated so that the milk or milk products are maintained at a temperature of 45°F or cooler, but not frozen and protected from sunlight, from freezing, and from contamination;

x. Item 22p. Surroundings. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall keep neat, clean, and free from conditions which might attract or harbor flies, other insects, rodents, or which otherwise constitute a nuisance, the area surrounding any milk plant;

y. Each grade A permit holder's receiving station shall comply with subdivisions C 1 a through q of this section, inclusive, and subdivisions C 1, s, v, and x of this section, except that the partitioning requirement of subdivision C 1 g of this section shall not be deemed to apply;

z. Each grade A permit holder's transfer station shall comply with subdivisions C 1 c, f, h through n, p, q, s, v, and x of this section; and as climatic and operating

conditions require, the provisions of subdivisions C 1 d and e of this section; except that each person shall provide overhead protection for a transfer station; and

a1. Each grade A permit holder's facilities for the cleaning and sanitizing of bulk tanks which transport milk and milk products shall comply with subdivisions C 1 a, f, h through n, p, q, v, and x of this section; and as climatic and operating conditions require, the provisions of subdivisions C 1 d and e of this section except that each grade A permit holder shall provide overhead protection for facilities for the cleaning and sanitizing of bulk tanks which transport milk and milk products in the grade A permit holder's milk plant, receiving station, or transfer station.

D. Minimum facilities requirements for milk processing plant. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products shall:

1. Provide a separate receiving room meeting the requirements of subdivision C 1 y of this section from any other area of the plant for the receipt of milk or milk products in bulk if the plant receives any milk or milk products in bulk;

2. Provide cleaning and sanitizing facilities for milk tank trucks as part of the plant's receiving room facilities if the plant receives any milk or milk products in bulk;

3. Provide a separate receiving room from any other area of the plant for the receipt of milk or milk product in cans or other containers if the plant receives any milk or milk product in cans or other containers;

4. Provide a separate room from any other area of the plant for the cleaning of milk cans or containers, bottles, milk cases, and dry milk or milk product containers if the plant receives any milk in cans or containers or washes any bottles, milk cases, or dry milk or milk product containers;

5. Provide a separate room for the fabrication of containers and closures for milk and milk products if the plant fabricates any containers or closures;

6. Provide a separate room for the packaging of dry milk or milk products if the plant packages any dry milk or milk product; and

7. Provide separate rooms from any other area of the plant for each of the following operations performed on any milk, milk product, or condensed and dry milk product: (i) pasteurization; (ii) processing; (iii) cooling; (iv) reconstitution; (v) condensing; (vi) drying; and (vii) packaging, if the operation is performed in the plant.

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2VAC5-490-73. Mandatory pasteurization for all milk, milk products, condensed milk, condensed milk products, dry milk, and dry milk products in final package form intended for direct human consumption.

No person shall ~~cause to be delivered into intrastate commerce or shall sell, otherwise distribute, or hold for sale with intent to sell or other distribution after shipment offer to sell~~ in intrastate commerce any milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product in final package form for direct human consumption unless the product has been pasteurized or is made from milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product that has all been pasteurized, except where alternative procedures to pasteurization are provided for under 21 CFR Part 133 for curing of certain cheese varieties.

2VAC5-490-105. New or test facilities and equipment; equipment design, construction and approval process.

A. At the request of any grade A permit holder, the State Regulatory Authority may allow the temporary installation of equipment or the temporary construction of dairy facilities that the State Regulatory Authority has no or limited regulatory experience with, on a trial basis, to determine if the equipment or dairy facilities can comply with the requirements of this chapter under normal conditions of use. The State Regulatory Authority will at a minimum evaluate the equipment or facilities for compliance with the requirements of this chapter when newly installed, as well as, complete a separate evaluation of the inspection record during the trial of the equipment or facilities to comply with the requirements of this chapter over time under normal conditions of use.

B. At the conclusion of each trial, the State Regulatory Authority shall inform the grade A permit holder in writing if the equipment or facilities or both the equipment and facilities comply with the requirements of this chapter. If the equipment or facilities do not comply or both the equipment and facilities do not comply with the requirements of this chapter, the State Regulatory Authority shall inform the grade A permit holder in writing to alter or remove his equipment or facilities or to alter or remove both his equipment and facilities within a maximum of six months from the date of receipt of the written decision by the permit holder.

C. The State Regulatory Authority ~~shall not~~ may renew or extend any temporary installation of equipment or the temporary construction of dairy facilities beyond the time specified in the written agreement between the grade A permit holder and the State Regulatory Authority ~~for more than one year after the time specified in the written agreement for any reason. The State Regulatory Authority shall not accept any agreement between the grade A permit holder and the State Regulatory Authority for the temporary installation of equipment or the temporary construction of dairy facilities~~

~~that proposes to be evaluated for a period longer than one year.~~

D. If the State Regulatory Authority agrees to allow the temporary installation of equipment or the temporary construction of dairy facilities, the State Regulatory Authority and the grade A permit holder installing the equipment or constructing the facilities shall each sign a written agreement that at a minimum includes:

1. A description of the equipment or facilities and detailed plans for their installation acceptable to the State Regulatory Authority;
2. The name of the grade A permit holder and the physical address where the equipment or facilities will be installed;
3. The name and contact information for the person or persons who will be installing the equipment or constructing the facilities;
4. A detailed plan including:
 - a. A description of the items to be evaluated by the State Regulatory Authority;
 - b. Criteria to judge the acceptability of performance by which each item being evaluated will be measured by the State Regulatory Authority;
 - c. A time table specifying the length of the trial, the minimum number of inspections and time periods between inspections;
 - d. How inspection findings will be documented and reviewed with the permit holder and at what frequency;
 - e. A provision for the State Regulatory Authority to end the temporary installation agreement before the completion of the timeline and reject the equipment or facilities as not complying with the requirements of this chapter if continuation of the trial will not substantially affect the decision of the State Regulatory Authority;
 - f. A provision that at the end of the timeline specified in the agreement, the permit holder will remove or alter the equipment or facilities within a maximum of six months from the date he receives written instruction to do so from the State Regulatory Authority to comply with the requirements of this chapter if the State Regulatory Authority does not approve the equipment or facilities; and
 - g. A provision that the permit holder's failure to remove or alter the equipment or facilities to comply with the requirements of this chapter within six months after receipt of written instructions from the State Regulatory Authority shall be considered sufficient cause for permit suspension.

Part XI
Voluntary HACCP Program

Article 1
Program Participation

2VAC5-490-131. HACCP program participation voluntary.

A. Participation in the HACCP program is voluntary for each person who operates a dairy plant, receiving station or transfer station and the State Regulatory Authority responsible for the permitting and auditing of each person's dairy plant, receiving station or transfer station. No person operating a milk plant, receiving station or transfer station may participate in the voluntary HACCP program unless the State Regulatory Agency responsible for the permitting and auditing of each person's dairy plant agrees to participate in the voluntary HACCP program, also.

B. Each person volunteering to operate his milk plant, receiving station or transfer station under the voluntary HACCP program shall provide a written commitment to the State Regulatory Authority responsible for his milk plant, receiving station or transfer station that he will supply the necessary resources to support participation in the voluntary HACCP program.

C. Each State Regulatory Authority volunteering to participate in the voluntary HACCP program shall provide a written commitment to the person requesting to operate a milk plant, receiving station or transfer station under the voluntary HACCP program that the State Regulatory Authority will supply the necessary resources to support participation in the voluntary HACCP program.

D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall have a minimum of 60 days of HACCP System records prior to a HACCP listing audit. Each milk plant, receiving station or transfer station shall be inspected and permitted initially by the State Regulatory Authority and shall be regulated initially under the requirements of this chapter without taking into consideration the provisions of this part until the State Regulatory Authority conducts an acceptable HACCP listing audit documenting the successful implementation of a fully functioning HACCP System in the person's milk plant, receiving station or transfer station.

E. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Comply with all of the provisions applicable to the voluntary HACCP program contained in:
 - a. Section 7, Standards for grade "A" milk and milk products;
 - b. Item 16p, Pasteurization and aseptic processing;

- c. Item 16p(E), Pasteurization and aseptic processing records, equipment tests and examinations;
- d. Section 13, Personnel health;
- e. Section 14, Procedure when infection or high risk of personnel health;
- f. Appendix H, Pasteurization Equipment and procedures;
- g. Appendix I, Pasteurization equipment and controls tests;
- h. Appendix K, HACCP Program; and
- i. Appendix R, Determination of Time/Temperature Control for Safety of Milk and Milk Products contained in the "Grade A Pasteurized Milk Ordinance, ~~2005~~ 2009 revision";

2. Prepare their HACCP Plan based on the following HACCP principles:

- a. Conduct a hazard analysis;
- b. Determine the critical control points;
- c. Establish critical limits;
- d. Establish monitoring procedures;
- e. Establish corrective actions;
- f. Establish verification procedures; and
- g. Establish recordkeeping and documentation procedures;

3. Prior to the implementation of a HACCP Plan develop, document and successfully implement written prerequisite programs which provide the basic environment and operating conditions that are necessary for the production of safe, wholesome food.

2VAC5-490-138. Training.

Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure that each person who is responsible for: (i) developing a hazard analysis; (ii) delineating control measures; (iii) developing a HACCP plan that is appropriate for the specific milk plant, receiving station or transfer station; (iv) validating and modifying the HACCP plan; or (v) performing required HACCP plan record reviews has received basic HACCP training and an orientation to the HACCP requirements contained in Appendix K of the "Grade A Pasteurized Milk Ordinance, ~~2005~~ 2009 revision."

Regulations

Part XII
Interpretation and Enforcement

2VAC5-490-140. Interpretation and enforcement.

A. This chapter is based on the "Grade A Pasteurized Milk Ordinance- ~~2005~~ 2009 recommendations." Except as otherwise provided in this chapter, the provisions of this chapter shall be interpreted in a manner consistent with interpretations accorded the "Grade A Pasteurized Milk Ordinance- ~~2005~~ 2009 recommendations."

B. The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act.

C. The State Regulatory Authority shall comply with the following administrative procedures when summarily suspending a grade A permit as specified in 2VAC5-490-31 B:

1. The State Regulatory Authority shall serve upon the grade A permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the grade A permit holder of the right to appear before the State Regulatory Authority in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;

2. Upon receipt of written application from any person whose grade A permit has been summarily suspended (within 30 days after the effective date of the summary suspension) the State Regulatory Authority shall within seven days after the date of receipt by the State Regulatory Authority of a written application from any person whose grade A permit has been summarily suspended proceed to hold an informal fact-finding conference to ascertain the facts of the violations in question and upon evidence presented at the informal fact-finding conference shall affirm, modify, or rescind the summary suspension;

3. The State Regulatory Authority shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal conference proceedings. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the State Regulatory Authority for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the agency which can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose grade A permit has been summarily suspended may be granted an informal fact-finding conference by the State Regulatory Authority unless the State Regulatory Authority receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the grade A permit holder may request a formal hearing under § 2.2-4020 of the Code of Virginia by writing the Program Manager of the Office of Dairy and Foods within 30 days stating the request and by providing the State Regulatory Authority with a statement of the issues in dispute. If the request for a formal conference is denied, the State Regulatory Authority shall notify the grade A permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal fact-finding conference is denied, the State Regulatory Authority shall notify the grade A permit holder of the right to file an appeal in the circuit court.

DOCUMENTS INCORPORATED BY REFERENCE
(2VAC5-490)

Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Traceback, M-I-96-10 (Revision ~~#5~~ #7), ~~March 10, 2004~~ January 4, 2010, published by the Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

Evaluation of Milk Laboratories, ~~2005~~ 2007 Revision, published by the Food and Drug Administration Laboratory Quality Assurance Team, HFH-450, 6502 South Archer Road, Summit-Argo, Illinois 60501.

Grade "A" Pasteurized Milk Ordinance, ~~2005~~ 2009 Revision, published by the Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

Official Methods of Analysis of the Association of AOAC International, 18th Edition, 2005, published by the Association of Official Analytical Chemists International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417.

Uniform Methods and Rules: Bovine Tuberculosis Eradication - effective January 1, 2005, available from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, federal Center Building, Hyattsville, Maryland 20782 or Federal Veterinarian in Charge, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 N. 8th Street, Richmond, Virginia 23240.

Uniform Methods and Rules: Brucellosis Eradication - effective October 1, 2003, available from U.S. Department of

Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal center Building, Hyattsville, Maryland 20782 or Federal Veterinarian in Charge, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 N. 8th Street, Richmond, Virginia 23240.

VA.R. Doc. No. R10-2395; Filed May 21, 2010, 12:06 p.m.

PESTICIDE CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The Pesticide Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the board adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more board meetings and one public hearing.

Title of Regulation: 2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act (amending 2VAC20-51-60).

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: July 21, 2010.

Agency Contact: Liza Fleeson, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 786-9149, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendment exempts from the applicator certification requirements of the Virginia Pesticide Control Act certain governmental employees who utilize FIFRA 25 (b) minimum-risk pesticide products and any registered ready-to-use pesticide products when the intended use of the products is to prevent immediate personal harm from stinging or biting insects.

2VAC20-51-60. Persons exempt from certification.

The following persons are exempt from certification:

1. Persons conducting laboratory research involving restricted use pesticides;
2. Doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication during the course of their practice, or to control pests in corpses;
3. Persons who use or supervise the use of nonrestricted use pesticides as part of their duties only on properties owned or leased by their employers, except those persons identified in 2VAC20-51-20 B;
4. Persons who provide janitorial or cleaning services using nonrestricted use sanitizers, disinfectants, and germicides;

5. Painters who apply restricted use marine antifoulant paint under the direct supervision of a commercial applicator. One commercial applicator shall be present for every eight painters;

6. Forestry applicators standing on the ground who apply general use herbicides for forest vegetation control and tree thinning under the direct on-site supervision of a commercial applicator. One commercial applicator shall be present for every eight forestry applicators and be within voice contact of and no more than 200 feet from such applicators; and

7. Individuals engaged in the training required for certification while under the direct on-site supervision of a certified applicator; and

8. Employees of local, state, or federal governmental agencies who from time to time make incidental use of ready-to-use pesticides that are properly registered in Virginia. For purposes of this section, "incidental use" means the use of a pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm from stinging or biting insects. This exemption does not include regular, routine, or maintenance applications of pesticides or any use of restricted-use pesticides.

VA.R. Doc. No. R10-20; Filed May 21, 2010, 12:06 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

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 4VAC20-20-10, 4VAC20-20-20, 4VAC20-20-30).

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

Effective Date: July 16, 2010.

Agency Contact: Jane Warren, 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.

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Summary:

The purpose of these amendments is to reduce entanglements of marine mammals, specifically bottlenose dolphins and threatened and endangered marine sea turtles.

4VAC20-20-10. Purpose.

The purposes of this chapter are to set forth the procedures pertaining to the licensing of fixed fishing devices and the priority rights of holders of fixed fishing device licenses ~~and to~~ ensure the safety of persons fishing near pound nets and staked gill nets, and reduce entanglements with sea turtles and bottlenose dolphins.

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 that~~ 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 that~~ have been pushed or pumped into the bottom and has one or two wings and a leader or runner to help guide the fish into the net.

"Inshore pound net" means a pound net that has a leader or runner that originates within 10 horizontal feet from the mean low water line.

"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.

"Pound Net Regulated Area I" means Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0' north latitude, and west of 76°13.0' west longitude, and all waters south of 37°13.0' north latitude to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05' north latitude, 75°59' west longitude to 36°55' north latitude, 76°08' west longitude) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36°59.55' north latitude, 76°18.64' west longitude) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55' north latitude, 76°30.40' west longitude).

"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, 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.

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.

E. Any pound net licensed and fished in Virginia tidal waters located in Pound Net Regulated Area I, except inshore pound nets, shall be equipped with a modified leader from May 6 through July 31. In addition, it shall be the responsibility of the licensee of any pound net, except inshore pound nets, licensed in Virginia tidal waters located in Pound Net Regulated Area I 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 pound net's leader design, prior to any initial or subsequent deployment of that pound net within any year.

V.A.R. Doc. No. R10-2376; Filed May 26, 2010, 9:48 a.m.

Final Regulation

Title of Regulation: 4VAC20-370. Pertaining to the Culling of Crabs (amending 4VAC20-370-20).

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

Effective Date: June 1, 2010.

Agency Contact: Jane Warren, 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:

This amendment makes it unlawful to possess more than 10 dark sponge crabs per bushel or 35 dark sponge crabs per barrel from March 17 through June 30.

4VAC20-370-20. Culling requirements.

A. All crabs taken from the tidal waters of Virginia shall be culled to the legal size and possession limits by the catcher at the location of the harvest.

B. The catcher shall use culling containers (other than bushel baskets and barrels normally used for crabs) for the purpose of culling crabs during the harvesting process. Crabs placed loose in any boat are subject to be culled at any time. The provisions of this section shall not apply to the harvesting of crabs from a licensed crab trap (crab pound).

C. During culling, all undersize crabs shall be immediately returned to the water as required by § 28.2-708 of the Code of Virginia.

D. From March 17 through ~~July 15~~ June 30, it shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of the presence of a dark egg mass more than 10 dark sponge crabs per United States standard bushel or 35 dark sponge crabs per barrel, and the following conservation measures shall be in effect:

1. During culling, those dark sponge crabs in excess of the allowance level shall be immediately returned to the water alive and shall not be altered or destroyed in any manner.

2. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of unnatural removal of eggs, a female blue crab that has been scrubbed or has in any manner other than natural hatching had the eggs removed therefrom.

3. Any marine patrol officer may grade or cull any number of barrels, baskets or containers of crabs in any person's possession. If the officer finds more than 10 dark sponge crabs per United States standard bushel or 35 per barrel, he shall seize the entire quantity of crabs in or from each such container, and the person who possessed the crabs shall immediately return them to the water. Refusal to return the crabs to the water is a separate offense from any other violation.

E. Nothing in this section shall prohibit the possession of dark sponge crab which have been taken outside of Virginia waters by crab processing houses meeting the following conditions:

1. It shall be unlawful for any crab processing house to import or possess any dark sponge crabs from any other state or jurisdiction without first providing notice to the operations office of its intent to import dark sponge crabs.

2. Any crab processing house shall notify the operations office of its intent to import or possess dark sponge crabs from another state at least 24 hours in advance, either by telephone (1-757-541-4646 or 757-247-2265/2266) or by FAX (757-247-8026). Each crab processing house shall provide the operations office with their company name, manager's name, business location, phone number, quantity of crabs to be imported, source of crabs, arrival date and approximate time.

3. Such imported crabs shall be accompanied by a bill of sale which shall include the name of the seller, address and phone number of the seller, the license number of the seller if such license is required in the jurisdiction of harvest, the date of sale, and the quantity of crabs sold or purchased under the bill of sale.

V.A.R. Doc. No. R10-2423; Filed May 26, 2010, 9:33 a.m.

Final Regulation

Title of Regulation: 4VAC20-1040. Pertaining to Crabbing Licenses (amending 4VAC20-1040-20).

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

Effective Date: June 1, 2010.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-

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2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This amendment extends the license sales moratorium indefinitely. Fishermen eligible for any crabbing license in 2010 will continue to be eligible for that specific crab license unless the fisherman fails to register as a commercial fisherman or transfers that license to another person.

4VAC20-1040-20. License sales moratorium and license ineligibility conditions.

A. For ~~the any~~ lawful crabbing seasons ~~of 2008 through 2010~~ season, commercial licenses for crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net shall be sold only to those registered commercial fishermen who have been determined by the commission to be eligible to purchase any of these licenses in ~~2007 2010~~, except as described in subsection B of this section.

B. For ~~the any~~ lawful crabbing seasons ~~of 2009 and all subsequent seasons~~ season, those registered commercial fishermen who were eligible from 2004 through 2008 for any crab pot or peeler pot licenses, but reported no harvest from 2004 through 2007, ~~shall be placed on a waiting list and shall be were placed on a waiting list in 2009 and shall remain ineligible to purchase a crab pot or peeler pot license, except as described in subdivisions 1 and 2 of this subsection in accordance with subsection C of this section.~~

1. ~~Those crab pot or peeler pot fishermen described in this subsection who reported harvest prior to the control date of December 17, 2007, from the crab dredge fishery for both the 2005/06 and 2006/07 seasons shall remain eligible to purchase their crab pot or peeler pot license for the lawful crabbing seasons of 2009 and 2010.~~

2. ~~Those crab pot or peeler pot fishermen described in this subsection who do not meet the condition described in subdivision 1 of this subsection shall remain on the waiting list until such time that results from the Chesapeake Bay Winter Dredge Survey indicate that an abundance of 200 million age 1+ blue crabs (blue crabs 2.4 inches and greater, in carapace width) has been attained in three consecutive, seasonal (December – March) surveys.~~

C. At such time results from the Chesapeake Bay Winter Dredge Survey indicate that an abundance of 200 million age 1+ blue crabs (blue crabs 2.4 inches and greater, in carapace width) has been attained in three consecutive, seasonal (December – March) surveys, those registered commercial fishermen on the waiting list shall resume their eligibility to purchase their crab pot or peeler pot licenses according to a limited and delayed access system established by the Commission.

~~C. D.~~ Any person receiving a crab license by lawful transfer ~~in 2008 through 2010~~ also establishes his eligibility to purchase that specific license ~~through 2010~~; however, any person either failing to register as a commercial fisherman in any year or lawfully transferring his crab license to another person shall forfeit his eligibility to purchase that specific crab license ~~through 2010~~.

~~D. E.~~ Commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets may be transferred to an immediate family member of the licensee at any time and, in the case of death or incapacitation of the licensee, may be transferred to a registered commercial fisherman at any time. Crabbing licenses also may be transferred to another registered commercial fisherman, except that not more than 100 licenses shall be transferred in the current year. All such transfers shall be documented on forms provided by the commission and shall be subject to the approval of the commissioner.

~~E. F.~~ Any crab pot or peeler pot license that is purchased by the commission through the Federal Crab Disaster Relief Program shall be permanently retired and shall not be available for sale to any fisherman at any time. Any person whose license is purchased under the Crab Disaster Relief Program may re-enter the fishery only through the transfer of another crab pot or peeler pot license as authorized by regulations in effect at the time of the transfer.

VA.R. Doc. No. R10-2421; Filed May 26, 2010, 9:37 a.m.

Final Regulation

Title of Regulation: **4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-10, 4VAC20-1140-20).**

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

Effective Date: June 1, 2010.

Agency Contact: Jane Warren, 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:

This chapter prohibits crab dredging in Virginia's waters from December 1, 2010, through March 31, 2011.

4VAC20-1140-10. Purpose.

This chapter promotes conservation of the blue crab resource, especially female crabs that constitute mostly all of the crab dredge harvest, with many of those female crabs yet to produce their initial spawn. The provisions in this chapter are in response to the reduced abundance of the blue crab resource and its overexploitation, especially of female crabs.

4VAC20-1140-20. Crab dredging prohibited.

A. In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, ~~2009~~ 2010, through March 31, ~~2010~~ 2011, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

B. The following regulations that pertain to the crab dredge fishery or activities associated with crab dredging are repealed:

- 4VAC20-40, "Pertaining to Crab Catch Limits"
- 4VAC20-90, "Pertaining to Dredging for Crabs"
- 4VAC20-270-30 C, Daily Time Limits, "Pertaining to Crabbing"
- 4VAC20-750, "Pertaining to Crab Dredge Sales"
- 4VAC20-752-30 A, Harvest Restrictions. "Pertaining to Blue Crab Sanctuaries"
- 4VAC20-1090-30 1, Commercial Licenses: Blue Crab Harvesting and Shedding Licenses--For each boat used for taking or catching hard crabs with dredges. "Pertaining to Licensing Requirements and License Fees"

V.A.R. Doc. No. R10-2422; Filed May 26, 2010, 9:29 a.m.



TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **5VAC5-40. Administration of the Office of the Clerk of the Commission (adding 5VAC5-40-10, 5VAC5-40-20).**

Statutory Authority: § 13.1-1062 of the Code of Virginia.

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

Public Comment Deadline: July 2, 2010.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 371-9912, or email joel.peck@scc.virginia.gov.

Summary:

Chapter 703 of the 2010 Acts of Assembly provides authority to the State Corporation Commission to set the schedule for assessing limited liability companies in Virginia. Currently, limited liability companies are assessed annually in July, and assessments must be paid by the end of September. The changes in Chapter 703 permit the commission to assess all LLCs annually in July or assess each LLC annually during the month it was originally organized. The second enactment clause of the act requires the commission to enter an order no later than August 1, 2010, setting the schedule for assessing LLCs in Virginia. The Order to Take Notice and attached proposed regulations set forth a schedule for assessing LLCs annually in July, which is current practice. The proposed regulation merely puts in regulation the schedule that has been in statute prior to the enactment of Chapter 703.

AT RICHMOND, JUNE 1, 2010

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. CLK-2010-00006

Ex Parte: In re: annual registration fees for limited liability companies

ORDER TO TAKE NOTICE

Chapter 703 of the 2010 Virginia Acts of Assembly ("Chapter 703 of the Acts"), among other things, requires each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth to pay an annual assessment of \$50, calculated in accordance with a schedule set by the State Corporation Commission ("Commission"). The schedule shall be in accordance with § 13.1-1062, as amended by Chapter 703 of the Acts. The second enactment of Chapter 703 of the Acts directs the Commission to enter an order setting this schedule no later than August 1, 2010.

NOW THE COMMISSION, based on information supplied by the Clerk of the Commission, proposes to adopt a regulation setting an assessment schedule as required by Chapter 703 of the Acts.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, entitled "Assessment Schedule for Limited Liability Companies," is appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before July 2, 2010. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately

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addressed in written comments. All correspondence shall contain a reference to Case No. CLK-2010-00006. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof shall be sent to the Clerk of the Commission, who shall forthwith mail a copy of this Order, including a copy of the proposed regulation, to interested parties as he may designate.

CHAPTER 40

ADMINISTRATION OF THE OFFICE OF THE CLERK OF THE COMMISSION

5VAC5-40-10. (Reserved.)

5VAC5-40-20. Assessment of limited liability companies.

Each year, the commission shall ascertain from its records each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth, as of July 1 of each year, and shall assess against each such limited liability company the annual registration fee imposed in subsection A of § 13.1-1062 of the Code of Virginia, and, except as provided in subsection C of § 13.1-1062, that each such limited liability company shall pay the assessment due into the state treasury on or before September 30 in each year after the calendar year in which it was formed or registered to transact business in the Commonwealth; provided that the initial annual registration fee to be paid by a domestic limited liability company created by conversion shall be due in the year after the calendar year in which it converted.

VA.R. Doc. No. R10-2454; Filed June 2, 2010; 11:00 a.m.

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Regulation

Title of Regulation: 9VAC15-40. Small Renewable Energy Projects (Wind) Permit by Rule (adding 9VAC15-40-10 through 9VAC15-40-140).

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Hearing Information:

August 3, 2010 - 2 p.m. - Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949-A Cox Road, Glen Allen, VA

Public Comment Deadline: August 20, 2010.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email carol.wampler.renewable.energy@gmail.com.

Basis: This regulatory action is undertaken by the Department of Environmental Quality (DEQ) pursuant to §§ 10.1-1197.5 through 10.1-1197.11 of the Code of Virginia (Chapters 808 and 854 of the 2009 Acts of Assembly). The legislation mandates that DEQ develop one or more permits by rule for small renewable energy projects.

Purpose: This regulatory action is necessary in order for DEQ to carry out the requirements of Chapters 808 and 854 of the 2009 Acts of Assembly. This regulatory action is essential to protect the health, safety, and welfare of Virginia citizens because it will establish necessary requirements, other than those established in applicable environmental permits, to protect Virginia's natural resources that may be affected by the construction and operation of small renewable energy projects.

Substance: This regulatory action addresses the need for a reasonable degree of certainty and timeliness in the natural-resource protections required of small wind energy projects by setting forth, as fully as practicable, these required protections "up front" in this new permit by rule for wind energy projects. The regulatory action describes how DEQ will address analysis of potential environmental impacts, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, compliance, enforcement, and other topics that may be brought up during the public comment period.

Issues: The primary advantages of the proposed regulation to the public include the following:

1. For any individual or company wishing to develop a small wind energy project, the proposed regulation provides certain, consistent and, DEQ believes, reasonable standards for obtaining a permit to construct and operate. Furthermore, the proposal mandates that DEQ process permit applications in no more than 90 days—a timeframe that should help developers in their planning. Provision of certain and timely regulatory requirements should assist developers in obtaining project financing.
2. For individuals or companies wishing to develop very small projects (5 megawatts and below), the proposal requires notification to DEQ for these projects, which should make it

less costly to develop residential-scale and community-scale projects.

3. Another advantage to the regulated community, government officials, and the public is that this proposal creates a clear and, DEQ believes, an efficient path for development of wind energy in Virginia. Avoiding additional electrical generation from fossil fuels is a benefit for the environment because renewable energy projects do not emit greenhouse gases or other air pollutants. Developing and expanding new, environmentally friendly industry in Virginia is also a boost for our economy and a significant step in creating energy independence from foreign oil interests.

4. Of interest is the agreement of the regulatory advisory panel (RAP)—a group comprised of representatives from environmental advocacy groups, industry, local government, academia, industry, and state agencies—on all but a small number of issues presented in the proposal. Across the country, wind energy projects are typically lightning rods for significant controversy. The fact that the RAP was able to agree on the vast majority of issues was a significant milestone in creating a more constructive and productive process for approving proposed wind energy projects in Virginia.

The proposal poses no known disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to 2009 Acts of Assembly Chapters 808 and 854, the Department of Environmental Quality (DEQ) proposes to establish requirements for permits by rule for wind-energy projects with rated capacity not exceeding 100 megawatts. By means of this legislation, the General Assembly moved permitting authority for these projects from the State Corporation Commission to DEQ. By requiring a "permit by rule," the legislature is mandating that permit requirements be set forth "up front" within this regulation, rather than being developed on a case-by-case basis. The proposed regulation establishes requirements for potential environmental impacts analyses, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, compliance, and enforcement.

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

Estimated Economic Impact. Prior to the 2009 legislation small renewable energy projects were permitted on a case-by-case basis. For those considering small wind-energy projects there was large uncertainty concerning the requirements and potential costs of completing a project. The permit by rule framework eliminates much of that uncertainty. Applicants would need to meet the 14 criteria set forth by §§ 10.1-1197.6 B - 1197.11 of the Code of Virginia to obtain permit

by rule. This significant reduction in uncertainty is in itself beneficial and will increase the likelihood that net beneficial projects will go forward. Wind power is generally considered less damaging to the environment than most other sources of energy. Thus, to the degree that the likely increase in generation of wind energy replaces more polluting forms of energy, there will likely be some benefit to the environment.

There was only one known small wind-energy project that went forward when permitting authority was vested with the State Corporation Commission. The approval process took nearly seven years. Since projects were to be permitted on a case-by-case basis and there was only one case prior to the change in authority and process, a precise comparison of the costs for establishing small wind-energy projects under the prior system with the costs under the proposed permit by rule system cannot be made. Given both the significant benefit for reduced risk, reduced time cost, and reduced administrative costs for both applicants and the state inherent in the permit by rule system, total application costs will likely be reduced under the proposed regulation.

DEQ projects the costs for applying for a wind permit by rule are estimated as follows:

- 1) Cost estimate to apply for the wind permit by rule: 100MW = \$545,000; 50MW = \$405,000; and 10MW = \$310,000. These cost estimates include completion of permit by rule application requirements both desktop and pre-construction field efforts (e.g. wildlife studies, cultural studies, natural resource studies, scenic impact studies, reporting, P.E. certification, National Ambient Air Quality Standards analysis, public meetings/report, application fee, and administrative costs).
- 2) Cost estimate for first year of post construction wildlife monitoring: 100MW = \$170,000; 50MW = \$90,000; and 10MW = \$40,000. These estimates include the labor, reporting, and administrative costs necessary to conduct the first year of post construction wildlife monitoring.
- 3) Cost estimate for subsequent years of wildlife mitigation and monitoring: Financial cost cap of \$5,000 per turbine per year (that is, the equivalent of approximately 120 hours of curtailment, as specified in the proposed regulation).

All costs are presented as 2010 dollars. Estimates could increase depending on several factors not included above (e.g., specialized species surveys, wetland/stream delineations, cultural surveys, etc.).

Businesses and Entities Affected. The proposed amendments affect individuals, businesses, or other entities wishing to develop a small wind energy project of 100 MW or less. DEQ staff is currently aware of two proposed ridge-top projects that could be subject to the proposed regulation, if the

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owner/operator chooses to apply for DEQ's permit by rule once these new regulations become final.

Localities Particularly Affected. The proposed regulation applies statewide and is not designed to have a disproportionate material impact on any particular locality. As a practical matter, however, wind-energy projects will be located where adequate wind conditions exist (generally Class 3 winds or higher for commercial-scale projects).¹

Projected Impact on Employment. The statutes and proposed regulation will increase the likelihood that small wind-energy projects will go forward. Consequently, the proposed regulation may have a small positive impact on employment.

Effects on the Use and Value of Private Property. The statutes and proposed regulation will increase the likelihood that small wind-energy projects will go forward. Consequently, the proposed regulation may have a small positive impact on the value of land appropriate for such projects and entities that may be considering generating wind energy.

Small Businesses: Costs and Other Effects. The statutes and proposed regulation will reduce risk, time costs, and administrative costs for small wind-energy firms.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not produce an adverse impact on small businesses.

Real Estate Development Costs. The statutes and proposed regulation will reduce the cost of developing land for wind energy projects.

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 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ Source: Department of Environmental Quality

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

Summary:

The proposal implements 2009 state legislation requiring the Department of Environmental Quality (DEQ) to develop one or more permits by rule for wind-energy projects with rated capacity not exceeding 100 megawatts. By means of this legislation, the General Assembly moved permitting authority for these projects from the State Corporation Commission to DEQ. By requiring a "permit by rule," the legislature is mandating that permit requirements be set forth "up front" within this regulation, rather than being developed on a case-by-case basis. The legislation mandates that the permit by rule include conditions and standards necessary to protect the Commonwealth's natural resources. The proposal establishes requirements for potential environmental impacts analyses, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, compliance, and enforcement. The legislation requires DEQ to determine if multiple permits by rule are necessary to address all the renewable energy media. DEQ determined that multiple permits by rule are necessary. This proposal constitutes DEQ's permit by rule for wind energy projects.

CHAPTER 40

SMALL RENEWABLE ENERGY PROJECTS (WIND)

PERMIT BY RULE

Part I

Definitions and Applicability

9VAC15-40-10. Definitions.

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

"Applicant" means the owner or operator who submits an application to the department for a permit by rule pursuant to this chapter.

"Coastal zone" means the jurisdictions of Tidewater Virginia, as follows: the counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond,

Spotsylvania, Stafford, Surry, Westmoreland, and York; and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

"Department" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DGIF" means the Department of Game and Inland Fisheries.

"Disturbance zone" means the area within the site directly impacted by construction and operation of the wind energy project, and within 100 feet of the boundary of the directly impacted area.

"Ecological core" means an area of nonfragmented forest, marsh, dune, or beach of ecological importance that is at least 100 acres in size and identified in DCR's Natural Landscape Assessment web-based application (9VAC15-40-120 B 2).

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Interconnection point" means the point or points where the wind energy project connects to a project substation for transmission to the electrical grid.

"Invasive plant species" means non-native plant species that cause, or are likely to cause, economic or ecological harm or harm to human health as established by Presidential Executive Order 13112 (64 FR 6183, February 3, 1999) and contained on DCR's Invasive Alien Plant Species of Virginia (9VAC15-40-120 A 3).

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Operator" means the person responsible for the overall operation and management of a wind energy project.

"Owner" means the person who owns all or a portion of a wind energy project.

"Permit by rule" means provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution,

utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Phase of a project" means one continuous period of construction, startup, and testing activity of the wind energy project. A phase is deemed complete when 90 calendar days have elapsed since the last previous wind turbine has been placed in service, except when a delay has been caused by a significant force majeure event, in which case a phase is deemed complete when 180 calendar days have elapsed since the last previous wind turbine has been placed in service.

"Post-construction" means any time after the last turbine on the wind energy project or phase of that project has been placed in service.

"Pre-construction" means any time prior to commencing land-clearing operations necessary for the installation of energy-generating structures at the small wind energy project.

"Rated capacity" means the maximum capacity of a wind energy project based on the sum total of each turbine's nameplate capacity.

"SGCN" or "species of greatest conservation need" means any vertebrate species so designated by DGIF as Tier 1 or Tier 2 in the Virginia Wildlife Action Plan (9VAC15-40-120 A 6).

"Site" means the area containing a wind energy project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from sunlight, wind, falling water, wave motion, tides, or geothermal power, or (ii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

"Small wind energy project," "wind energy project," or "project" (i) means a small renewable energy project that generates electricity from wind, whose main purpose is to supply electricity, consisting of one or more wind turbines and other accessory structures and buildings, including substations, post-construction meteorological towers, electrical infrastructure, and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts. Two or more wind energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single wind energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of

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meteorological towers to determine the appropriateness of a site for the development of a wind energy project.

"T&E," "state threatened or endangered species," or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to the § 29.1-563-570 of the Code of Virginia and 4VAC15-20-130.

"VLR" means the Virginia Landmarks Register (9VAC15-40-120 A 1).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.

9VAC15-40-20. Authority and applicability.

This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for wind-powered electric generation projects consisting of wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts. The department has determined that a permit by rule is required for small wind energy projects with a rated capacity equal to or greater than 5 megawatts and this regulation contains the permit by rule provisions for these projects in Part II (9VAC15-40-30 et seq.) of this chapter. The department has also determined that a permit by rule is not required for small wind energy projects with a rated capacity less than 5 megawatts and this regulation contains notification provisions for these projects in Part III (9VAC15-40-130) of this chapter.

Part II

Permit by Rule Provisions

9VAC15-40-30. Application for permit by rule for wind energy projects.

A. The owner or operator of a small wind energy project with a rated capacity equal to or greater than 5 megawatts shall submit to the department a complete application, in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;

5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small wind energy project, as designed, does not exceed 100 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-40-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-4060 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of 9VAC15-40-30 A 8 shall only be required if the department determines, pursuant to 9VAC15-40-50, that the information collected pursuant to § 10.1-1197.6 B

7 of the Code of Virginia and 9VAC15-40-40 indicates that significant adverse impacts to wildlife or historic resources are likely. The mitigation plan shall be an addendum to the operating plan of the wind energy project, and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule:

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-40-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan that includes a description of how the project will be operated in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-40-50;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-40-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small wind energy project has applied for or obtained all necessary environmental permits;

13. Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B 13 and 10.1-1197.6 B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-40-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

14. In accordance with 9VAC15-40-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural Resources, whether the application is complete and whether it adequately meets the requirements of this chapter, pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to

construct and operate a small wind energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC15-40-40. Analysis of the beneficial and adverse impacts on natural resources.

A. Analyses of wildlife. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall conduct pre-construction wildlife analyses. The analyses of wildlife shall include the following:

1. Desktop surveys and maps. The applicant shall obtain a wildlife report and map generated from DGIF's Virginia Fish and Wildlife Information Service or Wildlife Environmental Review Map Service web-based application (9VAC15-40-120 B 3) of the following: (i) wildlife species and habitats known to occur on the site or within two miles of the boundary of the site; (ii) bat hibernacula known to occur on the site or within five miles of the boundary of the site; and (iii) maternity and bachelor bat colonies known to occur on the site or within 12 miles of the boundary of the site.

2. Breeding bird surveys. If the desktop analyses prescribed in subdivision 1 of this subsection indicate the presence of or habitat for a state-listed T&E bird species or a Tier 1 or Tier 2 bird SGCN within the disturbance zone, then the applicant shall conduct a breeding bird survey to identify state T&E bird species and Tier 1 and Tier 2 bird SGCN occurring within the disturbance zone during the species' annual breeding season.

3. Field survey of nonavian resources. If the desktop analyses prescribed in subdivision 1 of this subsection indicate the presence of or habitat for a Tier 1 or Tier 2 vertebrate SGCN, other than a bird, within the disturbance zone, then the applicant shall conduct field surveys of suitable habitats for that species within the disturbance zone to determine the species' occurrence and relative distribution within the disturbance zone.

4. Raptor migration surveys. The applicant shall conduct one year of raptor migration surveys, in both the spring and

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fall seasons, to determine the relative abundance of migrant raptors moving through the general vicinity of the disturbance zone.

5. Desktop surveys and maps of coastal avian migration corridors. When a proposed wind energy project site will be located in part or in whole within the coastal zone of Virginia, the applicant shall obtain a desktop report and maps generated from the department's Coastal GEMS geospatial data system (9VAC15-40-120 B 1) showing essential wildlife habitats, important bird areas, and migratory songbird stopover habitat.

6. Bat acoustic surveys. The applicant shall conduct bat acoustic surveys to determine the presence of and level of bat activity and use within the disturbance zone.

7. Mist-netting or harp-trapping surveys. If the applicant identifies potential for T&E bat species within the disturbance zone, the applicant shall conduct a season-appropriate mist-netting survey or harp-trapping survey or both.

8. Wildlife report. The applicant shall provide to the department a report summarizing the relevant findings of the desktop and field surveys conducted pursuant to subdivisions 1 through 7 of this subsection. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife resources identified in subdivisions 1 through 7 of this subsection.

B. Analyses of historic resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct a pre-construction historic resources analysis. The analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation (9VAC15-40-120 A 2) in the appropriate discipline. The analysis shall include each of the following:

1. Compilation of known historic resources. The applicant shall gather information on known historic resources within the disturbance zone and within five miles of the disturbance zone boundary and present this information on the context map referenced in 9VAC15-40-70 B, or as an overlay to this context map, as well as in tabular format.

2. Architectural survey. The applicant shall conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older within the disturbance zone and within 1.5 miles of the disturbance zone boundary and evaluate the eligibility of any identified resource for listing in the VLR.

3. Archaeological survey. The applicant shall conduct an archaeological field survey of the disturbance zone and

evaluate the eligibility of any identified archaeological site for listing in the VLR.

4. Historic resources report. The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subdivisions 1 through 4 of this subsection. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on historic resources identified in subdivisions 1, 2, and 3 of this subsection.

C. Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct pre-construction analyses of the impact of the proposed project on other natural resources, which have not been addressed pursuant to subsection A or B of this section, and as are specified in subdivisions 1 and 2 of this subsection. The analyses shall include:

1. Natural heritage resources. An analysis of the impact of the project on natural heritage resources, which shall include the following:

a. A desktop survey of natural heritage resources within the site and within two miles of the boundary of the site.

b. Field surveys within the disturbance zone mapping: (i) the ecological community groups as classified in accordance with DCR's The Natural Communities of Virginia, Classification of Ecological Community Groups (9VAC15-40-120 A 4); (ii) natural heritage resources to include species and community identification, location, age, size, spatial distribution, and evidence of reproduction; (iii) caves; (iv) mines; (v) rock outcrops; (vi) cliffs; (vii) wetlands; and (viii) invasive plant species.

2. Scenic resources. An analysis of the impact of the project on scenic resources, as follows:

a. Pursuant to 9VAC15-40-70, for the area within the site and within five miles of the boundary of the site, a viewshed analysis of the impact of the proposed project on existing federally designated or state-designated scenic resources, including national parks, national forest-designated scenic areas, state parks, state natural area preserves, national scenic trails, national or state-designated scenic roads, national or state-designated scenic rivers, and those resources identified as potential candidates for such designation in DCR's Virginia Outdoors Plan (9VAC15-40-120 A 5).

b. The applicant shall conduct these analyses and shall show the potential impact of the proposed project on the viewshed from such identified resources, where applicable.

3. Other natural resources report. The applicant shall provide to the department a report, including maps, documenting the results of the analyses conducted pursuant

to subdivisions 1 and 2 of this subsection. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on natural resources identified in subdivisions 1 and 2 of this subsection.

9VAC15-40-50. Determination of likely significant adverse impacts.

A. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-40-40 A document that either of the following conditions exists:

1. Bats have been detected, or a hibernaculum exists, within the disturbance zone.
2. State-listed T&E wildlife are found to occur within the disturbance zone.

B. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-40-40 B indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

9VAC15-40-60. Mitigation plan.

A. If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then the applicant shall prepare a mitigation plan. The mitigation plan shall include a description of the affected wildlife or historic resources, or both, and the impact to be mitigated; a description of actions that will be taken to avoid the stated impact; and a plan for implementation. If the impact cannot reasonably be avoided, the plan shall include a description of actions that will be taken to minimize the stated impact and a plan for implementation. If neither avoidance nor minimization is reasonably practicable, the plan shall include a description of other measures that may be taken to offset the stated impact; and a plan for implementation.

B. Mitigation measures for significant adverse impacts to wildlife shall include:

1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts, or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-40-40 A or 9VAC15-40-40 C 1.
2. For bats, the mitigation plan shall include measures to curtail operation of wind turbines on low wind speed nights when bats are likely to be active within the disturbance zone and to monitor the efficacy of these measures; however, the combined cost of mitigation and

post-construction monitoring, in each year after year one, shall not exceed 120 hours of curtailment per year per turbine, averaged. The combined cost of mitigation shall consist of lost revenue from curtailment of wind turbines, including lost production tax credits.

3. Post-construction monitoring shall be designed to achieve the following:

- a. Estimate the level of avian and bat fatalities associated with the wind energy project, accounting for scavenger removal and searcher efficiency.
- b. Investigate the correlation of bat fatalities with project operational protocols, weather-related variables, and the effectiveness of operational adjustments to reduce impacts.

4. Post-construction wildlife mitigation and management shall include the following:

- a. Post-construction mitigation. After completing the initial one year of post-construction monitoring, the owner or operator shall submit a plan consisting of his proposed monitoring and mitigation actions expected to be implemented for the remainder of the project's operating life.
- b. Amendment of mitigation plan. After three years of post-construction mitigation efforts, the owner or operator of the project may initiate a consultation with the department to propose amendments to the mitigation plan. The owner or operator shall submit any proposed amendments of the mitigation plan to the department. The department may approve the proposed amendments if the department determines that the proposed amendments will avoid or minimize adverse impacts to a demonstrably equal or greater extent as the mitigation measures being implemented at that time. Alternatively, the department may approve the proposed amendments to the mitigation plan if the owner or operator demonstrates that the mitigation measures being implemented at that time are not effectively avoiding or minimizing adverse impacts, and the owner's or operator's proposed amendments are preferable methods to mitigate for ongoing adverse impacts. For example, proposed amendments may include funding research or preserving habitats.

C. Mitigation measures for significant adverse impacts to historic resources shall include:

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the wind energy project or the installation of vegetative or other screening.
2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly

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adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

3. If any identified VLR-eligible or VLR-listed archaeological site can not be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery.

9VAC15-40-70. Site plan and context map requirements.

A. The applicant shall submit a site plan that includes maps showing the physical features and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient to show, and shall include, the following: (i) the boundaries of the site; (ii) the location, height, and dimensions of all existing and proposed wind turbines, other structures, fencing, and other infrastructure; (iii) the location, grades, and dimensions of all temporary and permanent on-site and access roads from the nearest county or state maintained road; (iv) existing topography; and (v) water bodies, waterways, wetlands, and drainage channels.

B. The applicant shall submit a context map including the area encompassed by the site and within five miles of the site boundary. The context map shall show state and federal resource lands and other protected areas, historic resources, state roads, waterways, locality boundaries, forests, open spaces, and transmission and substation infrastructure.

9VAC15-40-80. Small wind energy project design standards.

The design and installation of the small wind energy project shall incorporate any requirements of the mitigation plan that pertain to design and installation, if a mitigation plan is required pursuant to 9VAC15-40-50.

9VAC15-40-90. Public participation.

A. Before the initiation of any construction at the small wind energy project, the owner or operator shall publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a project eligible for a permit by rule. No later than the date of newspaper publication of the initial notice, the owner or operator shall submit to the department a copy of the notice along with electronic copies of all documents in support of the application. The notice shall include:

1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number of turbines, and approximate maximum blade-tip height;

2. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the proposed project and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner or operator and persons who may be affected by the project;

3. Announcement of a 30-day comment period in accordance with subsection D of this section, and the name, telephone number, address, and email address of the owner's or operator's representative who can be contacted by the interested persons to answer questions or to whom comments shall be sent;

4. Announcement of the date, time, and place for a public meeting held in accordance with subsection C of this section; and

5. Location where copies of the documentation to be submitted to the department in support of the permit by rule application are located in accordance with 9VAC15-40-90 B.

B. The owner or operator shall place a copy of the documentation in a location accessible to the public in the vicinity of the proposed project.

C. The owner or operator shall hold a public meeting not earlier than 15 days after the initial publication of the notice required in subsection A of this section and no later than seven days before the close of the 30-day comment period. The meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project.

D. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin on the date the owner or operator initially publishes the notice in the local newspaper.

E. For purposes of this chapter, the applicant and any interested party who submits written comments on the proposal to the owner's or operator's representative during the public comment period or who signs in and provides oral comments at the public meeting shall be deemed to have participated in the proceeding for a permit by rule under this chapter and pursuant to § 10.1-1197.7 B of the Code of Virginia.

9VAC15-40-100. Change of ownership, project modifications, termination.

A. Change of ownership. A permit by rule may be transferred to a new owner or operator if:

1. The current owner or operator notifies the department at least 30 days in advance of the transfer date by submittal of a notice per subdivision 2 of this subsection;

2. The notice shall include a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The transfer of the permit by rule to the new owner or operator shall be effective on the date specified in the agreement described in subdivision 2 of this subsection.

B. Project modifications. Provided project modifications are in accordance with the requirements of this permit by rule and do not increase the rated capacity of the small wind energy project, the owner or operator of a project authorized under a permit by rule may modify its design or operation or both by furnishing to the department new certificates prepared by a professional engineer, new documentation required under 9VAC15-40-30, and the appropriate fee in accordance with 9VAC15-40-110. The department shall review the received modification submittal in accordance with the provisions of subsection B of 9VAC15-40-30.

C. Permit by rule termination. The department may terminate the permit by rule whenever the department finds that:

1. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in any report or certification required under this chapter; or

2. After the department has taken enforcement actions pursuant to 9VAC15-40-140, the owner or operator persistently operates the project in significant violation of the project's mitigation plan.

Prior to terminating a permit by rule pursuant to subdivision 1 or 2 of this subsection, the department shall hold an informal fact-finding proceeding pursuant to § 2.2-4019 of the Virginia Administrative Process Act in order to assess whether to continue with termination of the permit by rule or to issue any other appropriate order. If the department determines that it should continue with the termination of the permit by rule, the department shall hold a formal hearing pursuant to § 2.2-4020 of the Virginia Administrative Process Act. Notice of the formal hearing shall be delivered to the owner or operator. Any owner or operator whose permit by rule is terminated by the department shall cease operating his small wind energy project.

9VAC15-40-110. Fees.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule or a modification to an existing permit by rule for a small wind energy project.

B. Permit fee payment and deposit. Fees for permit by rule applications or modifications shall be paid by the applicant as follows:

1. Due date. All permit application fees or modification fees are due on submittal day of the application or modification package.

2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240.

3. Incomplete payments. All incomplete payments shall be deemed nonpayments.

4. Late payment. No application or modification submittal will be deemed complete until the department receives proper payment.

C. Fee schedules. Each application for a permit by rule and each application for a modification of a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit application fee is based on the costs associated with the permitting program required by this chapter. The fee schedules are shown in the following table:

<u>Type of Action</u>	<u>Fee</u>
<u>Permit by rule application (including first three years of operation)</u>	<u>\$16,000</u>
<u>Permit by rule modification (after first three years of operation)</u>	<u>\$5,000</u>

D. Use of fees. Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter including, but not limited to, permit by rule processing, permit by rule modification processing, and inspection and monitoring of small wind energy projects to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this section and in § 10.1-1197.6 E of the Code of Virginia.

E. Fund. The fees, received by the department in accordance with this chapter, shall be deposited in the Small Renewable Energy Project Fee Fund.

F. Periodic review of fees. Beginning July 1, 2012, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.

9VAC15-40-120. Internet accessible resources.

A. This chapter refers to resources to be used. These resources are available through the Internet; therefore, in order to assist the applicants, the uniform resource locator or Internet address is provided for each the references listed in this section.

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B. Internet available resources.

1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following Internet address: <http://www.dhr.virginia.gov/register/register.htm>.

2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following Internet address: http://www.nps.gov/history/local-law/arch_stnds_9.htm.

3. Invasive alien plant species of Virginia, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia. Available at the following Internet address: http://www.dcr.virginia.gov/natural_heritage/invspinfo.shtml.

4. The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation, 2006, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA. Available at the following Internet address: http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml.

5. Virginia Outdoors Plan, 2007, Virginia Department of Conservation and Recreation, Richmond, Virginia. Available at the following Internet address: http://www.dcr.virginia.gov/recreational_planning/vop.shtml.

6. Virginia's Comprehensive Wildlife Conservation Strategy, 2005, Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. Available at the following Internet address: <http://www.bewildvirginia.org/wildlifeplan/>.

C. Internet applications.

1. Coastal GEMS application, 2010, Virginia Department of Environmental Quality. Available at the following Internet address: <http://www.deq.virginia.gov/coastal/coastalgems.html>.

NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, (804) 698-4000.

2. Natural Landscape Assessment, 2010, Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtml. Land maps may be viewed at DCR's Land Conservation

Data Explorer Geographic Information System website at <http://www.vaconservedlands.org/gis.aspx>.

NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at vaconslands@dcr.virginia.gov or DCR, Division of Natural Heritage, 217 Governor Street, Richmond, Virginia 23219, (804) 786-7951.

3. Fish and Wildlife Information Service or Wildlife Environmental Review Map Service, 2010, Virginia Department of Game and Inland Fisheries. Available at the following Internet address: <http://www.vafwis.org/fwis/>.

NOTE: This website is maintained by DGIF and it requires registration for use. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Service, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-1000.

Part III Notification Provisions

9VAC15-40-130. Small wind energy projects less than 5 megawatts.

The owner or operator of a small wind energy project with a rated capacity equal to or less than 500 kilowatts is not required to submit any notification or certification to the department. The owner or operator of a small wind energy project with a rated capacity greater than 500 kilowatts and less than 5 megawatts shall notify the department by submitting a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances and applicable local government requirements.

Part IV Enforcement

9VAC15-40-140. Enforcement.

The department may enforce the provisions of this chapter and any permits by rule authorized under this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-1197.11 of the Code of Virginia. In so doing, the department may:

1. Issue directives in accordance with the law;
2. Issue special orders in accordance with the law;
3. Issue emergency special orders in accordance with the law;
4. Seek injunction, mandamus or other appropriate remedy as authorized by the law;
5. Seek civil penalties under the law; or
6. Seek remedies under the law, or under other laws including the common law.

**DOCUMENTS INCORPORATED BY REFERENCE
(9VAC15-40)**

The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation (Version 2.2), 2006, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA.

Virginia Outdoors Plan, 2007, Virginia Department of Conservation and Recreation, Richmond, Virginia.

Virginia's Comprehensive Wildlife Conservation Strategy, 2005, Virginia Department of Game and Inland Fisheries, Richmond, Virginia.

VA.R. Doc. No. R09-2090; Filed June 2, 2010, 11:40 a.m.

TITLE 12. HEALTH

**DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES**

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The 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: 12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-10, 12VAC30-130-20, 12VAC30-130-30, 12VAC30-130-40).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396 et seq.).

Effective Date: July 21, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

The federal funding agency for the Virginia Medicaid Program, the Centers for Medicare and Medicaid Services, required that the Department of Medical Assistance Services move all of its school health services under the coverage of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services, which are located at 12VAC30-50-130. This federally mandated well child preventive health care program is covered by Medicaid

pursuant to the authority of 42 CFR 440.40. EPSDT is a better location than the original outpatient rehabilitation services (pursuant to 42 CFR 440.130) placement for the coverage of school health services as both EPSDT and school health services serve children and tend to be preventive and proactive in nature. At the point that the Department of Medical Assistance Services moved its school health services coverage to 12VAC30-50-130, it should have also removed references to school division providers from 12VAC30-130-10, 12VAC30-130-20, 12VAC30-130-30, and 12VAC30-130-40. This action corrects that oversight.

Part I

Outpatient Physical Rehabilitative Services

12VAC30-130-10. Scope

A. Medicaid covers outpatient physical rehabilitative services provided in outpatient settings. Services may be provided by acute and rehabilitation hospitals, ~~by school divisions~~, by home health agencies, and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services.

B. Physical therapy and related services shall be prescribed by a physician and be part of a written plan of care that is personally signed and dated by the physician prior to the initiation of rehabilitation services. The physician may use a signature stamp, in lieu of writing his full name, but the stamp must, at a minimum, be initialed and dated at the time of the initialing within 21 days of the order.

C. Any one of these services may be offered as the sole rehabilitative service and is not contingent upon the provision of another service.

D. All practitioners and providers of services shall be required to meet State and Federal licensing or certification requirements.

E. Covered outpatient rehabilitative services for short-term, acute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Acute conditions" shall be defined as conditions which are expected to be of brief duration (less than 12 months) and in which progress toward established goals is likely to occur frequently.

F. Covered outpatient rehabilitative services for long-term, nonacute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Nonacute conditions" shall be defined as those conditions which are of long duration (greater than 12 months) and in which progress toward established goals is likely to occur slowly.

G. All services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the

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requirement that the amount, frequency, and duration of the services shall be reasonable.

H. Rehabilitative services may be provided when all the following conditions are evidenced:

1. There is potential for improvement in the patient's condition or the patient has reached his maximum progress and requires the development of a safe and effective maintenance program;
2. There is motivation on the part of the patient and caregiver;
3. The patient's medical condition is stable; and
4. Progress toward goal achievement is expected within a reasonable time frame consistent with expectations for acute conditions and nonacute conditions.

I. Continued rehabilitation services may be provided when there is documentation of a positive history of response to previous therapy or evidence that a change in patient potential for improvement has occurred, or that a new or different therapeutic approach may effect a positive outcome.

J. Rehabilitative services shall be provided according to guidelines found in the Virginia Medicaid Rehabilitation Manual ~~and in the Virginia Medicaid School Division Manual.~~

12VAC30-130-20. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital outpatient service, nursing facility service, home health service, rehabilitation agency service; ~~by a school division employing qualified physical therapists;~~ or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. The services shall be directly and specifically related to an active written treatment plan designed and personally signed and dated (as in 12VAC30-130-10 B) by a physician after any needed consultation with a physical therapist licensed by the Board of Physical Therapy; and
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Physical Therapy, or a physical therapy assistant who is licensed by

the Board of Physical Therapy and is under the direct supervision of a physical therapist licensed by the Board of Physical Therapy. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

12VAC30-130-30. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital outpatient service, nursing facility service, home health service, rehabilitation agency; ~~by a school division employing qualified occupational therapists;~~ or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed and personally signed and dated (as in 12VAC30-130-10 B) by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board; and
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association under the supervision of an occupational therapist as defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

12VAC30-130-40. Services for individuals with speech, hearing, and language disorders.

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital outpatient service, nursing facility service, home health service, rehabilitation agency; ~~by a school division employing a qualified speech language pathologist or audiologist~~; or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language therapy services shall be those services furnished a patient which meet all the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed and personally signed and dated by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c); and
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology.

VA.R. Doc. No. R10-2410; Filed May 27, 2010, 2:15 p.m.

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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.

Title of Regulation: **21VAC5-110. Retail Franchising Act Rules (amending 21VAC5-110-30, 21VAC5-110-50, 21VAC5-110-85).**

Statutory Authority: §§ 12.1-13 and 13.1-572 of the Code of Virginia.

Effective Date: July 1, 2010.

Agency Contact: Garland H. Sharp, Chief Auditor, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9280, FAX (804) 371-9911, or email garland.sharp@scc.virginia.gov.

Summary:

The amendments (i) reflect the name changes of NASDAQ Stock Market, Inc., and Financial Industry Regulatory Authority, Inc., and (ii) require all new and renewal franchise applications to contain unaudited interim financial statements when the audited financial statements submitted with the registration application are over 120 days old.

AT RICHMOND, JUNE 1, 2010

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. SEC-2010-00021

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Retail Franchising Act

ORDER ADOPTING AMENDED RULES

By Order entered on March 23, 2010, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapter 110 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Retail Franchising Act Rules." On March 31, 2010, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed Regulations to all franchise registrants and applicants as of March 24, 2010 and to all interested parties pursuant to the Retail Franchising Act, § 13.1-557 et seq. of the Code of Virginia. The Order to Take Notice described the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by April 30, 2010.

No comments were filed, nor were any requests for hearing made 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 July 1, 2010.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

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AN ATTESTED COPY of this Order shall be sent by the Clerk of the Commission to the Commission's Division of Information Resources and the Commission's Office of General Counsel.

21VAC5-110-30. Registration application; documents to file; interim financial statements.

A. An application for registration of a franchise is made by filing with the commission the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;
2. Total Costs and Sources of Funds for Establishing New Franchises, Form B;
3. Uniform Consent to Service of Process, Form C;
4. If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;
5. Franchise Disclosure Document;
6. Application fee (payable to the "Treasurer of Virginia"); and
7. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the Franchise Disclosure Document.

B. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and
2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

~~B.~~ C. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the registration application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the registration application.

~~C.~~ D. In addition to paper copies of the materials required by subsection A of this section, the franchisor may file one copy of the complete franchise registration application, including the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information

contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~D.~~ E. Examples of Forms A through C are printed at the end of this chapter.

21VAC5-110-50. Expiration; application to renew the registration; interim financial statements.

A. A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute.

B. An application for renewal of a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;
2. Updated Franchise Disclosure Document;
3. One complete copy of the amended Franchise Disclosure Document black-lined to show all additions, deletions, and other changes, using no margin balloons or color highlights; and
4. Application fee (payable to the "Treasurer of Virginia").

C. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and
2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

~~C.~~ D. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the renewal application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the renewal application.

~~D.~~ E. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise renewal application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;
2. The electronic version of the Franchise Disclosure Document must be text searchable; and
3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~E.~~ F. An example of Form A is printed at the end of this chapter.

21VAC5-110-85. Disclosure of confidential information.

A. This section governs the disclosure by the commission of information or documents obtained or prepared by any member, subordinate or employee of the commission in the course of any examination or investigation conducted pursuant to the provisions of the Retail Franchising Act (§ 13.1-557 et seq. of the Code of Virginia). It is designed to implement the provisions of § 13.1-567 that permit disclosure of information to governmental and quasi-governmental entities approved by rule of the commission.

B. The Director of the Division of Securities and Retail Franchising or his designee is hereby authorized to disclose information to the entities enumerated in subsections D, E and F of this section. Disclosure shall be made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law. As a condition precedent to disclosure a writing shall be obtained from the receiving entity undertaking that it will exercise reasonable measures to preserve the confidential nature of the information.

C. Disclosure may be made only under the following circumstances:

1. In response to an entity's request for information relating to a specific subject or person.
2. By disseminating to an entity information which may indicate a possible violation of law within the administrative, regulatory or enforcement responsibility of that entity.

3. To participate in a centralized program or system designed to collect and maintain information pertaining to possible violations of securities, investment advisory, retail franchising or related laws.

4. To the extent necessary for participation in coordinated examinations or investigations.

D. The following are approved governmental entities (including any agencies, bureaus, commissions, divisions or successors thereof) of the United States:

1. Board of Governors of the Federal Reserve System or any Federal Reserve Bank.
2. Commodity Futures Trading Commission.
3. Congress of the United States, including either House, or any committee or subcommittee thereof.
4. Department of Defense.
5. Department of Housing and Urban Development.
6. Department of Justice.
7. Department of Treasury.
8. Federal Deposit Insurance Corporation.
9. Office of Thrift Supervision.
10. Federal Trade Commission.
11. Postal Service.
12. Securities and Exchange Commission.
13. Comptroller of the Currency.
14. Federal Bureau of Investigation.
15. Any other federal agency or instrumentality which demonstrates a need for access to confidential information.

E. The following are approved nonfederal governmental entities:

1. The securities or retail franchising regulatory entity of any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, state legislative bodies and state and local law-enforcement entities involved in the detection, investigation or prosecution of violations of law.
2. The securities or retail franchising regulatory entity of any foreign country, whether such entity is on a national, provincial, regional, state or local level, and law-enforcement entities within such countries.

F. The following are approved quasi-governmental entities:

1. American Stock Exchange.
2. Chicago Board Options Exchange.
3. Midwest Stock Exchange.

Regulations

4. Municipal Securities Rulemaking Board.
5. National Association of Attorneys General.
6. ~~National Association of Securities Dealers, Inc.~~
NASDAQ Stock Market, Inc.
7. New York Stock Exchange.
8. North American Securities Administrators Association, Inc.
9. Pacific Stock Exchange.
10. Philadelphia Stock Exchange.
11. Securities Investor Protection Corporation.
12. National White Collar Crime Center.
13. ~~National Association of Securities Dealers Regulation, Inc.~~
Financial Industry Regulatory Authority, Inc.
14. Any other quasi-governmental entity which demonstrates a need for access to confidential information.

VA.R. Doc. No. R10-2307; Filed June 2, 2010, 11:08 a.m.

GENERAL NOTICES/ERRATA

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Notice of Periodic Review

18VAC30-20, Regulations of the Board of Audiology and Speech-Language Pathology.

The Board of Audiology and Speech-Language within the Department of Health Professions is preparing to conduct a periodic review of its regulations.

The comment period begins on July 5, 2010, and ends on August 4, 2010.

The regulations may be viewed online at <http://regulations.legis.virginia.gov> (Title 18, Agency 30, Chapter 20) or http://www.dhp.virginia.gov/aud/aud_laws_regs.htm, or copies will be sent upon request.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 26, 2010

Administrative Letter 2010-05

To: All Insurers Licensed to Write Workers' Compensation Insurance In Virginia

Re: Revised Form WCLC VA for Insurer Expense Multiplier Filings, Related Rules, and Tiered Rating; Withdrawal of Administrative Letter 2005-03

This administrative letter introduces a revised adoption form, WCLC-VA (05/10), for use in filing insurer expense multipliers, related rules, and supplementary rate information for workers' compensation insurance. In addition, this administrative letter introduces the use of tiered rating plans for workers' compensation insurance. Administrative Letter 2005-03, which included the original adoption form, WCLC-VA (05/05), is hereby withdrawn.

The National Council on Compensation Insurance (NCCI) files loss costs for the voluntary workers' compensation insurance market on behalf of all insurers licensed to write this coverage in Virginia. Such loss costs supersede previously-approved loss costs and must be used by all insurers for policies effective on or after the effective date prescribed in the State Corporation Commission's approval order. A given insurer's workers' compensation rates will then be the approved NCCI loss costs modified by that insurer's

filed expense multiplier. Expense multiplier filings are accepted on a file-and-use basis and apply to policies effective on or after the requested effective date or the date received by the Bureau, whichever is later. Insurers may not file to delay or change the implementation date of the approved NCCI loss costs.

In addition to its expense multiplier, each insurer must also file any expense constant, premium discount table, or minimum premium formula that will be used in rating workers' compensation policies. Insurers using the NCCI small deductible plan must file the variable expense multiplier and safety factor that will be used to calculate deductible credits. Insurers writing retrospectively-rated policies must file the values used in premium calculation, including expected loss ratios, tax multipliers, table of expense ratios, excess loss premium factors, and loss development factors. Each insurer must also file a drug-free workplace premium discount rule in compliance with § 65.2-813.2 of the Code of Virginia. These filings are accepted on a file-and-use basis. Any exceptions to the approved NCCI manual of rules must also be filed. Insurers should not re-file rules already filed on their behalf by NCCI.

Pricing programs reflecting tiered rating are also permitted. However, certain requirements must be met in order to comply with §§ 38.2-1904 and 38.2-1906 of the Code of Virginia. If an insurer wishes to use tiered rating, the insurer must file the multiplier(s) it will use for each tier. In addition, the insurer is required to file eligibility criteria applicable to new and renewal policies for each tier. The criteria for assignment must be objective and mutually exclusive, allowing a risk to qualify for only one rating tier.

In addition to filing eligibility criteria, insurers are required to re-evaluate each policy at renewal to ensure that the appropriate rates are applied in accordance with the filed eligibility criteria. The filed rules must reflect this requirement.

Insurers are required to use the attached form WCLC-VA (05/10) to file new or revised expense multipliers in combination with any of the other rating elements outlined above. If filing amendments to exception pages on file, the insurer should file only the pages being changed. Pages not being amended need not be re-filed. If filing exception pages only with no change in multipliers, use of the WCLC-VA form is not necessary. The insurer should simply submit its exception pages with a clear explanation of the changes. Rate certification form COF-1 (05/05) must also be completed and submitted with each filing (see Administrative Letter 2005-01).

An insurer electing to file expense multipliers that vary by classification code may file its primary multiplier and up to 27 exceptions by listing the primary multiplier and exceptions on page 1 of form WCLC-VA (05/10). Any insurer electing

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to file more than 27 exceptions should attach a schedule of its multipliers when submitting the WCLC VA (05/10). A separate WCLC VA (05/10) must be filed for each tier.

Any modification of, or deviation from, the approved NCCI loss costs (other than the filed expense multiplier) is deemed to be a filing of independent workers' compensation insurance rates and is, therefore, subject to the 60-day delayed-effect provisions of § 38.2-1912 of the Code of Virginia. If the indicated multiplier meets or exceeds unity (1.00), any selected multiplier less than unity will be considered a deviation from loss costs, subjecting the insurer's filing to the delayed-effect provisions. Filings reflecting modifications or deviations from loss costs require the submission of final rates in lieu of a multiplier. Exceptions to NCCI rules that impact premiums will also be deemed to be independent rate filings subject to the delayed-effect statute. In addition, large deductible plans for workers' compensation insurance are subject to the 60-day delayed-effect provisions of § 38.2-1912 unless exempted from filing requirements by § 38.2-1903. Section 38.2-1903 also sets forth exemption criteria for certain retrospective rating plans.

Filings subject to § 38.2-1912 must include actuarial support of the filing and the insurer must certify that it has notified the Division of the Consumer Counsel of the Office of the Attorney General that the filing has been made. The filing should propose an effective date which is at least sixty days after the date the filing is received by the Bureau of Insurance. Under Virginia statute the filing is not deemed made until all necessary data requested from the insurer is furnished. If the initial submission does not include all necessary data, the earliest the filing can be approved is 60 days from the date the filing is deemed complete.

Any questions related to this administrative letter may be directed to Sandra Mawyer, Principal Insurance Market Examiner, Commercial Casualty Rates and Forms Section, Property and Casualty Division, telephone (804) 371-9197, or email sandra.mawyer@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

**SUMMARY OF SUPPORTING INFORMATION
WORKERS' COMPENSATION EXPENSE MULTIPLIER**

INSURER: _____ NAIC NUMBER: _____

EFFECTIVE DATE OF MULTIPLIER: _____

TIER: _____*

*If filing tiered programs, a separate WCLC VA form must be filed for each tier.

Development of Expected Loss ratio:

- a. Total Production Expense _____%
- b. General Expense _____%
- c. Taxes, Licenses and Fees _____%
- d. Underwriting Profit and Contingencies _____%
- e. Residual Market Costs _____%
- f. Other (Explain) ** _____%
- ** _____
- g. Total _____%

Expected Loss Ratio (100% – g) in decimal form: _____

Indicated Insurer Loss Costs Multiplier (1.00/ELR): _____***

Selected Insurer Primary Loss Costs Multiplier: _____****

***Multipliers must be expressed as a factor to be applied to loss costs (e.g. 1.25)

****Explain any differences between the indicated and selected multiplier below:

- ____ Competitive Reasons
- ____ Other (explain) _____

COMPLETED BY: _____

TITLE: _____

TELEPHONE NUMBER: _____

SIGNATURE: _____

NOTE: If an insurer makes any modification to the approved NCCI loss costs (other than the application of an expense multiplier to represent the insurer's expenses, profit and contingencies), the resulting rates will be deemed to be independent rates and shall be subject to the 60 day delayed-effect provisions of § 38.2-1912 of the Code of Virginia, as provided by § 38.2-1906 E.

SUMMARY OF ATTACHED MANUAL EXCEPTION PAGES

(Check all that apply)

- Expense Constant
- Premium Discount Table
- Minimum Premium Formula
- Drug-Free Premium Discount Rules

Tiered Rating:

- Rating Plan Criteria

Small Deductible Plan:

- Variable Expense Multiplier
- Safety Factor

Retrospective Rating Values:

- Expected Loss Ratio (ELR) Factor
- Tax Multiplier
- Table of Expense Ratios (insurers must file the table)
- Excess Loss Premium Factors
- Retrospective Premium Development Factors

Other (explain):

NOTE: *Please attach exception pages only for values being changed or filed for the first time. These values remain filed until withdrawn or changed; therefore, it is not necessary to re-file values that are not being changed. A completed and signed rate certification form COF-1 (05/05) must be attached whenever this form, WCLC VA (05/10), is filed.*

DEFINITIONS

The following are commonly accepted definitions for use with Form WCLC VA:

Expense Multiplier: total production expenses, general expenses, taxes, licenses and fees, underwriting profit and contingencies and other expenses (excluding loss adjustment expenses)

Total Production Expenses: commission and brokerage and other expenses associated with production, sales, field supervision, advertising and collection

General Expenses: payroll, rent, board and bureau fees, pensions and employee benefits

Taxes, Licenses and Fees: premium taxes, fire programs fund assessment, maintenance assessment of the Bureau of Insurance, payroll taxes, guaranty fund assessments, etc.

Underwriting Profit and Contingencies: investment income, risk evaluation, cost of capital, surplus, competitive considerations

Other Expenses: expenses not included above (must be described)

Loss Costs: historical aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time (loss costs do not include provisions for profit or expenses other than loss adjustment expenses)

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for George W. Kemper IV

An enforcement action has been proposed for George W. Kemper IV for alleged violations in Rockingham County. Mr. Kemper is a poultry grower who failed to have his poultry waste transfer records available for inspection and stored poultry waste on the ground outside, uncovered, and unprotected from storm water runoff, wind, and precipitation. A consent order with Mr. Kemper will collect a civil charge. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at <http://www.deq.virginia.gov>. David Robinett will accept comments by email at david.robinett@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from June 21, 2010, to July 21, 2010.

Proposed Consent Special Order for Rahim Corp.

An enforcement action has been proposed for Rahim Corp., for alleged violations in Powhatan County. The State Water Control Board proposes to issue a consent special order to Rahim Corp. to address noncompliance with underground storage tank regulations. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at <http://www.deq.virginia.gov>. Jennifer Hoeffner will accept comments by email at jennifer.hoeffner@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from June 21, 2010, to July 23, 2010.

Restore Water Quality in the Clinch River Including Plum Creek, Middle Creek, and Coal Creek

Announcement of an effort to restore water quality in the Clinch River including Plum Creek, Middle Creek, and Coal Creek in Tazewell County, Virginia.

Public meeting location: Cedar Bluff Town Hall, 115 Central Avenue, Cedar Bluff, VA on July 8, 2010, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ), Department of Mines, Minerals and Energy and the Department of Conservation and Recreation are announcing a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: First public meeting on a study to restore water quality.

Description of study: DEQ is working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of the Clinch River

including Plum Creek, Middle Creek, and Coal Creek in Tazewell County, Virginia. The Clinch River is impaired for failure to meet the recreational use because of fecal coliform bacteria violations, as well as violation of the E. coli standard from the Lincolnshire Branch confluence downstream to the Pounding Mill Branch confluence and from the Dry Branch confluence downstream to the Mill Creek confluence. Plum Creek, Middle Creek, and Coal Creek are also impaired for failure to meet the recreational use because of bacteria violations. Coal Creek is impaired for failure to meet the aquatic life use based on violations of the general standard for aquatic organisms as well.

During the study, the pollutants impairing the aquatic community will be identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ will also determine the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, July 9, 2010, to August 10, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at <http://www.deq.virginia.gov/tmdl>.

Contact for additional information: Shelley D. Williams, SWRO/TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email shelley.williams@deq.virginia.gov.

Restore Water Quality for Portions of Fontaine Creek

Public meetings: Public meetings will be held on Monday, June 28, 2010, from 2 p.m. to 4 p.m. and 6 p.m. to 8 p.m. at the Richardson Memorial Library located at 100 Spring Street, Emporia, VA 23847. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are announcing the draft water quality study to

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restore water quality for portions of Fontaine Creek which stretches across portions of Brunswick and Greenville Counties. This notice also announces the final public meetings and a public comment opportunity.

Meeting description: Summary of the study's conclusions on the water quality impairments of the recreation use for portions of Fontaine Creek which are impaired due to bacterial violations.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination for portions of Fontaine Creek. This impairment spans approximately 32 miles. These waterways are impaired for failure to meet the recreational designated use due to exceedances of the bacterial water quality standard.

Waterbody	Location	Impaired Length (mi)	Impairment
Fontaine Creek (K11R-01-BAC)	Rt 633 Bridge to the tributary between Rts 627 and 639 Greenville Co.	9.87	Recreational Use
Fontaine Creek (K11R-04-BAC)	I-95 Bridge to Rt 301 Bridge Greenville Co.	9.12	
Fontaine Creek (K12R-01-BAC)	Route 301 Bridge to confluence with Meherrin River Greenville Co.	13.29	
Total Impairment Length		32.28	

The study reports on the current status of the river and its tributaries via sampling performed by DEQ and the possible sources of bacterial contamination. The study recommends total maximum daily loads, or 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 the 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 begins June 29, 2010, and expires July 30, 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.

Revised Results of a Water Quality Restoration Study for the James River and Tributaries

Public meeting: Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Richmond, Virginia 23060. Public meetings will be held on Wednesday, June 30, 2010, at 2 p.m. and 6 p.m. In addition, an informal question and answer session will be held a half hour prior to each meeting, the first at 1:30 p.m. and the second at 5:30 p.m. Both meetings and question and answer sessions are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are presenting a revised draft report of a study to restore water quality, a public comment opportunity, and two public meetings.

Meeting description: Public meetings on a study to restore water quality along the James River and tributaries in and around Richmond City and Chesterfield, Henrico, and Powhatan Counties. Meetings will highlight the revisions which have been made to the document (a document summarizing these changes will be available). The main topic of discussion will address the challenge of meeting attainment in Gillie Creek and Almond Creek and the ongoing collaboration of DEQ with the City of Richmond concerning combined sewer overflows (CSOs). The DEQ proposes to utilize the TMDL report as a technical support document for the future purpose of a use attainability analysis (UAA) of the concremented portion of Gillie Creek, should one be necessary.

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	6.95	Bacteria (Primary Contact Use)
Powwhite Creek	Chesterfield, Richmond City	8.13	
Reedy Creek	Richmond City	3.69	
James River	Richmond City	2.99	
Gillie Creek	Richmond City, Henrico	5.75	
	Henrico	2.08	

Almond

Creek			
Goode Creek	Richmond City	1.22	
Falling Creek	Chesterfield	3.10	
No Name Creek	Chesterfield	2.07	
James River	Chesterfield, Henrico, Richmond City	6.75	

These streams are impaired for failure to meet the primary contact (recreational) designated use because of bacteria standard violations. The study reports the sources of bacterial contamination and recommends total maximum daily loads, or TMDLs, for the 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 the TMDL amount.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency and the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will begin on July 1, 2010, and end on August 2, 2010.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949 A 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 Hunting Creek, Cameron Run, and Holmes Run

Announcement of a total maximum daily load (TMDL) study to restore water quality in the bacteria impaired waters of Hunting Creek, Cameron Run, and Holmes Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the final Technical Advisory Committee (TAC) meeting for the Hunting Creek, Cameron Run, and Holmes Run Bacteria TMDL Studies.

Technical advisory committee meeting: Friday, June 25, 2010, 10:30 a.m. to 12:30 p.m., City of Alexandria, Charles

E. Beatley Central Library, Main Community Room, 5005 Duke Street, Alexandria, VA 22304-2903.

Meeting description: This is the third meeting of the TAC. The purpose of the TAC will be to provide technical input and insight for the project and to assist with stakeholder and public participation.

Description of study: Portions of Hunting Creek, Cameron Run, and Holmes Run have been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of E. coli bacteria. Virginia agencies are working to identify the sources of bacteria contamination in these stream segments. The Hunting Creek, Cameron Run, and Holmes Run watersheds are located within Arlington County, the City of Alexandria, the City of Falls Church, and Fairfax County. Below are descriptions of the impaired segments that will be addressed in this study:

Stream Name	Impairments	Area	Upstream Limit	Downstream Limit
Hunting Creek (Tidal)	Recreational use Impairment due to E. coli bacteria	0.53 square miles	Route 241 (Telegraph Road) Bridge Crossing	Confluence with the Potomac River
Cameron Run (Non-Tidal)	Recreational use Impairment due to E. coli bacteria	2.08 miles	Confluence with Backlick Run	Route 241 (Telegraph Road) Bridge Crossing
Holmes Run (Non-Tidal)	Recreational use Impairment due to E. coli bacteria	3.58 miles	Mouth of Lake Barcroft	Confluence with Backlick Run

During this study, DEQ will develop a TMDL for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from June 25, 2010, to July 26, 2010. 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. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email katie.conaway@deq.virginia.gov.

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Total Maximum Daily Load for Hunting Creek, Cameron Run, and Holmes Run

Announcement of a total maximum daily load (TMDL) study to restore water quality in the bacteria impaired waters of Hunting Creek, Cameron Run, and Holmes Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a Public Meeting regarding the Hunting Creek, Cameron Run, and Holmes Run Bacteria TMDL Studies.

Public meeting: Wednesday, June 30, 2010, 7 p.m. to 8 p.m., City of Alexandria, Charles E. Beatley Central Library, Main Community Room, 5005 Duke Street, Alexandria, VA 22304-2903.

Meeting description: This is the final meeting for this project. The purpose of this meeting is to discuss the study with community members and present the project results.

Description of study: Portions of Hunting Creek, Cameron Run, and Holmes Run have been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of E. coli bacteria. Virginia agencies are working to identify the sources of bacteria contamination in these stream segments. The Hunting Creek, Cameron Run, and Holmes Run watersheds are located within Arlington County, the City of Alexandria, the City of Falls Church, and Fairfax County. Below are descriptions of the impaired segments that will be addressed in this study:

Stream Name	Impairments	Area	Upstream Limit	Downstream Limit
Hunting Creek (Tidal)	Recreational use Impairment due to E. coli bacteria	0.53 square miles	Route 241 (Telegraph Road) Bridge Crossing	Confluence with the Potomac River
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Holmes Run (Non-Tidal)	Recreational use Impairment due to E. coli bacteria	3.58 miles	Mouth of Lake Barcroft	Confluence with Backlick Run

During this study, DEQ will develop a TMDL for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on materials presented at the public meeting will extend from June 30,

2010, to July 30, 2010. 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. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email katie.conaway@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on June 4, 2010. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Fifty-One (10)

Virginia's Instant Game Lottery 1178; "Super Blackjack" Final Rules for Game Operation (effective June 4, 2010)

Director's Order Number Fifty-Two (10)

Virginia's Instant Game Lottery 1182; "Diamond Bingo" Final Rules for Game Operation (effective June 4, 2010)

Director's Order Number Fifty-Three (10)

Virginia's Instant Game Lottery 1184; "Winning Fever" Final Rules for Game Operation (effective June 4, 2010)

Director's Order Number Fifty-Four (10)

Virginia's Instant Game Lottery 1193; "Lucky 8's" Final Rules for Game Operation (effective June 4, 2010)

Director's Order Number Fifty-Six (10)

Virginia's Instant Game Lottery 1200; "Winfall" Final Rules for Game Operation (effective June 4, 2010)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Legal Notice

**Notice of Intent to Amend
(Pursuant to § 1902(a)(13) of the Social Security Act
(42 USC § 1396a(a)(13))
Virginia State Plan for Medical Assistance**

2010 Appropriation Act Mandated Reimbursement Changes

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to

provide for changes to the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70); Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80); and Methods and Standards for Establishing Payment Rates-Long Term Care (12VAC30-90). DMAS intends to implement a number of changes in reimbursement methodology on July 1, 2010, pursuant to Item 297 of Chapter 874 of the 2010 Appropriation Act (Act). These are cost savings measures arising from the need for budget reductions statewide. If Congress extends through June 30, 2011, the increased federal funds matching rates, which otherwise will end December 31, 2010, the Act directs DMAS not to implement some of these changes.

Reimbursement Changes Affecting Hospitals (12VAC30-70)

12VAC30-70-50 is being amended to eliminate the inflation adjustment for long-stay hospitals for State Fiscal Year (SFY) 2011 and SFY 2012 and to freeze ceilings in SFY 2011 and SFY 2012 at the same level as the ceilings for long-stay hospitals with Fiscal Year Ends (FYE) of June 30, 2010. This change is mandated by Item 297 AAA of the Act.

12VAC30-70-351 is being amended to rebase hospital diagnosis-related group (DRG) weights, case rates, psychiatric and rehabilitation per diem rates except that 2008 base year costs shall only be increased 2.58% in SFY 2011. No inflation adjustment shall be applied to hospital operating rates in SFY 2012. This change is mandated in Item 297 BBB 1 a of the Act.

12VAC30-70-221, 12VAC30-70-301, and 12VAC30-70-391 are being amended to change the inpatient hospital Medicaid utilization percentage from 15 to 14 to determine disproportionate share hospital (DSH) eligibility. DSH reimbursement is to be rebased for all hospitals with the final calculation being reduced by a uniform percentage so that SFY 2011 expenditures do not exceed SFY 2010 expenditures. No inflation adjustment shall be applied to hospital DSH payments in SFY 2012. This change is mandated by Item 297 BBB 1 b of the Act.

12VAC30-70-351 is being amended to eliminate inflation for graduate medical education per resident amounts in SFY 2011 and SFY 2012 as directed by Item 297 BBB 1 c of the Act.

12VAC30-70-351 and 12VAC30-70-391 are being amended to eliminate rebasing in SFY 2011 and inflation in SFY 2011 and SFY 2012 for freestanding psychiatric hospital facilities as directed in Item 297 CCC of the Act.

12VAC30-70-291 is being amended to exclude certain out-of-state hospitals from receiving indirect medical education payments and 12VAC30-70-301 is being amended to reduce DSH payments to certain out-of-state hospitals. These changes are mandated in Item 297 TTT of the Act.

Reimbursement Changes Affecting Other Providers (12VAC 30-80)

12VAC30-80-180 is being amended to eliminate the SFY 2011 and SFY 2012 inflation adjustments for home health agencies. This change is mandated in Item 297 FFF of the Act.

12VAC30-80-190 is being amended to reduce rates for procedure codes determined under resource based relative value system (RBRVS) (these codes are billed by physicians and other practitioners) by 3% in SFY 2011. In SFY 2012, rates will be reduced by 4% from what they would have been without the 3% reduction (an additional 1% reduction). This change is mandated in Item 297 CCCC of the Act.

12VAC30-80-200 is being amended to eliminate the SFY 2011 and SFY 2012 inflation adjustments for outpatient rehabilitation agencies as mandated by Item 297 GGG of Chapter 874 of the Act.

Reimbursement Changes Affecting Nursing Facilities (12VAC 30-90)

12VAC30-90-41 is being amended to eliminate rebasing in SFY 2011 and inflation in SFY 2011 and SFY 2012 as directed by Item 306 DDD1 a of the Act. Nursing facility and specialized care ceilings shall be frozen at the same level as providers with fiscal year ends of June 30, 2010.

The American Recovery and Reinvestment Act (ARRA) (P.L. 111-5)

In addition to the above-described changes, the 2010 General Assembly also required DMAS to implement on July 1, 2010, the changes listed below. These changes, however, are dependent upon whether additional federal stimulus money will be available to state Medicaid programs. These actions will not be implemented if federal medical assistance percentages under ARRA are extended to June 30, 2011.

Reimbursement Changes Affecting Hospitals (12VAC30-70)

Eliminate the efficiency incentive for long-stay hospitals. (Item 297 AAA of the Act).

Reduce inpatient capital reimbursement from 75% to 72% of cost and 71% in SFY 2012 with corresponding changes for Type One hospitals and Virginia hospitals with Medicaid utilization greater than 50%. (Item 297 HHHH of the Act).

Reduce the hospital adjustment factor from 78% to 75% for acute and rehab services and from 84% to 81% for psychiatric services and 74% and 80% respectively in SFY 2012. Corresponding changes for Type One hospitals. (Item 297 AAAA of the Act).

Reduce outpatient hospital reimbursement from 80% to 77% of cost and to 76% in SFY 2012. Corresponding changes for Type One hospitals. (Item 297 BBBB of the Act).

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Reimbursement Changes Affecting Other Providers (12VAC30-80)

12VAC30-80-40 (Fee-for-service providers: pharmacy) is being amended per Item 297 SSS of Chapter 874 of the Act to decrease the maximum reimbursement for pharmaceutical products to the average wholesale price minus 13.1%, effective July 1, 2010.

Reduce physician rates by 3% with an additional 1% reduction in SFY 2012. (Item 297 CCCC of the Act).

Reduce dental fees by 3% with an additional 1% reduction in SFY 2012. (Item 297 DDDD of the Act).

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

Reduce nursing facility operating rates by 3% in SFY 2011 and 2012. (Item 297 DDD 1 b of the Act).

Reduce nursing facility capital rental rate floor from 9% to 8.75% in SFY 2011 and to 8.5% in SFY 2012. (Item 297 DDD 1 c of the Act).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (<http://www.townhall.virginia.gov>). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: William Lessard, Department of Medical Assistance Services, Provider Reimbursement Division, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 371-8892, or email william.lessard@dmas.virginia.gov.

Legal Notice

Notice of Intent to Amend

(Pursuant to § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13))

The Virginia State Plan for Medical Assistance

Changes and Clarifications in Reimbursement Methodology Effective July 1, 2010

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70); Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80); and Methods and Standards for Establishing Payment Rates-Long

Term Care (12VAC30-90). The Department intends to implement a number of changes and clarifications in reimbursement methodology effective July 1, 2010.

Reimbursement Changes Affecting Hospitals (12VAC30-70)

The State Plan for Medical Assistance is being amended to clarify that reimbursement to facilities operated by the Department of Behavioral Health and Developmental Services (DBHDS) is based on costs. In addition, the formula for disproportionate share hospital (DSH) payments to DBHDS facilities will be revised to maintain the same level of total reimbursement even if some of the facilities exceed the hospital specific DSH limit.

Reimbursement Changes Affecting Other Providers (12VAC30-80)

The State Plan for Medical Assistance is being amended to make a supplemental payment for hospital outpatient services to Type One hospitals (state teaching hospitals) to fully cover its costs.

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

The State Plan for Medical Assistance is being amended to clarify that reimbursement to nursing facilities and intermediate care facilities operated by the DBHDS and nursing facilities operated by the Department of Veterans Affairs is based on costs.

The State Plan for Medical Assistance is being amended to clarify that DMAS may grant an exception to the minimum occupancy requirement for reimbursement purposes for beds taken out of service for renovation.

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (<http://www.townhall.virginia.gov>). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 371-8892, or email william.lessard@dmas.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Notice of Periodic Review

22VAC40-400, Funding Limitation for the Refugee Resettlement Program.

Pursuant to Executive Order Number 107 (2009), the Department of Social Services (DSS) is currently reviewing this regulation to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 107 (2009) and in DSS's Plan for Review of Existing Agency Regulations.

DSS seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until July 12, 2010, to Penelope Boyd, Refugee Program Consultant, Office of Newcomer Services, Virginia Department of Social Services, 801 East Main Broad Street, Richmond, VA 23219, or by facsimile to (804) 726-7088.

DEPARTMENT OF TRANSPORTATION

Notices of Periodic Review

Pursuant to Executive Order Number 107 (09), the Virginia Department of Transportation (VDOT) has scheduled the five regulations listed below for review. VDOT will conduct these reviews to determine whether the regulations should be amended, or retained as written, and will file the necessary documentation to comply with applicable statutes or other directives.

Contact information and duration of the collection of comment are shown at the end of this notice.

Regulation Title: 24VAC30-50. Rules and Regulations for the Administration of Waysides and Rest Areas.

Subject: This regulation sets forth rules concerning the use of waysides and rest areas, including prohibited actions, and those allowed with a permit.

APA Exemption: None

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure maximum utility of facilities to users.
3. Is the regulation written clearly and understandably?

Regulation Title: 24VAC30-61. Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities.

Subject: This regulation sets forth the rules for users of state-owned bridge-tunnel facilities, including those for transporting hazardous materials.

APA Exemption: None

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Regulation Title: 24VAC30-100. Rules and Regulations for the Administration of Parking Lots and Environs.

Subject: This regulation sets forth rules concerning the use of CTB-controlled parking lots and their surrounding vicinity, including prohibited actions, and those allowed with a permit.

APA Exemption: None

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure maximum utility of parking lots and environs to users.
3. Is the regulation written clearly and understandably?

Regulation Title: 24VAC30-490. Roads in the Grounds of State Institutions.

Subject: This regulation establishes the minimum design standards that roads within the grounds of state institutions must meet to be included in the primary system.

APA Exemption: § 2.2-4002 B 3 of the Code of Virginia

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Regulation Title: 24VAC30-500. Roads in the Grounds of State Parks.

Subject: This regulation establishes the policy under which state secondary system routes located completely within state parks, government parks, reservations, and recreational areas may be closed or turned over for maintenance and

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construction to the various authorities in charge of such parks, areas, etc., if they so request.

APA Exemption: § 2.2-4002 B 3 of the Code of Virginia

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Contact: David Roberts, Program Administration Specialist III, Virginia Department of Transportation, Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3620, FAX (804) 225-4700, or email david.roberts@vdot.virginia.gov.

Comments may be submitted from June 21, 2010, to July 12, 2010, to the contact referenced above.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

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

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies

may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages