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Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

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

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.

A 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. **26:20 VA.R. 2510-2515 June 7, 2010,** refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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

PUBLICATION SCHEDULE AND DEADLINES

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

December 2010 through December 2011

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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 28, 2010 **(Tuesday)**	January 17, 2011
27:11	January 12, 2011	January 31, 2011
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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
27:22	June 15, 2011	July 4, 2011
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28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 **(Tuesday)**	December 5, 2011

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

Name of Petitioner: Ms. Corinne Schuman.

Nature of Petitioner's Request: To amend regulations to separate the application fee and the licensing fee and allow the licensing fee to be refundable if an applicant is unable to complete the licensure process.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on November 5, 2010, the Board of Counseling voted to reject the petition for rulemaking. By having the licensure fee included with the application fee, a person is able to be licensed immediately upon application approval. If the fees were separated, it would be necessary for the board to notify an applicant that his/her application had been approved and that a licensure fee was now due. A two-step process would likely delay licensure and the ability to practice the profession by at least a couple of weeks. The applications that are denied are typically those that are problematic and consume more staff and board resources that are represented by the application processing fee.

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

VA.R. Doc. No. R10-74; Filed November 10, 2010, 4:42 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending the following regulation: **18VAC85-50, Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to consider changes to the "fourth visit rule" and also review language in all of Part IV on Practice Requirements to include the use of and requirements for a protocol.

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

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

Public Comment Deadline: January 5, 2011.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R11-2642; Filed November 12, 2010, 8:12 a.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulation: **22VAC40-745, Assessment in Assisted Living Facilities.** The purpose of the proposed action is to (i) ensure that the regulation's definitions and content conform to current Virginia Department of Social Services licensing regulations, (ii) clarify regulation content that may be confusing, and (iii) incorporate person-centered language throughout the regulation.

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

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

Public Comment Deadline: January 5, 2011.

Agency Contact: Karin Clark, Policy Advisor, Department of Social Services, Office of Commissioner, 801 East Main Street, Room 1512, Richmond, VA 23219, telephone (804) 726-7017, FAX (804) 726-7015, TTY (800) 828-1120, or email karin.clark@dss.virginia.gov.

VA.R. Doc. No. R11-2585; Filed November 15, 2010, 12:31 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **3VAC5-50. Retail Operations (adding 3VAC5-50-240).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 5, 2011.

Effective Date: January 20, 2011.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-111 of the Code of Virginia requires that the Alcoholic Beverage Control Board promulgate a regulation that requires off-premises retail licensees to place any premixed alcoholic energy drink containing one-half of 1.0% or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

Purpose: Energy drinks containing alcohol often feature labels very similar to nonalcoholic energy drink products popular with children, which can cause confusion among both consumers and retail clerks. This regulatory action is both mandated by statute and essential to protect the health, safety, and welfare of citizens because it will help reduce the probability of consumers mistaking products containing alcohol for nonalcoholic products.

Rationale for Using Fast-Track Process: This rulemaking is expected to be noncontroversial because the proposal closely follows the statutory requirement. The agency has very little discretion.

Substance: The proposal provides that alcoholic energy drinks, defined as alcoholic beverages that contain caffeine or other stimulants, must be displayed for sale alongside other alcoholic beverage products, and not immediately adjacent to nonalcoholic beverages.

Issues: The primary advantage of the proposed regulatory action is a reduction in the possibility of consumer confusion between energy drink products containing alcohol and those without. There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to § 4.1-111 of the Code of Virginia, the Alcoholic Beverage Control Board (ABC) proposes to amend its regulations that govern retail operations to require that alcoholic energy drinks be displayed adjacent to other alcoholic beverages and not adjacent to nonalcoholic beverages.

Result of Analysis. The benefits likely exceed the costs for this proposed change.

Estimated Economic Impact. Current regulations are silent as to the placement in stores of alcoholic energy drinks. The Virginia General Assembly passed a law in 2009 that requires alcoholic energy drinks to be displayed near other alcoholic beverages and at a distance from nonalcoholic beverages. ABC now proposes to amend its retail operations regulations to add this requirement. To the extent that alcoholic energy drinks have been displayed near nonalcoholic drinks, ABC licensees may incur some minimal costs for moving these products to a legislatively approved area of their store. These costs are likely outweighed by the benefits that will accrue to consumers who will be less likely to inadvertently buy an alcoholic beverage when it was not their intention to do so. Additionally, this change may reduce the chances that minors would be able to purchase alcohol by reducing confusion of retail clerks as to what is an alcoholic beverage and what is not.

Businesses and Entities Affected. ABC estimates that approximately 6,500 licensees are subject to the requirements of these regulations. ABC further estimates that approximately 90% of these licensees meet the legislative definition for small businesses.

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

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

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

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

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The addition of a new section, 3VAC5-50-240, requires off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of 1.0% or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

3VAC5-50-240. Alcoholic energy drinks.

A. "Alcoholic energy drink" means an alcoholic beverage that contains caffeine or other stimulants.

B. Any establishment licensed to sell beer or wine for off-premises consumption shall display alcoholic energy drinks for sale immediately adjacent to other alcoholic beverage products, and not immediately adjacent to any nonalcoholic beverages.

VA.R. Doc. No. R11-2427; Filed November 16, 2010, 9:46 a.m.

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TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulation have been filed by the Virginia Waste Management Board. Amended or added forms are reflected in the listing and may be viewed from this issue of the *Virginia Register of Regulations* online by clicking on the name of the form. The forms are also available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC20-80. Solid Waste Management Regulations.**

Agency Contact: Debra A. Miller, Policy Planning Specialist, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, or email debra.miller@deq.virginia.gov.

FORMS (9VAC20-80)

Open Dump Evaluation Criteria Part I-Flood Plains, DWM Form SW-4-1.

Open Dump Evaluation Criteria Part II-Surface Water, DWM Form SW-4-2.

Open Dump Evaluation Criteria Part III-Groundwater, DWM Form SW-4-3.

Open Dump Evaluation Criteria Part IV-Disease Vectors, DWM Form SW-4-4.

Open Dump Evaluation Criteria Part V-Open Burning, DWM Form SW-4-5.

Open Dump Evaluation Criteria Part VI-Safety: Landfill Gas, DWM Form SW-4-6.

Open Dump Evaluation Criteria Part VII-Safety: Fires, DWM Form SW-4-7.

Open Dump Evaluation Criteria Part VIII-Safety: Bird Hazard, DWM Form SW-4-8.

Solid Waste Management Facility Permit Applicant's Disclosure Form, DWM Form DISC-01.

Solid Waste Management Facility Permit Applicant's Disclosure Form-Key Personnel, DWM Form DISC-02.

Request for Local Government Certification, DWM Form SW-11-1.

Solid Waste Part A Application, Form SW-7-3 (rev. 4/09).

~~Solid Waste Information and Assessment Program Reporting Table, DEQ Form 50-25 (rev. 2/05).~~

Solid Waste Information and Assessment Program Reporting Table, DEQ Form 50-25 (rev. 10/10).

VA.R. Doc. No. R11-2659; Filed November 12, 2010, 12:07 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

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: **10VAC5-160. Rules Governing Mortgage Lenders and Brokers (amending 10VAC5-160-10, 10VAC5-160-20, 10VAC5-160-40, 10VAC5-160-50; adding 10VAC5-160-90, 10VAC5-160-100).**

Statutory Authority: § 6.2-1613 of the Code of Virginia.

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

Public Comment Deadline: December 20, 2010.

Agency Contact: E.J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

Summary:

The amendments to this regulation governing mortgage lenders and brokers accomplish three basic goals: (i) address the transition of mortgage lender and broker licensees and new applicants to the electronic National Mortgage Licensing System and Registry (NMLS); (ii) provide basic codes of conduct for licensees in maintaining records with NMLS and supervising mortgage loan originators (already licensed through NMLS); and (iii) make technical changes and corrections to conform to NMLS, as well as to the recodification of Title 6.1 of the Code of Virginia into Title 6.2. All applications for mortgage lender or broker licenses under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia must be sent through NMLS beginning January 3, 2011. Mortgage lenders and brokers licensed prior to January 1, 2011, are required to transition to NMLS no later than April 1, 2011. Licensees may not employ persons who are not licensed as mortgage loan originators under Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia to take applications for, or offer or negotiate the terms of, residential mortgage loans. Licensees must disclose on all documents provided to a borrower the licensee's NMLS unique identifier, as well as the unique identifier of any mortgage loan originator associated with the loan. Licensees are required to keep their information current in NMLS. The commission may enforce these regulations or Chapter 16 by fines or suspension or revocation of licenses.

AT RICHMOND, NOVEMBER 16, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00255

Ex Parte: In re: Mortgage Lenders and Brokers

ORDER TO TAKE NOTICE

Section 6.2-1613 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia. The Commission's regulations governing licensed mortgage lenders and brokers ("Licensees") are set forth in Title 10 of the Virginia Administrative Code.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to 10 VAC 5-160 ("Chapter 160") of the Virginia Administrative Code, which governs the conduct of Licensees. The impetus for the proposed amendments is Chapter 831 of the 2010 Virginia Acts of Assembly ("Chapter 831"), which became effective on July 1, 2010, and required all Licensees to register with the Nationwide Mortgage Licensing System and Registry ("NMLS"). The proposed regulation sets forth the requirements for Licensees to transition to NMLS and maintain current and accurate records in NMLS, as well as the requirements for new mortgage lenders and brokers to apply for licensure through NMLS. The proposed regulation also clarifies certain operating rules for Licensees through their participation in NMLS and supervision of mortgage loan originators, also licensed through NMLS.

NOW THE COMMISSION, based on information supplied by the Bureau, is of the opinion and finds that the proposed regulation should be considered for adoption with a proposed effective date of January 1, 2011.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, entitled "Mortgage Lenders and Brokers," 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 December 20, 2010. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2010-00255. 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 Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, including a copy of the proposed regulation, to all licensed mortgage lenders and brokers, and other interested parties as he may designate.

10VAC5-160-10. Definitions.

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

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

"Affiliate" for purposes of subdivision 3 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Chapter 16" means Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia.

"Commission" and "commissioner" shall have the meanings ascribed to them in § ~~6.1-409~~ 6.2-1600 of the Code of Virginia.

"Commitment" means a written offer to make a mortgage loan signed by a person authorized to sign such offers on behalf of a mortgage lender.

"Commitment agreement" means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon.

"Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of a commitment or as a requirement for acceptance by the applicant of a commitment, but the term does not include fees paid to third persons or interest.

"Dwelling" means one- to four-family residential property located in the Commonwealth.

"Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker, or paid by the applicant to, or retained by, the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.

"Licensee" means a person licensed under Chapter 16 ~~(§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia~~.

"Lock-in agreement" means a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval. A commitment agreement that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement is also a lock-in agreement. The interest rate that is established and set by the agreement may be either a fixed rate or an adjustable rate.

"Lock-in fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in

agreement, but the term does not include fees paid to third persons or interest.

"Mortgage lender," "mortgage broker," and "mortgage loan" shall have the meanings ascribed to them in § ~~6.1-409~~ 6.2-1600 of the Code of Virginia.

"Mortgage loan originator," "Nationwide Mortgage Licensing System and Registry," and "Registry" shall have the meanings ascribed to them in § 6.2-1700 of the Code of Virginia.

"Personal, family or household purposes" for purposes of § ~~6.1-409~~ 6.2-1600 of the Code of Virginia means that the individual obtaining the loan intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be (i) improved or rehabilitated by or on behalf of the purchaser for subsequent sale to one or more other individuals who will reside in the dwelling on a temporary or permanent basis, or (ii) leased by the purchaser to one or more other individuals who will reside in the dwelling on a temporary or permanent basis.

"Points" means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan, other than or in addition to fees paid to third persons or interest.

"Reasonable period of time" means that period of time, determined by a mortgage lender in good faith on the basis of its most recent relevant experience and other facts and circumstances known to it, within which the mortgage loan will be closed.

"Senior officer" for purposes of §§ ~~6.1-414~~ 6.2-1605, ~~6.1-415~~ 6.2-1606, ~~6.1-416~~ 6.2-1607, and ~~6.1-416.1~~ 6.2-1608 of the Code of Virginia means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

"Subsidiary" for purposes of subdivision 3 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

10VAC5-160-20. Operating rules.

A licensee shall conduct its business in accordance with the following rules:

1. No licensee shall misrepresent the qualification requirements for a mortgage loan or any material loan terms or make false or misleading statements to induce an applicant to apply for a mortgage loan or to induce an applicant to enter into any commitment agreement or lock-in agreement or to induce an applicant to pay any commitment fee or lock-in fee in connection therewith. A "material loan term" means the loan terms required to be disclosed to a consumer pursuant to (i) the Truth in Lending Act (15 USC § 1601 et seq.), and regulations and official commentary issued thereunder, as amended from time to time, (ii) § 6.1-2.9:5 of the Code of Virginia, and (iii) 10VAC5-160-30. A misrepresentation or false or misleading statement resulting directly from incorrect information furnished to a licensee by a third party, or a good-faith misunderstanding of information furnished by a third party, shall not be considered a violation of this section if the licensee has supporting documentation thereof and the licensee's reliance thereon was reasonable.

2. No licensee shall retain any portion of any fees or charges imposed upon consumers for goods or services provided by third parties. All moneys received by a licensee from an applicant for fees paid to third persons shall be accounted for separately, and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid. All such moneys shall be deposited in an escrow account in a bank, savings institution, or credit union segregated from other funds of the licensee.

3. The mortgagor who obtains a mortgage loan shall be entitled to continue to make payments to the transferor of the servicing rights under a mortgage loan until the mortgagor is given written notice of the transfer of the servicing rights by the transferor. The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least 10 calendar days before the first payment affected by the notice.

4. If a person has been or is engaged in business as a mortgage lender or mortgage broker and has filed a bond with the commissioner, as required by § ~~6.1-413~~ 6.2-1604 of the Code of Virginia, such bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:

a. The person's application for a license is withdrawn or denied;

b. The person's license is surrendered, suspended, or revoked; or

c. The person ceases engaging in business as a mortgage lender or mortgage broker.

5. Within 15 days of becoming aware of the occurrence of any of the following events, a licensed mortgage lender or mortgage broker shall file a written report with the commissioner describing such event and its expected impact, if any, on the activities of the licensee in the Commonwealth:

a. The licensee files for bankruptcy or reorganization.

b. Any governmental authority institutes revocation or suspension proceedings against the licensee, or revokes or suspends a mortgage-related license held or formerly held by the licensee.

c. Any governmental authority takes (i) formal regulatory or enforcement action against the licensee relating to its mortgage business or (ii) any other action against the licensee relating to its mortgage business where the total amount of restitution or other payment from the licensee exceeds $20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

d. Based on allegations by any governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed mortgage business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

e. The licensee surrenders its license to engage in any mortgage-related business in another state in lieu of threatened or pending license revocation, license suspension, or other regulatory or enforcement action.

f. The licensee is denied a license to engage in any mortgage-related business in another state.

g. The licensee or any of its employees, officers, directors, or principals is indicted for a felony.

h. The licensee or any of its employees, officers, directors, or principals is convicted of a felony.

6. No licensee shall inform a consumer that such consumer has been or will be "preapproved " or "pre-approved" for a mortgage loan unless the licensee contemporaneously provides the consumer with a separate written disclosure (in at least 10-point type) that (i) explains what preapproved means; (ii) informs the consumer that the consumer's loan application has not yet been approved; (iii) states that a written commitment to make a mortgage loan has not yet been issued; and (iv) advises the consumer what needs to occur before the consumer's loan application can be approved. This provision shall not apply to advertisements subject to 10VAC5-160-60. In the case of a preapproval initially communicated to a consumer by telephone, the licensee shall provide the written disclosure to the consumer within three business days.

7. No licensee shall permit any individual who is not licensed as a mortgage loan originator pursuant to Chapter 17 (§ 6.2 1700 et seq.) of Title 6.2 of the Code of Virginia to, on behalf of the licensee, take an application for or offer or negotiate the terms of a residential mortgage loan as defined in § 6.2-1700 of the Code of Virginia.

8. Beginning April 1, 2011, every licensee shall disclose on all documents provided to the borrower associated with a Virginia residential mortgage loan: (i) the licensee's unique identifier assigned by the Registry; and (ii) the unique identifier assigned by the Registry to any mortgage loan originator who took the application or negotiated the terms of the loan.

10VAC5-160-40. Schedule of annual fees for the examination, supervision, and regulation of mortgage lenders and mortgage brokers.

Pursuant to § ~~6.1-420~~ 6.2-1612 of the Code of Virginia, the Commission sets the following schedule of annual fees to be paid by mortgage lenders and mortgage brokers required to be licensed under Chapter 16 ~~(§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia~~. Such fees are to defray the costs of examination, supervision and regulation of such lenders and brokers by the Bureau of Financial Institutions. The fees are related to the actual costs of the Bureau, to the volume of business of the lenders and brokers, and to other factors relating to supervision and regulation.

SCHEDULE

LENDER LICENSEE: Minimum fee -- $800, plus $6.60 per loan

BROKER LICENSEE: Minimum fee -- $400, plus $6.60 per loan

DUAL AUTHORITY (LENDER/BROKER): Minimum fee -- $1,200, plus $6.60 per loan

The annual fee for each mortgage lender shall be computed on the basis of the number of mortgage loans, as defined in § ~~6.1-409~~ 6.2-1600 of the Code of Virginia, made or originated during the calendar year preceding the year of assessment. The annual fee for each mortgage broker shall be based on the number of such loans brokered. The annual fee for each mortgage lender/broker shall be based on the total number of mortgage loans made or originated and mortgage loans brokered. The annual fee computed using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before April 25 for the current calendar year. By law the fee must be paid on or before May 25.

The annual report of each licensee shall be due March 1 of each year and shall provide the basis for licensee assessment, i.e., the number of loans made or brokered. If the annual report of a licensee has not been filed by the assessment date, a provisional fee, subject to adjustment when the report is filed, shall be assessed. In cases where a license or additional authority has been granted between January 1 and March 31, one of the following fees or additional fee shall be assessed: lender -- $400; broker -- $200; lender/broker -- $600.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection B of § ~~6.1-420~~ 6.2-1612 of the Code of Virginia.

10VAC5-160-50. Responding to requests from Bureau of Financial Institutions.

A. When the Bureau of Financial Institutions (bureau) requests a written response, books, records, documentation, or other information from a mortgage lender or mortgage broker (licensee) in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation or information and such other factors as the bureau determines to be relevant under the circumstances.

B. Requests made by the bureau pursuant to subsection A are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § ~~6.1-419~~ 6.2-1611 of the Code of Virginia. Failure to comply with subsection A may result in fines, license suspension, or license revocation.

10VAC5-160-90. National Mortgage Licensing System and Registry.

A. Beginning January 3, 2011, applications for a mortgage lender or mortgage broker license shall be made through the Registry in accordance with instructions provided by the commissioner. The commissioner may provide these instructions through the Registry, on the commission's Internet website, or by any other means the commissioner deems appropriate.

B. The commissioner shall notify all licensees no later than January 1 of each calendar year of the information required to be included in the annual report to be submitted by each licensee pursuant to § 6.2-1610 of the Code of Virginia.

C. Entities exempt from the requirement for licensure under Chapter 16 that supervise mortgage loan originators licensed pursuant to Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia may obtain a unique identifier through the Registry.

D. All licensees holding a license under Chapter 16 prior to January 1, 2011, shall obtain such unique identifier and provide all required information to the Registry no later than April 1, 2011.

E. Every licensee shall maintain current information in its records with the Registry. Any changes to the licensee's address, principal officers, or any other information in the Registry shall be updated by the licensee as soon as is practicable, but in no event later than five business days from when the change takes effect.

10VAC5-160-100. Enforcement.

A. Failure to comply with any provision of Chapter 16 or this chapter may result in fines, license suspension, or license revocation.

B. Pursuant to § 6.2-1624 of the Code of Virginia, a licensee shall be subject to a fine of up to $2,500 for every violation of Chapter 16, this chapter, or other law or regulation applicable to the conduct of the licensee's business. Furthermore, if a licensee violates any provision of Chapter 16, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple borrowers, loans, or prospective loans, the licensee shall be subject to a separate fine for each borrower, loan, or prospective loan. For example, if a licensee makes five loans and the licensee violates two provisions of this chapter in connection with each of the five loans, there would be a total of 10 violations and the licensee would be subject to a maximum fine of $25,000.

VA.R. Doc. No. R11-2653; Filed November 16, 2010, 11:11 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-613. Regulations for Alternative Onsite Sewage Systems (adding 12VAC5-613-10 through 12VAC5-613-200).**

Statutory Authority: §§ 32.1-12, and 32.1-164 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 4, 2011.

Agency Contact: Allen Knapp, Director, Division of Onsite Sewage and Wastewater Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7470, or email allen.knapp@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia authorizes the Board of Health to promulgate and enforce regulations. Under § 32.1-164 of the Code of Virginia, the board is authorized to

promulgate regulations governing onsite sewage systems to protect public health and is required to exercise due diligence to protect the quality of both surface water and ground water. Section 32.164 H and I of the Code of Virginia require the board to establish a program for operation and maintenance of alternative onsite sewage systems (AOSSs) and to promulgate regulations for AOSSs. Chapter 220 of the 2009 Acts of Assembly required the board to adopt emergency regulations for operation, maintenance, performance requirements, and horizontal setback requirements for AOSSs necessary to protect public health and the environment. The emergency regulations became effective on April 7, 2010. The emergency regulations remain effective for 12 months; thus, they are set to expire on April 6, 2011. This current regulatory action is intended to replace the emergency regulations.

Purpose: The new regulation is necessary in order to carry out the board's mandates regarding AOSSs with respect to (i) performance requirements; (ii) operation and maintenance requirements; and (iii) horizontal setbacks for AOSSs designed pursuant to § 32.1-163.6 of the Code of Virginia.

The needs and goals for this regulation fall into three conceptual areas:

1. The current performance requirements contained in the Sewage Handling and Disposal Regulations are inadequate for AOSSs.

2. Statutory changes in 2008 (§ 32.1-163.6) allow licensed professional engineers to design AOSSs that are not required to comply with the Sewage Handling and Disposal Regulations. Instead, these designs must be compliant with performance requirements established by the board. Since current performance requirements are inadequate, these regulations seek to establish measurable performance requirements appropriate for all AOSSs, including the engineered designs under § 32.1-163.6.

3. Proper operation and maintenance are essential to ensure that AOSSs function as designed to protect public and environmental health.

Substance: This proposed regulation contains the following provisions:

1. Definitions, the most relevant being: standard engineering practice, best management practice, general approval, pollution, renewable operating permit, state waters, treatment levels 2 and 3, relationship with an operator, Chesapeake Bay Watershed, ground water, direct dispersal of effluent to ground water, and wetlands.

2. It is deemed a violation of these regulations if any AOSS fails to (i) achieve one or more performance requirements; (ii) accomplish any mandated visit by an operator; or (iii) accomplish any operation, maintenance, monitoring, sampling, reporting, repair, or inspection requirement. Also, a violation of an operation and maintenance manual is a violation of the regulations if it results in a violation of one or more performance requirements.

3. Before the Virginia Department of Health (VDH) will issue an operation permit for an AOSS, the owner must establish a relationship with a licensed operator. The owner must maintain a relationship with an operator during any period that the AOSS is operational.

4. Before VDH will issue an operation permit for an AOSS serving a residential structure, the property owner must record an instrument that complies with § 15.2-2157 E of the Code of Virginia in the land records of the appropriate circuit court.

5. A requirement that all plans and specifications for AOSSs are either sealed by a professional engineer or contain a certification statement claiming an appropriate exemption from the practice of engineering.

6. A requirement that applications submitted under § 32.1-163.6 of the Code of Virginia include a site characterization report.

7. Establishment of the framework for an evaluation and testing protocol for generally approved treatment units to be developed by the division through a guidance document at a later date. In addition, these regulations contain a five-year sunset provision for treatment units that have been conferred general approval on or before the effective date of this chapter. After the five-year period has elapsed, these treatment units must follow the evaluation and testing protocol in effect at the time of reapplication in order to obtain general approval.

8. A number of performance requirements for AOSSs that include:

a. A prohibition against the presence of raw or partially treated sewage on the ground surface;

b. A prohibition against the backup of sewage into plumbing fixtures;

c. Maximum trench bottom hydraulic loading rates based on two different effluent qualities (TL-2, and TL-3);

d. A requirement that STE may only be discharged to a soil treatment area when the vertical separation to a limiting feature consists of at least 18 inches of naturally-occurring, in-situ soil;

e. A requirement that AOSSs designed to disperse STE have at least 12 inches of soil cover over the soil treatment area;

f. A requirement that dosing of a treatment unit shall accommodate the designs peak flow;

g. Whenever a site has ground water at less than six inches from the surface or there is less than 18 inches of vertical separation from the point of effluent application to the bottom of a trench or other excavation, then the

designer must demonstrate that water mounding will not adversely affect the functioning of the soil treatment area. The designer must provide additional studies demonstrating that the site is not flooded during the wet season and that there is sufficient hydraulic gradient to move effluent off the site without ponding;

h. When standard disinfection is required, the fecal coliform effluent quality prior to dispersal to the soil treatment area must not exceed 200 cfu/100 ml;

i. The following performance requirements related to site conditions (vertical separation to limiting features) and effluent quality:

(1) Sites with less than 18 inches of vertical separation, but at least 12 inches of vertical separation and six inches of naturally occurring, undisturbed soils, require a minimum of TL-2 effluent;

(2) Sites with less than 12 inches vertical separation must apply a minimum of TL-3 effluent with disinfection. However, if the site has less than six inches of vertical separation from a perched or seasonal water table, then it must also comply with additional ground water protection standards enumerated in 12VAC5-613-90;

j. Organic loading rates cannot exceed 0.00021 BOD lb/day/sf on a trench bottom basis;

k. Large AOSSs that are not situated in the Chesapeake Bay Watershed must comply with a total nitrogen limit of five mg/l at the project area boundary. As a precondition to the issuance of an operation permit, the designer is required to provide calculations and modeling to demonstrate that the proposed AOSS will meet this nitrogen requirement;

l. AOSSs must be designed and constructed so as to be structurally sound, resist infiltration and inflow, minimize odor or other nuisances, and maintain forward flow;

m. When sand, soil, or soil-like material is used to increase the vertical separation, the designer shall specify methods and materials that will achieve the performance requirements of the regulations;

n. Septic tank effluent is prohibited for large AOSSs;

o. AOSSs with soil dispersal systems installed with less than six inches of vertical separation to ground water must meet the following requirements:

(1) If the concentration of any constituent in ground water is less than the limits set forth in 9VAC25-280, then the natural quality for the constituent must be maintained; natural quality must also be maintained for all constituents not set forth in 9VAC25-280. If the concentration of any constituent in ground water exceeds the limit set forth in the regulatory standard for that constituent, then no addition of that constituent to the naturally occurring concentration can occur;

(2) Ground water monitoring to confirm compliance with ground water quality standards must be undertaken for large AOSSs;

(3) Additional effluent monitoring is required for small AOSSs;

(4) A renewable operating permit must be obtained and maintained in accordance with the regulations;

(5) The designer must provide analyses demonstrating that the system will function as designed for the life of the structure without degrading the soil treatment area; and

(6) The systems must comply with the enumerated effluent quality standards for BOD, TSS, total nitrogen, fecal coliform, and total phosphorous. In addition, high level disinfection is required and the systems must incorporate filtration capable of demonstrating compliance with the enumerated turbidity standard;

p. AOSSs in the Chesapeake Bay Watershed must provide a 50% reduction of Total Nitrogen (TN) as compared to conventional systems which must be demonstrated either through compliance with the divisions BMPs or through sufficient calculations. In addition, large AOSSs in the Chesapeake Bay Watershed must demonstrate less than 3 mg/L TN at the project boundary and ground water monitoring for large AOSSs may be required;

q. Laboratory sampling is required for all AOSSs except those designed to disperse septic tank effluent;

r. A small AOSS using a treatment unit with general approval is required to be sampled once during the first 180 days of operation and then once every five years thereafter;

s. A small AOSS using a treatment unit that does not have general approval is required to be sampled once during the first 180 days of operation, with four additional samples to follow within the first two years of operation, and an annual sample thereafter. However, if four or more consecutive samples demonstrate compliance with applicable performance requirements, then the owner may petition VDH to have the sampling frequency reduced to once every five years;

t. Samples for small AOSSs must be analyzed for BOD_5 and, if disinfection is required, fecal coliform organisms. Small AOSSs using chlorine as a disinfectant may sample for total residual chlorine instead of fecal coliform organisms;

u. Small AOSSs that disperse directly to ground water require quarterly samples and continuous monitoring of

critical treatment units. Large AOSSs that disperse directly to ground water require monthly samples and 24-hour staffing or telemetry in order to continuously monitor critical treatment units;

v. Sampling and monitoring requirements for large AOSSs are enumerated in Table 4 of the regulations; and

w. Recommended field measurements, sampling, and observations for all AOSSs up to 0.04 MGD are enumerated in Table 5 of the regulations.

9. Operator responsibilities that include:

a. Filing a report with VDH for each required visit or when there is a reportable incident;

b. Accomplishing the various responsibilities and assessments required by the regulations using visual and other observations, laboratory and field tests deemed appropriate and as required by the regulations;

c. Keeping a log for each AOSS for which he is responsible; and

d. Notifying VDH when his relationship with an owner terminates.

10. A requirement that any person who pumps or otherwise removes sludge or solids from any septic tank or treatment unit of an AOSS must file a report with VDH.

11. The establishment of owner responsibilities that include:

a. Maintaining a relationship with an operator;

b. Having the AOSS operated and maintained by an operator;

c. Having the AOSS visited by an operator at the frequencies and times required by the regulations;

d. Having an operator collect all required samples;

e. Keeping a copy of the log provided by the operator and the operation and maintenance manual (O&M manual) and making a reasonable effort to transfer both to a new property owner; and

f. Complying with the onsite sewage system requirements contained in local ordinances adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et. seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC10-20) when an AOSS is located within a Chesapeake Bay Preservation Area.

12. AOSS with flows less than or equal to 1,000 gpd require one operator visit within the first six months after the operation permit is issued, and an annual visit thereafter. AOSS with flows that exceed 1,000 gpd require more frequent operator visits and staffing.

13. Each AOSS must have an O&M manual prepared by the designer and submitted to the local health department for approval.

14. Minimum expectations for operator visits include:

a. Inspecting all components of the AOSS, conducting field measurements, sampling, and other observations as required by the regulations or the O&M manual, or as deemed necessary by the operator to assess the performance of the AOSS and its components;

b. Performing routine maintenance, making adjustments, and replacing worn or dysfunctional components with in-kind parts such that the system can reasonably be expected to return to normal operation; and

c. If the AOSS is not functioning as designed or in accordance with the performance requirements of the regulations and, in the operators professional judgment it cannot be reasonably expected to return to normal function through routine operation and maintenance, then the operator must immediately report to the owner the remediation efforts necessary to return the AOSS to normal operation.

15. The establishment of the minimum reporting requirements whenever an operator is required to file a report, which include:

a. The name and license number of the operator, the date and time of the report, and the purpose of the visit;

b. A summary statement describing whether the AOSS is functioning as designed, whether the operator believes that routine maintenance performed will return the AOSS to normal operation, or whether additional actions are required to return the AOSS to normal operation;

c. A report of maintenance performed, field measurements, observations, and sampling; and the name of the laboratory that will analyze samples; and

d. A copy of the report provided to VDH and the owner.

16. Horizontal setbacks for AOSS designs under § 32.1-163.6 of the Code of Virgina, which are necessary to protect public health and the environment and which cannot be reduced by the engineer designing an AOSS under § 32.1-163.6 of the Code of Virgina.

The following is a change from the existing Sewage Handling and Disposal Regulations:

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
12VAC5-950 Table 5.4	12VAC5-613-40	Table 5.4 contains prescriptive sizing criteria for soil absorption areas	This change applies only to AOSSs designed to disperse TL-2 or TL-3 effluent. These systems will be sized in accordance with performance requirements established in these regulations. Alternative systems that disperse septic tank effluent will continue to be sized in accordance with Table 5.4 of the Sewage Handling and Disposal Regulations. Because of the reduced organic loading rates and other benefits, AOSSs that treat wastewater to a higher degree than septic tank effluent before dispersal to a soil treatment area can utilize higher hydraulic loading rates than systems utilizing septic tank effluent.

Issues: The primary advantage to the public is providing access to adequate performance requirements, horizontal setbacks that protect public health, and operation and maintenance requirements for AOSSs. The proposed regulations also include nitrogen reduction requirements for all large AOSSs regardless of locality and small AOSSs located in the Chesapeake Bay Watershed. The public would enjoy more environmental protection with greater regulatory oversight. Less pollution and pathogens will better protect Virginia's natural resources, including the Chesapeake Bay.

Chapter 220 of the 2009 Acts of Assembly required the board to promulgate emergency regulations to establish performance requirements and horizontal setbacks for AOSSs necessary to protect public health and the environment and to establish operation and maintenance requirements consistent with the requirements for AOSSs contained in § 32.1-164 of the Code of Virginia. The emergency regulations expire April 6, 2011. To the extent the emergency regulations fostered protection of public health and the environment, such protection would be lost if these replacement regulations are not adopted.

The primary disadvantage could be considered to be the costs that AOSS owners would incur to achieve compliance with the regulations. See the Department of Planning and Budget's economic impact analysis for more information about the costs owners of AOSS would incur as a result of these regulations.

The primary advantage to VDH is having cogent, enforceable regulations. Without these regulations, VDH will not have enforceable requirements to protect public health and the environment with an adequate margin of safety. The Sewage Handling and Disposal Regulations provide inadequate performance, operation, and maintenance requirements for the protection of public health and the environment against the potentially injurious effects of malfunctioning or failing AOSS treatment systems. Additionally, the regulation implements requirements in § 32.1-164 A and I of the Code of Virginia and the legislative mandate contained in Chapter 220 of the 2009 Acts of Assembly.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations 1) establish performance and horizontal setback requirements for alternative onsite sewage systems (AOSS); 2) require owners of AOSS to have a relationship with a licensed operator for operation and maintenance of the system; establish an inspection, sampling, and reporting frequency for AOSS; and establish a $1 fee for filing of inspection reports with the Virginia Department of Health; 3) establish nitrogen limitations for all large AOSS and reduce nutrient loads for small AOSS; 4) establish additional design and monitoring requirements for small and large AOSS that disperse effluent directly into the groundwater; and 5) provide that generally approved systems undergo a reevaluation after five years from the effective date of these regulations.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Chapter 515 of the 2008 Acts of Assembly mandated that treatment works designs from individuals licensed as professional engineers shall be accepted as long as they comply with standard engineering practices, performance requirements, and the horizontal setback requirements established by the Board of Health. The performance requirements in effect at that time were Sewage Handling and Disposal Regulations[1] (SHDR) which had two

basic principles: a) no back-up into the dwelling and b) no effluent or sewage discharge onto the ground surface. After July 2008, Virginia Department of Health (VDH) started receiving applications with designs that otherwise complied with the performance requirements of the SHDR, but for the places that had historically been denied permits such as areas shallow to water table or rock and wetlands. In response, Chapter 220 of the 2009 Acts of Assembly directed VDH to implement emergency regulations which introduced additional performance requirements beyond SHDR.

In addition to the performance requirements contained in the emergency regulations, the proposed regulations contain additional performance requirements for cases where professional engineers propose sewage systems to disperse or discharge directly into groundwater or into wetlands. Under SHDR, VDH had been denying most proposals for direct dispersal into the groundwater.

While the proposed regulations also establish horizontal setback requirements for AOSS, these are the same standards enforced under the SHDR.

In short, when the statute mandated VDH to accept engineered designs for treatment works, the performance requirements contained in the SHDR were not adequate to minimize public health and environmental risks posed by the engineered systems. The proposed regulations introduce performance requirements that take into account potential risks posed by engineered systems.

One of the main economic effects of the proposed regulations arises from the fact that the sewage system permit has a direct impact on the feasibility of a building project and therefore the value of the underlying real property. In the absence of these regulations, VDH would be required to accept engineered systems shallow to water table or rock and wetlands as long as they complied with the performance requirements of SHDR. Since the proposed regulations introduce additional criteria compared to SHDR, they have the potential to make some of the previously feasible real estate development projects infeasible if the standards to protect public health and environment have not been met. On the other hand, VDH has been denying engineered systems designed to disperse or discharge directly into groundwater or into wetlands based on the interpretation that such a design is not a standard engineering practice. Since the proposed regulations allow systems designed to discharge into the groundwater so long as the standards to protect public health and environment have been met, they have the potential to make some of the previously infeasible real estate development projects feasible.

Considering, of the 1,500 to 2,700 alternative systems built every year, 25 to 300 are direct dispersal systems, the proposed performance standards are expected to make more feasible projects infeasible than making infeasible projects feasible. However, the proposed performance standards provide protection against the public health and environmental risks otherwise would have been posed by a large proportion of the alternative systems.

Chapter 220 of the 2009 Acts of Assembly also mandated that the Board of Health adopt regulations for operation and maintenance of the AOSS. The proposed regulations require that all AOSS owners must have a relationship with an operator, have the operator inspect their system once a year, report their findings with VDH, and collect samples for laboratory testing every five years for generally approved systems and every year for non-generally approved systems. VDH expects the cost of regular maintenance to be approximately $300 to $600 per year for generally approved small AOSS. The estimated maintenance cost for non-generally approved small AOSS range from $450 to $800 because of the increased sampling frequency. There are approximately 60,000 AOSS currently operating in Virginia and every year an additional 1,500 to 2,700 new systems come online. Approximately 60 to 80 percent of the systems are generally approved and the rest are non-generally approved. Thus, the statewide total cost of the proposed maintenance requirement for existing systems is expected to be between $10.8 million and $28.8 million for generally approved systems and $5.4 million and $19.2 million for non-generally approved systems. As more systems are installed, the statewide cost is expected to grow annually by $270,000 to $1.3 million for generally approved systems and by $243,000 to $480,000 for non-generally approved systems.

However, there have been several known localities[2] that were already requiring some type of maintenance or inspection. A survey conducted by the Weldon Cooper Center for Public Service[3] indicates 39% of the respondents said that homeowners in their counties or localities were legally required to have their systems inspected, 35% said this was not the case, and the remaining 26% were not sure. Additionally, 39% of the AOSS owners surveyed had maintenance contracts in place and 77% said that they had had a routine maintenance performed on their system in the last five years. Furthermore, 84% of respondents with AOSS had their system inspected in the last year. Thus, a non-negligible portion of the AOSS owners had already been incurring maintenance and inspection costs for their systems prior to the proposed regulations and the additional costs on these owners will be smaller.

On the other hand, routine inspection and maintenance is expected to extend the operational life of the system indefinitely, reduce operational and equipment deficiencies, allow the operator to find out and respond more quickly to problems, and consequently reduce malfunction costs and the chances of total system failure and the need for system replacement. Additionally, routine inspection and maintenance is expected to reduce public health and environmental risks associated with a system failure.

The proposed regulations are also expected to have a significant effect on the operators. Since a relationship with an operator is required, an increase in demand for AOSS technical services is expected. However, as mentioned before some of the AOSS owners already have maintenance or inspection performed on their systems voluntarily or as required by their local government. Thus, the potential increase in their business revenues will be somewhat offset.

The proposed regulations are likely to introduce some administrative costs on VDH. Under the proposed regulations, VDH will develop an inventory of AOSS in Virginia, build an Internet-based report filing system for the annual inspection reports required, compare reports with the inventory, conduct random site inspections, and follow up with those who do not get their systems inspected annually. According to VDH approximately 10 to 24 full time positions will be devoted to ensure compliance with the new regulations, but the administrative resources will be shifted from other functions to meet this need.

Also, pursuant to Chapter 892 of the 2007 Acts of Assembly, the proposed regulations establish a $1 fee for filing of annual inspection reports. Since there are approximately 60,000 systems operating in Virginia, up to $60,000 in fees is expected to be collected annually from the licensed operators. These funds will help VDH offset some of its administrative costs discussed above.

Furthermore, the proposed regulations establish nitrogen limitations for small AOSS and reduce nutrient loads for large AOSS. All small AOSS in the Chesapeake Bay Watershed are required reduce total nitrogen by 50%. To achieve the required reduction, VDH estimates that small AOSS installation costs will increase by $2 to $10 per gallon of capacity depending on the site conditions due to the required changes in the design. For example, an AOSS designed for a three bedroom home at 450 gallon per day capacity is expected to incur an additional one-time $900 to $4,500 in installation and new equipment costs. Approximately 1,000 to 2,000 small AOSS are estimated to be installed in the Chesapeake Bay Watershed every year. Thus, statewide total cost to comply with new nitrogen limits for small AOSS owners may range from $900,000 to $9 million annually.

Large AOSS are required to reduce their nitrogen concentration from 5 mg/l to 3 mg/l. The estimated cost of the required design change to achieve the new standard is estimated to be between 10 cents to 75 cents per gallon of capacity depending on the type of technology chosen and site conditions. For example, a system designed to discharge 10,000 gallons per day may incur an additional $1,000 to $7,500 in one-time installation and new equipment costs to reduce nitrogen load. Approximately 20 large AOSS with an average capacity of 10,000 gallons per day are estimated to be installed in the Chesapeake Bay Watershed annually. Thus, statewide total cost to comply with new nitrogen limits for large AOSS owners may range from $20,000 to $150,000 annually.

The proposed regulations establish additional design and monitoring requirements for small and large AOSS that disperse effluent directly into the groundwater. The one-time additional costs to change the small AOSS design is estimated to be between $5,000 and $10,000 depending on the capacity of the system, technology chosen, and the site conditions. The costs associated with the additional monitoring of small AOSS are estimated to be between $800 and $2,500 per year. VDH estimates that there are 25 to 300 small AOSS coming online each year that disperse effluent directly into the groundwater. Thus, statewide one-time total annual design costs are expected to range from $125,000 to $3,000,000. The statewide costs for the additional monitoring costs may range from $20,000 to $750,000 in the first year and continually increase by about the same amount for each additional year as more systems built over time.

Similarly, the proposed regulations require additional monitoring and treatment including enhanced disinfection and nutrient reduction for large AOSS that disperse effluent directly into the groundwater. The one-time additional design costs to comply with the proposed changes are estimated to be $2 to $10 per gallon of capacity. VDH estimates there are approximately 10 large AOSS are built per year. If the average capacity of new systems is 10,000 gallons per day, then the statewide costs may range from $200,000 to $1 million every year. In addition, additional ongoing monitoring costs are expected, but VDH does not have good estimates for this type of costs. Statewide additional monitoring costs will accumulate over time as more systems are built.

The statewide costs for the additional monitoring costs may range from $20,000 to $750,000 in the first year and continually increase by about the same amount for each additional year as more systems are built over time.

The proposed regulations also provide that generally approved systems undergo a reevaluation after five years from the effective date of these regulations. Currently, there are seven manufacturers with a generally approved system. A reevaluation would require analysis of 80 observations per system at a cost of $300 to $400 per observation. Thus, the total cost to all seven manufacturers is estimated to be $168,000 to $224,000 or $24,000 to $32,000 per manufacturer five years later. VDH is likely to incur some administrative costs in order to conduct the proposed reevaluations. On the other hand, the proposed reevaluation will help make sure that the generally approved systems continue to meet performance standards.

The main benefit of the proposed regulations is to protect public health and environment. Improperly sited and designed systems may cause untreated sewage to move hundreds of

feet away from a home contaminating the underground and surface waters threatening the public health. Organic matter, suspended solids, and nutrients may threaten streams, rivers, and lakes. Pollutants such as bacteria, viruses, and nitrate may threaten the public health. In the absence of the proposed performance standards and maintenance requirements, alternative sewage systems would pose health and environmental risks.

Businesses and Entities Affected. Currently, there are 60,000 AOSS systems, 545 licensed AOSS operators, and seven manufacturers with a generally approved system in Virginia.

Localities Particularly Affected. Some of the proposed regulations establish nitrogen limitations for AOSS located in the Chesapeake Watershed which includes all or parts of following localities: Frederick, Clarke, Loudoun, Shenandoah, Warren, Fauquier, Prince William, Fairfax, Rockingham, Page, Rappahannock, Culpeper, Stafford, Augusta, Greene, Madison, Orange, Albemarle, Spotsylvania, Louisa, Caroline, King George, Westmoreland, Essex, Richmond, Northumberland, Highland, Bath, Alleghany, Rockbridge, Nelson, Buckingham, Fluvanna, Goochland, Hanover, Henrico, King William, King and Queen, New Kent, Middlesex, Lancaster, Craig, Botetourt, Roanoke, Montgomery, Bedford, Amherst, Campbell, Appomattox, Cumberland, Prince Edward, Powhatan, Amelia, Nottoway, Chesterfield, Dinwiddie, Prince George, Charles City, James City, Surry, Gloucester, Matthews, York, Isle of Wight, Suffolk, Chesapeake, Accomack, and Northampton.

Rest of the proposed regulations applies throughout the Commonwealth. However, the survey conducted by the Weldon Cooper Center for Public Service[4] reveals that 31.3% of the alternative systems surveyed are located in Northwest Virginia, 26.3% are located in Northern Virginia, 22.4% are located in Eastern Virginia, 18.5% are located in Central Virginia, and 4.6% are located in southwest Virginia.

Projected Impact on Employment. The proposed standards for direct dispersal systems appear to be less stringent than SHDR standards. Thus, they are expected to make some building projects that were infeasible under SHDR feasible. On the other hand, the proposed standards for the remaining AOSS and the nitrogen standards for the systems located in the Chesapeake Bay watershed appear to be more stringent than SHDR standards. Since AOSS systems that are not direct dispersal systems and the systems located in the Chesapeake Bay watershed has a wider applicability than the direct dispersal systems, the proposed regulations may reduce the number of feasible building projects and consequently the demand for labor.

On the other hand, the proposed regulations are expected to minimize public health and environmental risks posed by AOSS. Reduced public health and environmental risks are likely to promote tourism and commerce in the Commonwealth and increase demand for labor. Additionally, the demand for technical services of AOSS operators will add to the demand for labor.

Finally, the proposed regulations are expected to increase the need for additional staff at VDH to administer the program, but the increased demand will be offset by reductions in other functional areas within the VDH.

Effects on the Use and Value of Private Property. The proposed standards for direct dispersal systems appear to be less stringent than SHDR standards. Thus, they are expected to make some building projects that were infeasible under SHDR feasible. The values of such private properties are expected to increase as a result of the proposed regulations.

On the other hand, the proposed standards for the remaining AOSS and the nitrogen standards for the systems located in the Chesapeake Bay watershed appear to be more stringent than SHDR standards. The values of such private properties are expected to decrease as a result of the proposed regulations.

Additional operating and maintenance costs on AOSS owners may negatively affect demand for their houses which in turn may have a negative effect on the price of their houses. However, ensuring proper maintenance and operation is expected to extend the life of the system and may add to the value of the house.

In addition, the asset values of AOSS operator businesses are expected to increase due to the additional demand created for their services.

Finally, the proposed sunset provisions for the systems that are generally approved are expected to introduce costs associated with testing and consequently have a negative impact on the asset values of the affected manufacturers.

Small Businesses: Costs and Other Effects. The proposed regulations will introduce the same costs and affects discussed above to small businesses if they own an AOSS. The number of small businesses that own an AOSS is not known.

In addition, most of the AOSS operators are expected to be small businesses. The proposed regulations will have a positive impact on their revenues.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that would minimize the adverse impact on small businesses that own an AOSS and achieve the same goals.

Real Estate Development Costs. The proposed standards for direct dispersal systems appear to be less stringent than SHDR standards. Thus, they are expected to make some development projects that were infeasible under SHDR feasible. The proposed regulations are expected to reduce the real estate development costs in these cases.

On the other hand, the proposed standards for the remaining AOSS and the nitrogen standards for the systems located in the Chesapeake Bay watershed appear to be more stringent than SHDR standards. The proposed regulations are expected to increase the real estate development costs in these cases.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007 H 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 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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[1] 12VAC5-610

[2] Known localities that used to require maintenance of AOSS include Loudoun County, Augusta County, and Gloucester County.

[3] Survey of Alternative Onsite System Issues in Virginia, 2009, Weldon Cooper Center for Public Service.

[4] Survey of Alternative Onsite System Issues in Virginia, 2009, Weldon Cooper Center for Public Service.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Department of Planning and Budget's (DPB) analysis that the proposed regulations are likely to impose economic costs and produce economic benefits. However, the risk to public health will be lessened from reduced pathogen concentrations as required by the proposed regulations. The agency also sees economic benefit to commercial fisheries, shellfish operations, tourism and recreation, property values, and the regional economies.

In May 1999, the Environmental Protection Agency (EPA) placed most of Virginia's Chesapeake Bay watershed and several of its associated tidal tributaries on the impaired waters list under § 3039(d) of the Clean Water Act because of excessive nutrient and sediment pollution. The 2000 Chesapeake Bay agreement[1] set a goal of removing these waters from the list of impaired water bodies. The water quality standards were not met as outlined in the 2000 agreement so EPA is in the process of establishing a federal Total Maximum Daily Load (TMDL) or "pollution diet" for the tidal segments of the Chesapeake Bay and its tidal tributaries. The TMDL will establish limits on the amount of nitrogen, phosphorus, and sediment that can enter the Chesapeake Bay from all source sectors, point and nonpoint. Onsite sewage systems are considered a nonpoint source sector of nitrogen pollution that contributes about 4.0% of the total nitrogen to the Chesapeake Bay each year, or about 2.9 million total pounds of nitrogen.

The Watershed Implementation Plan[2] (WIP), which outlines how Virginia intends to comply with the TMDL, would require Virginia to reduce nitrogen levels below present levels and account for growth of the population. Of the 500,000 to 600,000 onsite sewage systems being used in Virginia's portion of the Chesapeake Bay watershed, mostly at single-family residences, about 10%, or 60,000 systems, are estimated to be alternative onsite sewage systems impacted by the proposed regulations. Virginians install about 11,250 new onsite sewage systems on average in the watershed each year, including 1,500 to 2,700 alternative onsite sewage systems. Each new onsite sewage system contributes nitrogen and no technology can presently remove 100% of the nitrogen. The best available technology can achieve about 75% reduction at an estimated cost of $15,000 to $25,000 per system. The proposed regulations require a 50% reduction for alternative onsite sewage systems installed in the Chesapeake Bay watershed (not conventional systems). VDH estimates that this requirement will cost $2.00 to $10.00 per gallon, or about $900 to $4,500 per single family dwelling.

The limits proposed by the regulations will not reduce nitrogen in sufficient quantities to meet the anticipated WIP and TMDL as calculated through EPA's modeling of pollution from the onsite sewage system source sector. The proposed nitrogen reductions only slow the rate of nutrient impacts from onsite sewage systems. Current versions of the WIP propose an expansion of the nutrient credit exchange program to include offsets from the onsite sewage system sector. By slowing the rate of increase in nitrogen from onsite sewage systems, the proposed regulations may reduce the amount of credits that would have to be purchased.

In 2004, the State Water Control Board, Department of Environmental Quality (DEQ) proposed regulations to reduce nutrient and sediment pollution to the Chesapeake Bay watershed from point source discharges (9VAC25-40, Policy for Nutrient Enriched Waters; and 9VAC25-720, Water Quality Management Regulation). DPB cited numerous studies and information about the economic benefits of reducing nutrient and sediment pollution in its review of these regulations, which can be viewed at

http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\103\1389\2911\EIA_DEQ_2911_v2.pdf). DEQ's response can be viewed at the following link:

http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\103\1389\2911\EIARes_DEQ_2911_v1.pdf.

DPB reported insufficient data to adequately compare benefits and costs for the proposed regulations. VDH believes the economic benefits and studies used in DPB's analysis from 2004 for point source nutrient reductions could also be used as a reference for the proposed regulations, which address a nonpoint source.

The nitrogen reductions proposed by this regulation should be considered as part of the Commonwealth's overall strategy to meet the WIP and TMDL. While VDH is not aware of any specific study or analysis comparing the costs for pounds of nitrogen removed from each source sector, economies of scale would dictate that the cost to remove each pound of nitrogen from other source sectors, such as wastewater treatment plants, would deliver more nitrogen removal per dollar of cost. Presently, each single family home is expected on average to deliver about 9.8 lbs per year of nitrogen to the Chesapeake Bay according to the EPA model. The cost for a 50% reduction in pounds of nitrogen (4.9 lbs/year) is expected to be about $900 to $4,500 per single family home. The cost per pound of nitrogen removed from other source sectors with bigger economies of scale would be expected to cost significantly less on a relative basis.

To achieve an overall reduction in nitrogen within the onsite sewage system source sector and account for growth, some number of existing systems would need to be retrofitted with nitrogen-reducing technologies. The proposed regulations do not affect 85 to 90% of the onsite sewage systems in the Chesapeake Bay watershed. If overall nutrient reductions cannot be achieved within the onsite sewage system sector, then offsets would have to be obtained from another source sector or sectors. At present there are no mechanisms in place that would allow individual homeowners to trade nutrient credits, nor is there any source of funding to assist owners in installing nitrogen-reducing technologies. Regardless of any future strategy employed, obtaining an overall reduction in nitrogen from onsite sewage systems based on EPA's current model will be difficult and expensive. Significant statutory and regulatory changes as well as changes in funding options for onsite sewage systems would have to be proposed.

VDH's current approach to controlling nitrogen, given its present authority, focuses on requiring nitrogen reduction for large alternative (cluster) systems; encouraging design practices that favor nitrogen reduction for small systems; requiring operation, maintenance, and inspection of all alternative system; and increasing the accuracy of the database to account for the voluntary uses of nitrogen-reducing technologies.

[1] Pennsylvania, Maryland, Virginia, Washington, D.C., the Chesapeake Bay Commission, and EPA signed the agreement. In a separate six-state memorandum of understanding with EPA, New York, Delaware, and West Virginia also made the same commitment.

[2] Visit http://www.deq.virginia.gov/tmdl/baywip.html for more information about the WIP.

Summary:

The proposed regulatory action creates an inspection, sampling, and reporting frequency for all alternative onsite sewage systems (AOSS). The proposed regulations (i) establish the performance requirements for AOSS, as well as horizontal setbacks for those designed in accordance with § 32.1-163.6 of the Code of Virginia; (ii) require owners to have a relationship with a licensed operator for the purpose of providing operation and maintenance to the AOSS; (iii) establish nitrogen limitations for all large AOSS and require all small AOSS to reduce nutrient loads within the Chesapeake Bay Watershed; (iv) establish treatment levels for performance and provide a methodology for evaluating treatment unit efficacy; and (v) supplement the existing Sewage Handling and Disposal Regulations (12VAC5-610-20) that contain permitting and enforcement procedures and other requirements for onsite sewage systems, including AOSS.

CHAPTER 613
REGULATIONS FOR ALTERNATIVE ONSITE SEWAGE SYSTEMS

Part I
General

12VAC5-613-10. Definitions.

The following words and terms used in this chapter shall have the following meanings. Terms not defined in this chapter shall have the meanings prescribed in Chapter 6 (§ 32.1-163 et seq.) of Title 32.1 of the Code of Virginia or in 12VAC5-610 unless the plain reading of the language requires a different meaning.

"Alternative onsite sewage system," "AOSS," or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Best management practice" means a conservation or pollution control practice approved by the division, such as wastewater treatment units, shallow effluent dispersal fields, saturated or unsaturated soil zones, or vegetated buffers, that manages nutrient losses or other potential pollutant sources to minimize pollution of water resources.

"Biochemical oxygen demand" or "BOD" means the measure of the amount of oxygen required by bacteria for stabilizing material that can be decomposed under aerobic conditions.

"Biochemical oxygen demand, five-day" or "BOD_5" means the quantitative measure of the amount of oxygen consumed by bacteria while stabilizing, digesting, or treating biodegradable organic matter under aerobic conditions over a five-day incubation period; BOD_5 is expressed in milligrams per liter (mg/l).

"Board" means the State Board of Health.

"Chesapeake Bay Watershed" means the following Virginia river basins: Potomac River Basin (see 9VAC25-260-390 and 9VAC25-260-400), James River Basin (see 9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-420, and 9VAC25-260-430), Rappahannock River Basin (see 9VAC25-260-440), Chesapeake Bay and small coastal basins (see 9VAC25-260-520, Section 2 through Section 3g), and the York River Basin (see 9VAC25-260-530).

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Department" means the Virginia Department of Health.

"Direct dispersal of effluent to ground water" means less than six inches of vertical separation between the point of effluent application or the bottom of a trench or other excavation and ground water.

"Disinfection" means a process used to destroy or inactivate pathogenic microorganisms in wastewater to render them non-infectious.

"Dissolved oxygen" or "DO" means the concentration of oxygen dissolved in effluent, expressed in mg/l or as percent saturation, where saturation is the maximum amount of oxygen that can theoretically be dissolved in water at a given altitude and temperature.

"Division" means the Division of Onsite Sewage and Water Services, Environmental Engineering, and Marina Programs within the department or equivalent.

"Effluent" means sewage that has undergone treatment.

"General approval" means that a treatment unit has been evaluated and approved for TL-2 or TL-3 in accordance with the requirements of this chapter.

"GPD/sf" means gallons per day per square foot.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs. Ground water includes a seasonal or perched water table.

"High-level disinfection" means a disinfection method that results in a fecal coliform concentration less than or equal to 2.2 colonies/100 ml. Chlorine disinfection requires a minimum total residual chlorine (TRC) concentration at the end of a 30 minute contact time of 1.5 mg/l. Ultraviolet disinfection requires a minimum dose of 50,000 $\mu W\text{-sec/cm}^2$. Influent turbidity to the disinfection unit shall be less than or equal to 2 Nephelometric turbidity units (NTU) on average.

"Ksat" means saturated hydraulic conductivity.

"Large AOSS" means an AOSS that serves more than three attached or detached single-family residences or a structure with an average daily sewage flow in excess of 1,000 gpd.

"Limiting feature" means a feature of the soil that limits or intercepts the vertical movement of water, including seasonal, perched or permanent water table, pans, soil restrictions, and pervious or impervious bedrock.

"Local health department" means the local health department having jurisdiction over the AOSS.

"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drainfield piping, and distribution boxes or work requiring a construction permit and an installer.

"MGD" means million gallons per day.

"MPI" means minutes per inch.

"Operate" means the act of making a decision on one's own volition to (i) place into or take out of service a unit process or unit processes or (ii) make or cause adjustments in the operation of a unit process at a treatment works.

"Operation" means the biological, chemical, and mechanical processes of transforming sewage or wastewater to compounds or elements and water that no longer possess an adverse environmental or health impact.

"Operator" means any individual employed or contracted by any owner who is licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, monitor, and maintain an alternative onsite sewage system.

"Organic loading rate" means the biodegradable fraction of chemical oxygen demand (BOD, biodegradable fats, oils, and grease and volatile solids) delivered to a treatment component in a specified time interval expressed as mass per time or area; examples include pounds per day, pounds per cubic foot per day (pretreatment), or pounds per square foot per day (infiltrative surface or pretreatment). For a typical residential system, these regulations assume that biochemical loading (BOD_5) equals organic loading.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, or any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works.

"pH" means the measure of the acid or base quality of water that is the negative log of the hydrogen ion concentration.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Pollution shall include any discharge of untreated sewage into state waters.

"Project area" means one or more recorded lots or a portion of a recorded lot owned by the owner of an AOSS or controlled by easement upon which an AOSS is located or that is contiguous to a soil treatment area and that is designated as such for purposes of compliance with the performance requirements of this chapter. In the case of an AOSS serving multiple dwellings, the project area may include multiple recorded lots as in a subdivision.

"Project area boundary" means the limits of the three-dimensional space defined when (i) the horizontal component is the project area; (ii) the upper vertical limit is the ground surface in and around the AOSS; and (iii) the lower vertical limit is the vertical separation required by this chapter, a permeability limiting feature, or the permanent water table.

"Relationship with an operator" means an agreement between the owner of an AOSS and operator wherein the operator has been retained by the owner to operate the AOSS in accordance with the requirements of this chapter.

"Renewable operating permit" means an operation permit that expires and must be revalidated at a predetermined frequency or schedule in accordance with this chapter.

"Reportable incident" means one or more of the following: an alarm event; any failure to achieve one or more performance requirements; removal of solids; replacement of media; or replacement of any major component of the system including electric and electronic components, pumps, blowers, and valves. The routine maintenance of effluent filters is not a reportable incident.

"Saturated hydraulic conductivity" means a quantitative measure of a saturated soil's capacity to transmit water when subjected to a hydraulic gradient.

"Settleable solids" means a measure of the volume of suspended solids that will settle out of suspension within a specified time, expressed in milliliters per liter (ml/l).

"Sewage Handling and Disposal Regulations" means 12VAC5-610 adopted by the board.

"Small AOSS" means an AOSS that serves no more than three attached or detached single-family residences or a structure with an average daily sewage flow of less than or equal to 1,000 gpd.

"Soil treatment area" means the physical location in or on the naturally-occurring soil medium where final treatment and dispersal of effluent occurs; the soil treatment area includes subsurface drainfields and drip dispersal fields.

"Standard disinfection" means a disinfection process that results in a fecal coliform concentration of less than or equal to 200 colonies/100 ml. Chlorine disinfection requires a minimum TRC concentration at the end of a 30 minute contact time of 1.0 mg/l. Influent TSS to the disinfection unit shall average 30 mg/l or less.

"Standard engineering practice" means the care, diligence, competence, and judgment that a reasonably prudent and experienced professional engineer licensed in the Commonwealth of Virginia would exercise given the circumstances, including site and soil conditions, of a particular AOSS design.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Total nitrogen" or "TN" means the measure of the complete nitrogen content of wastewater including all organic, inorganic, and oxidized forms expressed in mg/l as nitrogen.

"Total residual chlorine" or "TRC" means a measurement of the combined available chlorine and the free available chlorine available in a sample after a specified contact time.

"Total suspended solids" or "TSS" means a measure of the mass of all suspended solids in a sample typically measured in milligrams per liter (mg/l).

"Treatment level 2 effluent" or "TL-2 effluent" means effluent that has been treated to produce BOD_5 and TSS concentrations equal to or less than 30 mg/l each.

"Treatment level 3 effluent" or "TL-3 effluent" means effluent that has been treated to produce BOD_5 and TSS concentrations equal to or less than 10 mg/l each.

"Treatment unit" or "treatment system" means a method, technique, equipment, or process other than a septic tank or septic tanks used to treat sewage to produce effluent of a

specified quality before the effluent is dispersed to a soil treatment area.

"Turbidity" means a measurement of the relative clarity of effluent as a result of the presence of varying amounts of suspended organic and inorganic materials or color.

"Vertical separation" means the vertical distance between the point of effluent application to the soil or the bottom of a trench or other excavation and a limiting feature of the soil treatment area such as seasonal high ground water, bedrock, or other restriction.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and as otherwise identified by the Army Corps of Engineers.

12VAC5-613-20. Purpose and authority.

A. Pursuant to the requirements of §§ 32.1-12 and 32.1-163 of the Code of Virginia, the board has promulgated this chapter to:

1. Establish a program for regulating the operation and maintenance of alternative onsite sewage systems;

2. Establish performance requirements for alternative onsite sewage systems;

3. Establish horizontal setbacks for alternative onsite sewage systems that are necessary to protect public health and the environment;

4. Discharge the board's responsibility to supervise and control the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and treatment works as they affect the public health and welfare;

5. Protect the quality of surface water and ground water;

6. Guide the commissioner in determining whether a permit or other authorization for an alternative onsite sewage system shall be issued or denied; and

7. Inform owners, applicants, onsite soil evaluators, system designers, and other persons of the requirements for obtaining a permit or other authorization for an AOSS.

B. The division may, as it deems necessary, develop best management practices for the purposes of recognizing acceptable methods to reduce pollution from AOSSs.

12VAC5-613-30. Applicability and scope.

A. As provided in this section, this chapter governs the design, construction, and operation of AOSSs.

B. Part II of this chapter, Performance Requirements, applies only to AOSSs with applications filed on or after the effective date of this chapter.

C. Any AOSS with an application filed prior to the effective date of this chapter is subject to the performance requirements contained in the regulations in effect at the time the system was permitted or the performance requirements contained in the operation permit.

D. Small AOSSs designed, constructed, permitted, and operated in accordance with this chapter; the prescriptive design, location, and construction criteria of 12VAC5-610-20; and the policies and procedures of the department are presumed to comply with the ground water quality requirements of 12VAC5-610-90 A.

E. Part III of this chapter, Operation and Maintenance Requirements, shall apply to all AOSSs, including those with applications filed prior to the effective date of this chapter.

F. Requirements for renewable operation permits contained in this chapter shall apply only to AOSSs with applications filed on or after the effective date of this chapter.

G. The laboratory sampling requirements of this chapter apply only to AOSSs with applications filed on or after the effective date of this chapter.

H. Any AOSS with an application filed prior to the effective date of this chapter is subject to the laboratory sampling requirements contained in the regulations in effect at the time the system was permitted or the sampling requirements contained in the operation permit.

I. AOSSs designed pursuant to § 32.1-163.6 of the Code of Virginia are subject to the following requirements:

1. Performance requirements of this chapter;

2. Horizontal setback requirements of this chapter;

3. Operation, maintenance, inspection, and sampling requirements of this chapter; and

4. Standard engineering practice.

J. Dispersal of treated or untreated sewage to a wetland is subject to permitting by the Virginia Department of Environmental Quality pursuant to the requirements of Title 62.1 of the Code of Virginia and is specifically excluded from this chapter.

K. Spray irrigation systems are subject to permitting by the Virginia Department of Environmental Quality and are specifically excluded from this chapter.

L. Treatment units for small AOSSs that are recognized by the department as generally approved for TL-2 or TL-3 as of the effective date of this chapter shall retain such status for a period of five years from the effective date of this chapter

after which the units shall be evaluated pursuant to the requirements of this chapter.

M. After the effective date of this chapter, new applications for general approval for TL-2 or TL-3 shall be subject to the requirements of this chapter. The department may continue to evaluate any treatment unit for small AOSSs that is undergoing evaluation as of the effective date of this chapter using the protocol in place on the date of application for general approval.

12VAC5-613-40. Relationship to other regulations.

A. This chapter is supplemental to 12VAC5-610 (Sewage Handling and Disposal Regulations).

B. All procedures pertaining to enforcement, minimum requirements for filing applications, and processing of applications, including appeals and case decisions contained in the Sewage Handling and Disposal Regulations shall apply to the permitting of AOSSs under this chapter.

C. In any case where there is a conflict between this chapter and the Sewage Handling and Disposal Regulations, this chapter shall be controlling.

D. This chapter supersedes Table 5.4 of the Sewage Handling and Disposal Regulations for all AOSSs designed to disperse TL-2 or TL-3 effluent. Table 5.4 of the Sewage Handling and Disposal Regulations shall govern the design of any AOSS designed to disperse septic tank effluent to the soil treatment area.

E. In accordance with standard engineering practice, all plans and specifications for AOSSs shall be properly sealed by a professional engineer licensed in the Commonwealth pursuant to Title 54.1 of the Code of Virginia unless such plans are prepared pursuant to an exemption from the licensing requirements of Title 54.1 of the Code of Virginia. AOSS designs submitted pursuant to § 32.1-163.6 of the Code of Virginia shall have a statement on the title page of the plans clearly identifying the plans as a § 32.1-163.6 submittal. Where this statement is not included on the title page, the department will review the plans pursuant to the Sewage Handling and Disposal Regulations and applicable policies.

F. When AOSS designs are prepared pursuant to an exemption from the licensing requirements of Title 54.1 of the Code of Virginia, the designer shall provide a certification statement in a form approved by the division identifying the specific exemption under which the plans and specifications were prepared and certifying that the designer is authorized to prepare such plans pursuant to the exemption.

G. In accordance with standard engineering practice, each application under § 32.1-163.6 of the Code of Virginia shall include a site characterization report using the Field Book for Describing and Sampling Soils, Version 2.0, National Soil Survey Center, Natural Resources Conservation Service, U.S. Department of Agriculture, September 2002. The report may contain such information that the designer deems appropriate; however, it must describe the following minimum attributes of the site of the proposed soil treatment area:

1. Depth to limiting features, including seasonal or perched water tables, pans, restrictions, or pervious or impervious bedrock;

2. Slope of the project area;

3. Ksat or percolation rate at the proposed installation depth and at depths below the soil treatment area to demonstrate compliance with this chapter. Ksat or percolation rate may be estimated for small AOSSs. The Ksat or percolation rate must be measured using an appropriate device for large AOSSs;

4. Landscape or landform; and

5. Project area along with those physical features in the vicinity of the proposed AOSS normally associated with plans for onsite sewage systems; such physical features include streams, bodies of water, roads, utilities, wells and other drinking water sources, existing and proposed structures, and property boundaries.

12VAC5-613-50. Violations and enforcement.

A. Failure by any AOSS to achieve one or more performance requirements prescribed by this chapter shall be a violation of this chapter.

B. Failure by any owner, operator, or person to comply with the conditions of an operation permit shall be a violation of this chapter.

C. Failure by any owner, operator, or person to accomplish any mandated visit, operation, maintenance, repair, monitoring, sampling, reporting, or inspection requirement prescribed by this chapter shall be a violation of this chapter.

D. Failure to follow the approved operation and maintenance manual (O&M manual) shall be deemed a violation of this chapter when such failure results in the failure to achieve one or more performance requirements prescribed by this chapter.

E. Nothing in this chapter shall be construed to limit the authority of the board, the commissioner, or the department to enforce this chapter or to enforce the requirements of 12VAC5-610.

F. In accordance with the Sewage Handling and Disposal Regulations and § 32.1-25 of the Code of Virginia, the commissioner may take such samples and conduct such monitoring, including ground water samples and monitoring, that he deems necessary to enforce this chapter.

G. The board, commissioner, and department may use any lawful means to enforce this chapter including voiding a construction or operation permit, imposition of civil penalties,

or criminal prosecution pursuant to § 32.1-27 of the Code of Virginia.

12VAC5-613-60. Operation permits and land records.

A. The department shall not issue an operation permit for an AOSS unless the owner has established a relationship with an operator and provided the operator's name and license number to the local health department. The owner shall maintain a relationship with an operator during all periods when the AOSS is in operation.

B. The department shall not issue an operation permit for an AOSS until the owner has recorded an instrument that complies with § 15.2-2157 E of the Code of Virginia in the land records of the circuit court having jurisdiction over the site of the AOSS.

C. When all or part of the project area is to be used in the management of nitrogen from a large AOSS, the owner shall record legal documentation in the land records of the circuit court having jurisdiction over the site of the AOSS. Such documentation shall be in a form approved by the division and shall protect and preserve the land area in accordance with the management methods established by the designer.

D. All large AOSSs and any AOSS permitted pursuant to 12VAC5-613-90 C shall be subject a renewable operating permit. Such permits shall be issued for a period of five years. Owners shall be required to apply for a new permit at least 180 days prior to the expiration date.

12VAC5-613-70. General approval testing and evaluation.

The division shall develop a protocol to verify the expected performance of treatment units of small AOSSs that meet TL-2 or TL-3 effluent quality. The protocol to evaluate and test field performance of TL-3 treatment units shall include the following minimum requirements:

1. The manufacturer shall evaluate at least 20 treatment units installed in the Commonwealth of Virginia for single family residences occupied full-time, year-round throughout the testing and evaluation period;

2. The manufacturer shall provide the division with quarterly results of influent and effluent samples measuring, at a minimum, BOD and TSS for each installed treatment unit;

3. Operation and maintenance shall be performed on each treatment unit during the evaluation period in accordance with the provisions of this chapter; and

4. An independent third party with no stake in the outcome of the approval process shall oversee and administer the testing and evaluation protocol. Examples of an independent third party include faculty members in an appropriate program of an accredited college or university, a licensed professional engineer experienced in the field of environmental engineering, or a testing firm that is deemed by the division to be acceptable.

Part II
Performance Requirements

12VAC5-613-80. Performance requirements; general.

All AOSS designed, constructed, and operated pursuant to this chapter shall comply with the following performance requirements:

1. The presence of raw or partially treated sewage on the ground's surface or in adjacent ditches or waterways is prohibited;

2. The exposure of insects, animals, or humans to raw or partially treated sewage is prohibited;

3. The backup of sewage into plumbing fixtures is prohibited;

4. The direct dispersal of effluent into ground water shall comply with 12VAC5-613-90 C;

5. All treatment units and treatment systems shall be designed for the anticipated wastewater strength and peak flow;

6. Dosing of the treatment unit or treatment system shall accommodate the design peak flow within the treatment unit's rated capacity;

7. The dispersal of septic tank effluent is prohibited for large AOSSs;

8. The AOSS shall be designed so that all components are of sufficient structural integrity to minimize the potential of physical harm to humans and animals;

9. The conveyance system for any AOSS shall be designed and installed with sufficient structural integrity to resist inflow and infiltration and to maintain forward flow;

10. The AOSS shall be designed to minimize noise, odor, or other nuisances at the property boundary;

11. Maximum trench bottom hydraulic loading rates for pressure-dosed systems using TL-2 and TL-3 effluent are found in Table 1 and are to be used as follows:

a. The designer is responsible for reducing loading rates according to the features and properties of the soils in the soil treatment area as well as for reducing loading rates for other types of dispersal;

b. Adherence to the maximum sizing criteria herein does not assure or guarantee that other performance requirements of this chapter, including effluent dispersal or ground water quality, will be met. It is the designer's responsibility to ensure that the proposed design is adequate to achieve all performance requirements of this chapter;

c. Trench bottom hydraulic loading rates for pressure-dosed systems shall not exceed the values in Table 1;

d. Trench bottom hydraulic loading rates shall be reduced from the values in Table 1 when a treatment unit or system is not designed to achieve TL-2 or TL-3. In such cases, the designer shall, for monitoring purposes, specify the effluent quality of the treatment unit. If the specified BOD_5 exceeds 60 mg/l, the designer shall use loading rates for septic tank effluent;

e. Trench bottom hydraulic loading rates for gravity dosed systems shall be reduced from the values in Table 1; and

f. Area hydraulic loading rates for systems such as drip dispersal, pads, spray irrigation, and mounds shall be reduced from the values in Table 1 and shall reflect standard engineering practice.

Table 1
Maximum Pressure-Dosed Trench Bottom Hydraulic Loading Rates

Percolation Rate (MPI)	TL-2 Effluent (gpd/sf)	TL-3 Effluent (gpd/sf)
≤15	1.8	3.0
15 to 25	1.4	2.0
>25 to 45	1.2	1.5
>45 to 90	0.8	1.0
>90	0.4	0.5

12. Septic tank effluent may only be discharged to a soil treatment area when the vertical separation to a limiting feature consists of at least 18 inches of naturally-occurring, in-situ soil. AOSSs designed to disperse septic tank effluent require at least 12 inches of soil cover over the soil treatment area;

13. Adequate vertical separation shall be maintained to ensure the performance requirements of this chapter. Adequate vertical separation shall be demonstrated as follows:

a. For any small AOSS where the vertical separation to a permeability-limiting feature is less than 18 inches below the point of effluent application or the bottom of the trench or other excavation, or where the vertical separation to ground water is less than six inches in the naturally-occurring soil, the designer shall demonstrate that (i) the site is not flooded during the wet season, (ii) there is a hydraulic gradient sufficient to move the applied effluent off the site, and (iii) water mounding will not adversely affect the functioning of the soil treatment area or create ponding on the surface;

b. For any large AOSS regardless of site constraints, the designer shall demonstrate that (i) the site is not flooded during the wet season, (ii) there is a hydraulic gradient sufficient to move the applied effluent off the site, and (iii) water mounding will not adversely affect the functioning of the soil treatment area or create ponding on the surface;

c. For large AOSSs, the department may require the owner to monitor the degree of saturation beneath the soil treatment area; and

d. For any system in which artificial drainage is proposed as a method to meet the requirements of this chapter, the designer shall provide calculations and other documentation sufficient to demonstrate the effectiveness of the proposed drainage.

14. The following minimum effluent quality shall be met for the described vertical separation to limiting feature as measured from the point of effluent application or the bottom of the trench or other excavation:

Table 2
Minimum Effluent Requirements for Vertical Separation to Limiting Features

Vertical separation	Minimum Effluent Quality
≥18" (requires naturally occurring, undisturbed soils)	Septic
<18" to 12" (requires minimum 6" of naturally occurring, undisturbed soils)	TL-2
0" to <12"	TL-3 and standard disinfection*

*Note: Where direct dispersal of effluent to ground water occurs, effluent quality shall be governed by 12VAC5-613-90 C.

15. The organic loading rate shall not exceed 2.1×10^{-4} BOD lb/day/sf on a trench-bottom basis; and

16. The designer shall specify methods and materials that will achieve the performance requirements of this chapter whenever sand, soil, or soil-like material is used to increase the vertical separation.

12VAC5-613-90. Performance requirements; ground water protection.

A. The AOSS shall not pose a greater risk of ground water pollution than systems otherwise permitted pursuant to 12VAC5-610. After wastewater has passed through a treatment unit or septic tank and through the soil in the soil treatment area, the concentration of fecal coliform organisms shall not exceed 2.2 cfu/100 ml at the lower vertical limit of the project area boundary.

B. Each large AOSS shall comply with TN limit of 5 mg/l at the project area boundary. Prior to the issuance of a construction permit, the designer shall demonstrate compliance with this requirement through modeling or other calculations. Such demonstration may incorporate multiple nitrogen removal methods such as pretreatment, vegetative uptake (only for AOSSs with shallow soil treatment areas), denitrification, and other viable nitrogen management methods. Ground water and other monitoring may be required at the department's discretion.

C. AOSSs with direct dispersal of effluent to ground water are subject to the following requirements:

1. If the concentration of any constituent in ground water is less than the limits set forth at 9VAC25-280, the natural quality for the constituent shall be maintained; natural quality shall also be maintained for all constituents not set forth in 9VAC25-280. If the concentration of any constituent in ground water exceeds the limit in the standard for that constituent, no addition of that constituent to the naturally occurring concentration shall be made. The commissioner shall consult with the Department of Environmental Quality prior to granting any variance from this subsection.

2. Ground water and laboratory sampling in accordance with 12VAC5-613-100 G.

3. The treatment unit or system shall comply with the following at a minimum:

a. The effluent quality from the treatment unit or system shall be measured prior to the point of effluent application to the soil treatment area and shall be as follows: BOD_5 and TSS concentrations each equal to or less than 5 mg/l; fecal coliform concentrations less than or equal to 2.2 col/100 ml as a geometric mean with no single sample exceeding 14 col/100 ml; TN of concentration of less than 5 mg/l, except in the Chesapeake Bay Watershed where the TN concentration shall be less than or equal to 3 mg/l; and total phosphorus concentration of less than 1 mg/l, except in the Chesapeake Bay Watershed where the total phosphorus concentration shall be less than or equal to 0.3 mg/l;

b. High level disinfection is required; and

c. Treatment systems shall incorporate filtration capable of demonstrating compliance with an average turbidity of less than or equal to 2 NTU prior to disinfection.

4. Gravity dispersal to the soil treatment area is prohibited.

5. Loading rates to the soil treatment area shall not exceed the loading rates in Table 1 of this section.

6. A renewable operating permit shall be obtained and maintained in accordance with 12VAC5-613-60 D.

7. The designer shall provide sufficient hydrogeologic analysis to demonstrate that a proposed AOSS will function as designed for the life of the structure served without degradation of the soil treatment area. This shall include a determination of ground water flow direction and rate.

D. The following additional nutrient requirements apply to all AOSSs in the Chesapeake Bay Watershed:

1. All small AOSSs shall provide a 50% reduction of TN as compared to a conventional gravity drainfield system; compliance with this subdivision may be demonstrated through the following:

a. Compliance with one or more best management practices approved by the division; or

b. Relevant and necessary calculations provided to show one or both of the following:

(1) Effluent TN concentration of 20 mg/l measured prior to application to the soil dispersal field; or

(2) A mass loading of 4.5 lbs N or less per person per year at the project boundary provided that no reduction for N is allotted for uptake or denitrification for the dispersal of effluent below the root zone (>18 inches below the soil surface).

2. All large AOSSs shall demonstrate less than 3 mg/l TN at the project boundary. Dilution may not be used to demonstrate compliance with this subdivision. At a minimum, the treatment system shall provide for the following effluent quality prior to application to the soil dispersal field:

Table 3
Maximum TN Effluent Quality Requirements for Large AOSSs

Design Flow	Maximum Total Nitrogen Effluent Concentration from Treatment System as TN
>1000 gpd to 40,000 gpd	20 mg/l
> 40,000 gpd to 100,000 gpd	10 mg/l
>100,000 gpd	5 mg/l

3. Ground water and other monitoring may be required at the department's discretion for large AOSSs.

E. No portion of an AOSS soil treatment area may be located in a wetland. Other portions of an AOSS may be located in wetlands subject to approval or permitting, as appropriate, by the Virginia Department of Environmental Quality.

12VAC5-613-100. Performance requirements; laboratory sampling and monitoring.

A. Laboratory sampling is not required for any small AOSS with an installed soil treatment area that is sized for septic tank effluent and complies with the requirements of 12VAC5-610 for septic tank effluent.

B. All effluent samples must be taken at the end of all treatment, prior to the point where the effluent is discharged to the soil treatment area. The designer shall identify the sampling points. When required, the sampling point for chlorine disinfection shall be at the end of the chlorine contact tank if TRC is to be used to measure compliance.

C. All sampling and monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency unless other procedures have been specified in this chapter.

D. The owner of each small AOSS is required to submit an initial grab sample of the effluent from the treatment unit and have the sample analyzed in accordance with 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency within the first 180 days of operation. Thereafter, if the treatment unit has received general approval, a grab sample is required once every five years. Samples shall be analyzed for BOD_5 and, if disinfection is required, fecal coliform. Treatment units utilizing chlorine disinfection may alternatively sample for TRC instead of fecal coliform. Sample results shall be submitted to the local health department by the 15th of the month following the month in which the sample was taken.

E. For small AOSSs that utilize a treatment unit that has not received general approval, in addition to the initial sample required by subsection D of this section, four additional grab samples of the effluent from the treatment unit shall be collected, analyzed, and submitted to the department within the first two years of operation and annually thereafter. The interval for collecting the samples shall not be less than quarterly or more than semiannually. Sample results shall be submitted to the local health department by the 15th of the month following the month in which the sample was taken. After two years of sampling in accordance with this subsection, the owner may submit a request to the department to reduce the sampling frequency to once every five years. The department shall grant such requests if the mean of five or more consecutive samples complies with the applicable performance requirements of this chapter.

F. Sampling and monitoring requirements for AOSS treatment systems with flows greater than 1,000 gpd are contained in Table 4:

Table 4
Sampling and Monitoring for Large AOSSs

PLANT SIZE	≥2.0 MGD	>1.0-2.0 MGD	>0.1-1.0 MGD	>0.04-0.1 MGD	≥0.010 -0.04 MGD	>0.001-0.010 MGD
Flow	Totalizing, Indicating, & Recording	Totalizing, Indicating, & Recording	Totalizing, Indicating, & Recording	Totalizing, Indicating, & Recording	Measured	Estimate
BOD_5, TSS	24-HC* 1/day	24-HC 5 days/wk	8-HC 3 days/wk	4-HC 1 day/wk	Grab quarterly	Grab 1/yr
Total Nitrogen	24-HC weekly	24-HC weekly	8-HC monthly	4-HC quarterly	Grab quarterly	Grab 1/yr
TRC, End of Contact Tank**	Grab daily	Grab daily	Grab weekly	Grab weekly	Grab weekly	Grab 1/yr
Fecal Coliform***	Grab weekly	Grab weekly	Grab monthly	Grab monthly	Grab quarterly	Grab 1/yr

*HC – hourly, flow weighted composite samples

** if disinfection required and chlorine used

***if disinfection required and another disinfecting process such as ultraviolet light is used

G. Systems with direct dispersal to ground water as described in 12VAC5-613-90 C shall comply with the following:

1. Small AOSS treatment systems:

a. Shall incorporate a method to continuously monitor the operation of critical treatment units, including the status of the disinfection unit, and automatically notify the operator and local health department if an alarm condition occurs;

b. Shall be sampled quarterly in accordance with 12VAC5-613-90 C and as defined in the renewable operating permit; and

c. No treatment units or systems shall be deemed generally approved.

2. Large AOSSs must be continuously monitored for the proper operation of all treatment units. If the wastewater treatment works is not manned 24 hours a day, telemetry

shall be provided that monitors all critical systems, including turbidity into the disinfection unit and the functionality of the disinfection unit, and notifies the operator of alarm conditions. Treatment works with a design flow of less than 40,000 gpd shall be sampled at least monthly in accordance with 12VAC5-613-90 C and as defined in the renewable operating permit. Treatment works with a design flow of 40,000 gpd or greater shall be sampled at the frequency specified in Table 4 of this section. Total phosphorus and other limited parameters not listed in Table 4 of this section shall be conducted at a frequency defined in the renewable operating permit.

3. Ground water monitoring is required for all large AOSSs with direct dispersal of effluent to the ground water and such monitoring shall be conducted in accordance with the renewable operating permit.

12VAC5-613-110. Performance requirements; field measurements, sampling, and observations.

A. For treatment units or treatment systems with flows up to 0.04 MGD, field measurements, sampling, and observations shall be performed at each mandated visit and during any reportable incident response visit as recommended in Table 5. The operator shall report the results of all field measurements, sampling, and observations.

Table 5
Recommended Field Measurements, Sampling, and Observations for AOSSs up to 0.04 MGD

Parameter	Average Daily Flow (gpd)		
	≤ 1,000 gpd	>0.001-0.010 MGD	>0.01-0.04 MGD
Flow	Required (measured or estimated)	Required	Required
pH	Operator discretion	Required	Required
TRC (After contact tank)*	Required	Required	Required
DO**	Operator discretion	Required	Required
Odor*	Operator discretion	Required	Required
Turbidity (visual)*	Operator discretion	Required	Required
Settleable solids**	Operator discretion	Required	Required

*Not required for systems without chlorine disinfection

**Not required for systems without an activated sludge component

B. For treatment systems with flows greater than 0.04 MGD, the operator shall follow the operational and control testing requirements of the O&M manual.

Part III
Operation and Maintenance Requirements

12VAC5-613-120. Operator responsibilities.

A. Whenever an operator performs a visit that is required by this chapter or observes a reportable incident, he shall document the results of that visit in accordance with 12VAC5-613-190.

B. Whenever an operator performs a visit that is required by this chapter, he shall do so in such a manner as to accomplish the various responsibilities and assessments required by this chapter through visual or other observations and through laboratory and field tests that are required by this chapter or that he deems appropriate.

C. Each operator shall keep an electronic or hard copy log for each AOSS for which he is responsible. The operator shall provide a copy of the log to the owner. In addition, the operator shall make the log available to the department upon request. At a minimum, the operator shall record the following items in the log:

1. Results of all testing and sampling;

2. Reportable incidents;

3. Maintenance, corrective actions, and repair activities that are performed other than for reportable incidents;

4. Recommendations for repair and replacement of system components;

5. Sludge or solids removal; and

6. The date reports were given to the owner.

D. When performing activities pursuant to a visit that is required by this chapter, the operator is responsible for the entire AOSS, including treatment components and soil treatment area components.

E. An operator shall notify the appropriate local health department when his relationship with an owner terminates.

12VAC5-613-130. Sludge and solids removal.

Any person who pumps or otherwise removes sludge or solids from any septic tank or treatment unit of an AOSS shall file a report with the appropriate local health department on a form approved by the division.

12VAC5-613-140. Owner responsibilities.

It is the owner's responsibility to do the following:

1. Maintain a relationship with an operator;

2. Have the AOSS operated and maintained by an operator;

3. Have an operator visit the AOSS at the frequency required by this chapter;

4. Have an operator collect any samples required by this chapter;

5. Keep a copy of the log provided by the operator on the property where the AOSS is located in electronic or hard copy form, make the log available to the department upon request, and make a reasonable effort to transfer the log to any future owner;

6. Keep a copy of the O&M manual in electronic or hard copy form for the AOSS on the property where the AOSS is located, make the O&M manual available to the department upon request, and make a reasonable effort to transfer the O&M manual to any future owner; and

7. Comply with the onsite sewage system requirements contained in local ordinances adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq. of the Code of Virginia) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC10-20) when an AOSS is located within a Chesapeake Bay Preservation Area.

12VAC5-613-150. Operator requirements for AOSS with flows up to 0.04 MGD, minimum frequency of visits.

The owner of each AOSS shall have that AOSS visited by an operator in accordance with Table 6.

Table 6
Minimum Operator Visit Frequency for AOSSs up to 0.04 MGD

Avg. Daily Flow	Initial Visit	Regular visits following initial visit
≤ 1,000 gpd	Within 180 calendar days of the issuance of the operation permit	Every 12 months
>0.001-0.010 MGD	First week of actual operation	Quarterly
>0.010-0.04 MGD	First week of actual operation	Monthly

12VAC5-613-160. Operator requirements for systems with flows greater than 0.04 MGD.

A. AOSSs with average daily flows in excess of 0.04 MGD shall be attended by a licensed operator and manned in accordance with the recommendations specified in the Sewage Collection and Treatment Regulations for sewage treatment works (9VAC25-790).

B. In instances where the hours of attendance by a licensed operator are less than the daily hours the treatment works is to be manned by operating staff. A licensed operator is not required to be physically located at the treatment works site during the remaining designated manning hours provided that the licensed operator is able to respond to requests for assistance in a satisfactory manner as described in the O&M manual.

C. Notwithstanding the language of the Sewage Collection and Treatment Regulations for sewage treatment works (9VAC25-790), attendance by the operator may not be waived.

D. The department may reduce operator or staffing requirements when automatic monitoring, telemetry, or other electronic monitoring or process controls are employed. All reductions must be approved by the division director.

12VAC5-613-170. Operation and maintenance manual.

A. This chapter outlines the minimum requirements for operation, maintenance, sampling, and inspection of AOSSs. Operation, maintenance, sampling, and inspection schedules for some AOSSs may exceed these minimum requirements, in which case the designer is responsible for determining such additional requirements based upon the proposed use, design flow, project area, loading rates, nitrogen removal, treatment level, and other factors.

B. Prior to the issuance of an operation permit, the owner shall have the designer submit an O&M manual to the local health department for approval. The designer shall provide a copy of the O&M manual to the owner.

C. The O&M manual shall be written to be easily understood by any potential owner and shall include the following minimum items:

1. Basic information on the AOSS design including treatment unity capacity, installation depth, pump operating conditions, a list of the components comprising the AOSS, a dimensioned site layout, sampling locations, and contact information for replacement parts for each unit process;

2. A list of any control functions and how to use them;

3. All operation, maintenance, sampling, and inspection schedules for the AOSS, including any requirements that exceed the minimum requirements of this chapter;

4. The performance (laboratory) data sampling and reporting schedule;

5. The limits of the AOSS design and how to operate the system within those design limits;

6. For systems with flows greater than 0.04 MGD, the O&M manual shall include operational and control testing recommendations that shall be based upon 9VAC25-790-970; and

7. Other information deemed necessary or appropriate by the designer.

12VAC5-613-180. Mandatory visits; inspection requirements.

When an operator is required to make a visit to an AOSS the operator shall, at a minimum, accomplish the following:

1. Inspect all components of the AOSS and conduct field measurements, sampling, and other observations required by this chapter, the O&M manual, or deemed necessary by the operator to assess the performance of the AOSS and its components.

2. Review and evaluate the operation of the AOSS, perform routine maintenance, make adjustments, and replace worn or dysfunctional components with functionally equivalent parts such that the system can reasonably be expected to return to normal operation.

3. If the AOSS is not functioning as designed or in accordance with the performance requirements of this chapter and, in the operator's professional judgment, cannot be reasonably expected to return to normal operation through routine operation and maintenance, report immediately to the owner the remediation efforts necessary to return the AOSS to normal function.

12VAC5-613-190. Reports.

When required to file a report, the operator shall complete the report in a form approved by the division. In accordance with § 32.1-164 H of the Code of Virginia, the operator shall file each report using a web-based system and pay the required fee. The operator may, solely at his own discretion, file reports in addition to those required by this chapter. Each report shall be filed by the 15th of the month following the month in which the visit occurred and shall include the following minimum elements:

1. The name and license number of the operator;

2. The date and time of the report;

3. The purpose of the visit, such as required visit, follow-up, or reportable incident;

4. A summary statement stating whether:

a. The AOSS is functioning as designed and in accordance with the performance requirements of this chapter;

b. After providing routine operation and maintenance, the operator believes the AOSS will return to normal operation; or

c. The system is not functioning as designed or in accordance with the performance requirements of this chapter and additional actions are required by the owner to return the AOSS to normal operation;

5. All maintenance performed or adjustments made, including parts replaced;

6. The results of field measurements, sampling, and observations;

7. The name of the laboratory that analyzed samples, if appropriate; and

8. A statement certifying the date the operator provided a copy of the report in electronic or hard copy form to the owner.

Part IV
Horizontal Setback Requirements

12VAC5-613-200. Horizontal setback requirements.

AOSSs designed pursuant to § 32.1-163.6 of the Code of Virginia are subject to the following horizontal setbacks that are necessary to protect public health and the environment:

1. The horizontal setback distances as found in 12VAC5-610 that apply to public and private drinking water sources of all types, including wells, springs, reservoirs, and other surface water sources, except that in cases where an existing sewage system is closer to a private drinking water source, the AOSS shall be no closer to the drinking water source than the existing sewage system;

2. The horizontal setback distances that apply to shellfish waters as found in 12VAC5-610;

3. The horizontal setback distances that apply to sink holes as found in 12VAC5-610;

4. A five foot horizontal separation from wetlands from the edge of the soil treatment area; and

5. Unless the AOSS complies with the ground water protection requirements of 12VAC5-613-90 C, a horizontal separation between the soil treatment area and any drainage trench or excavation that comes within six inches vertically of ground water shall be as follows:

a. AOSSs utilizing septic tank effluent shall be subject to a horizontal separation contained in 12VAC5-610;

b. AOSSs utilizing TL-2 or TL-3 (without disinfection) shall be subject to a horizontal separation of 20 feet; and

c. AOSSs utilizing TL-3 with disinfection shall be subject to a horizontal separation of 10 feet.

REGISTRAR'S NOTICE: The following form used in administering the regulation has been filed by the State Board of Health. The form is not being published; however, the name of the form is listed below and hyperlinks to the actual form. Online users of this issue of the Virginia Register of Regulations may access the form by clicking on the name of the form. The forms are also available for public inspection at the State Board of Health, 109 Governor Street, Richmond, VA 23219 or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (12VAC5-613)

Alternative Onsite Sewage System Inspection Report (eff. 10/10).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-613)

Field Book for Describing and Sampling Soils, Version 2.0, September 2002, National Soil Survey Center, Natural Resources Conservation Service, U.S. Department of Agriculture.

VA.R. Doc. No. R10-2164; Filed November 16, 2010, 1:02 p.m.

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.

Titles of Regulations: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-10).**

12VAC30-110. Eligibility and Appeals (adding 12VAC30-110-1600, 12VAC30-110-1610, 12VAC30-110-1620).

12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-100, 12VAC30-141-110).

Statutory Authority: § 32.1-351 of the Code of Virginia.

Effective Date: January 5, 2011.

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:

This action moves existing language from a Title XIX State Plan chapter (12VAC30-30) to a non-State Plan chapter (12VAC30-110) as a result of direction from the Centers for Medicare and Medicaid Services (CMS). The provision that must be moved (12VAC30-30-10 subdivision 12 b) addresses the eligibility of children who are born to women who are themselves eligible for services under the Title XXI FAMIS or FAMIS MOMS programs.

In addition to moving existing regulatory text, this action makes technical corrections to the existing FAMIS chapter sections (Chapter 141). There is no change in the number of children who will be covered nor in the services that these children will receive.

12VAC30-30-10. Mandatory coverage: Categorically needy and other required special groups.

The Title IV-A agency or the Department of Medical Assistance Services Central Processing Unit determines eligibility for Title XIX services.

1. Recipients of AFDC.

a. The approved state AFDC plan includes:

(1) Families with an unemployed parent for the mandatory six-month period and an optional extension of 0 months.

(2) AFDC children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training.

b. The standards for AFDC payments are listed in 12VAC30-40-220.

2. Deemed recipients of AFDC.

a. Individuals denied a Title IV-A cash payment solely because the amount would be less than $10.

b. Effective October 1, 1990, participants in a work supplementation program under Title IV-A and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program, in accordance with § 482(e)(6) of the Act.

c. Individuals whose AFDC payments are reduced to zero by reason of recovery of overpayment of AFDC funds.

d. An assistance unit deemed to be receiving AFDC for a period of four calendar months because the family becomes ineligible for AFDC as a result of collection or increased collection of support and meets the requirements of § 406(h) of the Act.

e. Individuals deemed to be receiving AFDC who meet the requirements of § 473(b)(1) or (2) for whom an adoption of assistance agreement is in effect or foster care maintenance payments are being made under Title IV-E of the Act.

3. Effective October 1, 1990, qualified family members who would be eligible to receive AFDC under § 407 of the Act because the principal wage earner is unemployed.

4. Families terminated from AFDC solely because of earnings, hours of employment, or loss of earned income disregards entitled up to 12 months of extended benefits in accordance with § 1925 of the Act.

5. Individuals who are ineligible for AFDC solely because of eligibility requirements that are specifically prohibited under Medicaid. Included are:

a. Families denied AFDC solely because of income and resources deemed to be available from:

(1) Stepparents who are not legally liable for support of stepchildren under a state law of general applicability;

(2) Grandparents;

(3) Legal guardians; and

(4) Individual alien sponsors (who are not spouses of the individual or the individual's parent).

b. Families denied AFDC solely because of the involuntary inclusion of siblings who have income and resources of their own in the filing unit.

c. Families denied AFDC because the family transferred a resource without receiving adequate compensation.

6. Individuals who would be eligible for AFDC except for the increases in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972 and who were receiving cash assistance in August 1972.

a. Includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in the state's August 1972 plan).

b. Includes persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

7. Qualified pregnant women and children.

a. A pregnant woman whose pregnancy has been medically verified who:

(1) Would be eligible for an AFDC cash payment if the child had been born and was living with her;

(2) Is a member of a family that would be eligible for aid to families with dependent children of unemployed parents if the state had an AFDC-unemployed parents program; or

(3) Would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

b. Children born after September 30, 1973 (specify optional earlier date), who are under age 19 and who would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

12VAC30-40-280 and 12VAC30-40-290 describe the more liberal methods of treating income and resources under § 1902(r)(2) of the Act.

8. Pregnant women and infants under one year of age with family incomes up to 133% of the federal poverty level who are described in §§ 1902(a) (10)(A)(i)(IV) and 1902(l)(A) and (B) of the Act. The income level for this group is specified in 12VAC30-40-220.

9. Children:

a. Who have attained one year of age but have not attained six years of age, with family incomes at or below 133% of the federal poverty levels.

b. Born after September 30, 1983, who have attained six years of age but have not attained 19 years of age, with family incomes at or below 100% of the federal poverty levels.

Income levels for these groups are specified in 12VAC30-40-220.

10. Individuals other than qualified pregnant women and children under subdivision 7 of this section who are members of a family that would be receiving AFDC under § 407 of the Act if the state had not exercised the option under § 407(b)(2)(B)(i) of the Act to limit the number of months for which a family may receive AFDC.

11. a. A woman who, while pregnant, was eligible for, applied for, and receives Medicaid under the approved state plan on the day her pregnancy ends. The woman continues to be eligible, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan for a 60-day period (beginning on the last day of her pregnancy) and for any remaining days in the month in which the 60th day falls.

b. A pregnant women who would otherwise lose eligibility because of an increase in income (of the family in which she is a member) during the pregnancy or the postpartum period which extends through the end of the month in which the 60-day period (beginning on the last day of pregnancy) ends.

12. ~~a.~~ A child born to a woman who is eligible for and receiving Medicaid on the date of the child's birth. The child is deemed eligible for one year from birth.

~~b. A child born to a woman under the age of 19 who is eligible for and receiving Title XXI coverage through the Family Access to Medical Insurance Security Plan (FAMIS) as of the date of the child's birth and who is screened to be income eligible for coverage under Medicaid. The child is deemed Medicaid eligible for one year from his date of birth.~~

13. Aged, blind and disabled individuals receiving cash assistance.

a. Individuals who meet more restrictive requirements for Medicaid than the SSI requirements. (This includes persons who qualify for benefits under § 1619(a) of the

Act or who meet the eligibility requirements for SSI status under § 1619(b)(1) of the Act and who met the state's more restrictive requirements for Medicaid in the month before the month they qualified for SSI under § 1619(a) or met the requirements under § 1619(b)(1) of the Act. Medicaid eligibility for these individuals continues as long as they continue to meet the § 1619(a) eligibility standard or the requirements of § 1619(b) of the Act.)

b. These persons include the aged, the blind, and the disabled.

c. Protected SSI children (pursuant to § 1902(a)(10)(A)(i)(II) of the Act) (P.L. 105-33 § 4913). Children who meet the pre-welfare reform definition of childhood disability who lost their SSI coverage solely as a result of the change in the definition of childhood disability, and who also meet the more restrictive requirements for Medicaid than the SSI requirements.

d. The more restrictive categorical eligibility criteria are described below:

(1) See 12VAC30-30-40.

(2) Financial criteria are described in 12VAC30-40-10.

14. Qualified severely impaired blind and disabled individuals under age 65 who:

a. For the month preceding the first month of eligibility under the requirements of § 1905(q)(2) of the Act, received SSI, a state supplemental payment under § 1616 of the Act or under § 212 of P.L. 93-66 or benefits under § 1619(a) of the Act and were eligible for Medicaid; or

b. For the month of June 1987, were considered to be receiving SSI under § 1619(b) of the Act and were eligible for Medicaid. These individuals must:

(1) Continue to meet the criteria for blindness or have the disabling physical or mental impairment under which the individual was found to be disabled;

(2) Except for earnings, continue to meet all nondisability-related requirements for eligibility for SSI benefits;

(3) Have unearned income in amounts that would not cause them to be ineligible for a payment under § 1611(b) of the Act;

(4) Be seriously inhibited by the lack of Medicaid coverage in their ability to continue to work or obtain employment; and

(5) Have earnings that are not sufficient to provide for himself or herself a reasonable equivalent of the Medicaid, SSI (including any federally administered SSP), or public funded attendant care services that would be available if he or she did have such earnings.

The state applies more restrictive eligibility requirements for Medicaid than under SSI and under 42 CFR 435.121. Individuals who qualify for benefits under § 1619(a) of the Act or individuals described above who meet the eligibility requirements for SSI benefits under § 1619(b)(1) of the Act and who met the state's more restrictive requirements in the month before the month they qualified for SSI under § 1619(a) or met the requirements of § 1619(b)(1) of the Act are covered. Eligibility for these individuals continues as long as they continue to qualify for benefits under § 1619(a) of the Act or meet the SSI requirements under § 1619(b)(1) of the Act.

15. Except in states that apply more restrictive requirements for Medicaid than under SSI, blind or disabled individuals who:

a. Are at least 18 years of age; and

b. Lose SSI eligibility because they become entitled to OASDI child's benefits under § 202(d) of the Act or an increase in these benefits based on their disability. Medicaid eligibility for these individuals continues for as long as they would be eligible for SSI, absence their OASDI eligibility.

~~c.~~ The state does not apply more restrictive income eligibility requirements than those under SSI.

16. Except in states that apply more restrictive eligibility requirements for Medicaid than under SSI, individuals who are ineligible for SSI or optional state supplements (if the agency provides Medicaid under § 435.230 of the Act), because of requirements that do not apply under Title XIX of the Act.

17. Individuals receiving mandatory state supplements.

18. Individuals who in December 1973 were eligible for Medicaid as an essential spouse and who have continued, as spouse, to live with and be essential to the well-being of a recipient of cash assistance. The recipient with whom the essential spouse is living continues to meet the December 1973 eligibility requirements of the state's approved plan for OAA, AB, APTD, or AABD and the spouse continues to meet the December 1973 requirements for have his or her needs included in computing the cash payment.

In December 1973, Medicaid coverage of the essential spouse was limited to: the aged; the blind; and the disabled.

19. Institutionalized individuals who were eligible for Medicaid in December 1973 as inpatients of Title XIX medical institutions or residents of Title XIX intermediate care facilities, if, for each consecutive month after December 1973, they:

a. Continue to meet the December 1973 Medicaid State Plan eligibility requirements;

b. Remain institutionalized; and

c. Continue to need institutional care.

20. Blind and disabled individuals who:

a. Meet all current requirements for Medicaid eligibility except the blindness or disability criteria; ~~and~~

b. Were eligible for Medicaid in December 1973 as blind or disabled; and

c. For each consecutive month after December 1973 continue to meet December 1973 eligibility criteria.

21. Individuals who would be SSI/SSP eligible except for the increase in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972, and who were receiving cash assistance in August 1972.

This includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in this state's August 1972 plan), and persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

22. Individuals who:

a. Are receiving OASDI and were receiving SSI/SSP but became ineligible for SSI/SSP after April 1977; and

b. Would still be eligible for SSI or SSP if cost-of-living increases in OASDI paid under § 215(i) of the Act received after the last month for which the individual was eligible for and received SSI/SSP and OASDI, concurrently, were deducted from income.

The state applies more restrictive eligibility requirements than those under SSI and the amount of increase that caused SSI/SSP ineligibility and subsequent increases are deducted when determining the amount of countable income for categorically needy eligibility.

23. Disabled widows and widowers who would be eligible for SSI or SSP except for the increase in their OASDI benefits as a result of the elimination of the reduction factor required by § 134 of P.L. 98-21 and who are deemed, for purposes of Title XIX, to be SSI beneficiaries or SSP beneficiaries for individuals who would be eligible for SSP only, under § 1634(b) of the Act.

The state does not apply more restrictive income eligibility standards than those under SSI.

24. Disabled widows, disabled widowers, and disabled unmarried divorced spouses who had been married to the insured individual for a period of at least 10 years before the divorce became effective, who have attained the age of 50, who are receiving Title II payments, and who because of the receipt of Title II income lost eligibility for SSI or SSP which they received in the month prior to the month in which they began to receive Title II payments, who would be eligible for SSI or SSP if the amount of the Title II benefit were not counted as income, and who are not entitled to Medicare Part A.

The state applies more restrictive eligibility requirements for its blind or disabled than those of the SSI program.

25. Qualified Medicare beneficiaries:

a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818 of the Act);

b. Whose income does not exceed 100% of the federal level; and

c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

(Medical assistance for this group is limited to Medicare cost sharing as defined in item 3.2 of this plan.)

26. Qualified disabled and working individuals:

a. Who are entitled to hospital insurance benefits under Medicare Part A under § 1818A of the Act;

b. Whose income does not exceed 200% of the federal poverty level;

c. Whose resources do not exceed twice the maximum standard under SSI; and

d. Who are not otherwise eligible for medical assistance under Title XIX of the Act.

(Medical assistance for this group is limited to Medicare Part A premiums under §§ 1818 and 1818A of the Act.)

27. Specified low-income Medicare beneficiaries:

a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818A of the Act);

b. Whose income for calendar years 1993 and 1994 exceeds the income level in subdivision 25 b of this section, but is less than 110% of the federal poverty level, and whose income for calendar years beginning 1995 is less than 120% of the federal poverty level; and

c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

(Medical assistance for this group is limited to Medicare Part B premiums under § 1839 of the Act.)

28. a. Each person to whom SSI benefits by reason of disability are not payable for any month solely by reason of clause (i) or (v) of § 1611(e)(3)(A) shall be treated, for purposes of Title XIX, as receiving SSI benefits for the month.

b. The state applies more restrictive eligibility standards than those under SSI.

Individuals whose eligibility for SSI benefits are based solely on disability who are not payable for any months solely by reason of clause (i) or (v) of § 1611(e)(3)(A) and who continue to meet the more restrictive requirements for Medicaid eligibility under the state plan, are eligible for Medicaid as categorically needy.

12VAC30-110-1600. (Reserved).

12VAC30-110-1610. Deemed newborn eligibility under FAMIS.

A child born to a woman who is eligible for and receiving Title XXI coverage through the Family Access to Medical Insurance Security Plan (FAMIS) or related waivers, such as FAMIS MOMS, as of the date of the child's birth and who is screened to be income eligible for coverage under Medicaid is deemed Medicaid/FAMIS eligible for one year from his date of birth.

12VAC30-110-1620. (Reserved).

Part III
Eligibility Determination and Application Requirements

12VAC30-141-100. Eligibility requirements.

A. This section shall be used to determine eligibility of children for FAMIS.

B. FAMIS shall be in effect statewide.

C. Eligible children must:

1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;

2. Be under 19 years of age;

3. Be residents of the Commonwealth;

4. Be either U.S. citizens, U.S. nationals or qualified noncitizens;

5. Be uninsured, that is, not have comprehensive health insurance coverage;

6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and

7. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS, the local department of social services will enroll the child in the FAMIS program.

2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare & Medicaid. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits

described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b and c of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.

H. Coverage under other health plans.

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance the child currently has or had within the past four months. If the child had health insurance coverage that was terminated in the past four months, inquiry as to why the health insurance was terminated is made. Each redetermination of eligibility shall also document inquiry about current health insurance or health insurance the child had within the past four months. If the child has been covered under a health insurance plan within four months of application for or receipt of FAMIS services, the child will be ineligible, unless the child is pregnant at the time of application, or, if age 18 or if under the age of 18, the child's parent, caretaker relative, guardian, legal custodian or authorized representative demonstrates good cause for discontinuing the coverage.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

c. Good cause. A child shall not be ineligible for FAMIS if health insurance was discontinued within the four-month period prior to the month of application if one of the following good cause exceptions is met.

(1) The family member who carried insurance, changed jobs, or stopped employment, and no other family member's employer contributes to the cost of family health insurance coverage.

(2) The employer stopped contributing to the cost of family coverage and no other family member's employer contributes to the cost of family health insurance coverage.

(3) The child's coverage was discontinued by an insurance company for reasons of uninsurability, e.g., the child has used up lifetime benefits or the child's coverage was discontinued for reasons unrelated to payment of premiums.

(4) Insurance was discontinued by a family member who was paying the full cost of the insurance premium under a COBRA policy and no other family member's employer contributes to the cost of family health insurance coverage.

(5) Insurance on the child was discontinued by someone other than the child (if 18 years of age) or if under age 18, the child's parent or stepparent living in the home, e.g., the insurance was discontinued by the child's absent parent, grandparent, aunt, uncle, godmother, etc.

(6) Insurance on the child was discontinued because the cost of the premium exceeded 10% of the family's monthly income or exceeded 10% of the family's monthly income at the time the insurance was discontinued.

(7) Other good cause reasons may be established by the DMAS director.

I. Eligibility of newborns. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time. A child born to a mother who is enrolled in FAMIS, under either the XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall be deemed

eligible for FAMIS for one year from birth unless the child is otherwise eligible for Medicaid.

12VAC30-141-110. Duration of eligibility.

A. The effective date of FAMIS eligibility shall be the date of birth for a newborn deemed eligible under 12VAC30-141-100 I. Otherwise the effective date of FAMIS eligibility shall be the first day of the month in which a signed application was received by either the FAMIS central processing unit or a local department of social services if the applicant met all eligibility requirements in that month. In no case shall a child's eligibility be effective earlier than the date of the child's birth.

B. Eligibility for FAMIS will continue for 12 months so long as the child remains a resident of Virginia and the child's countable income does not exceed 200% of the federal poverty level. A child born to a mother who was enrolled in FAMIS, under either the XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall remain eligible for one year regardless of income unless otherwise found to be eligible for Medicaid. A change in eligibility will be effective the first of the month following expiration of a 10-day advance notice. Eligibility based on all eligibility criteria listed in 12VAC30-141-100 C will be redetermined no less often than annually.

VA.R. Doc. No. R11-2514; Filed November 10, 2010, 12:11 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: **18VAC85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (amending 18VAC85-101-10, 18VAC85-101-25, 18VAC85-101-30, 18VAC85-101-55, 18VAC85-101-100, 18VAC85-101-130, 18VAC85-101-145, 18VAC85-101-150, 18VAC85-101-152, 18VAC85-101-153, 18VAC85-101-161; adding 18VAC85-101-27, 18VAC85-101-28, 18VAC85-101-91, 18VAC85-101-92).**

Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.

Public Hearing Information: February 2, 2011 - 1 p.m.- Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA

Public Comment Deadline: February 4, 2011.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer effectively the regulatory system. In addition, specific regulatory authority for the Board of Medicine to regulate radiologist assistants, radiologic technologists, and radiologic technologists-limited is found in § 54.1-2956.8:1 of the Code of Virginia. The regulations may include requirements for approved education programs, experience, examinations, and periodic review for continued competency.

Purpose: The goal of this action is to comply with the provisions of Chapters 83 and 507 of the 2009 Acts of the Assembly, which require the Board of Medicine to promulgate regulations for the licensure of radiologist assistants (RAs). Prior to the introduction of legislation, the Advisory Board on Radiological Technology and the Board of Medicine reviewed the responsibilities and the training of RAs and concluded that the definition and duties for an RA exceeded the scope of practice stated in Virginia law for a radiologic technologist and that it appeared to be a separate profession from radiologic technology. Therefore, legislation and regulation were necessary to allow this advanced level practitioner to perform the additional duties for which he or she is trained.

The proposed regulations establish criteria for licensure, supervision, and practice to ensure individuals licensed as RAs are competent to practice as advanced practitioners in radiology who assist the radiologist in patient care and treatment. This development of the radiologist assistant profession within the field of radiologic technology is an important step for improving access to care for patients in Virginia. The RA does not perform image interpretation, diagnose, or dispense medications. The RA works under the supervision of a radiologist and with the specialized training received in a RA program and the accountability of licensure, the health and safety of patients is adequately protected.

Substance: The proposed regulations specify qualifications for licensure, including completion of an educational program and certification examination; criteria for renewal and continued competency; requirements for supervision and professional practice; and fees for obtaining and maintaining licensure.

Issues: The primary advantage to the public is an expansion of physician extenders through the licensure and practice of radiologist assistants. Licensure will offer assurance of consistent education, training, minimum competency, and oversight by the Board of Medicine. An opportunity exists for advanced practice by a radiologic technologist with additional education and training. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or the Commonwealth. The number of licensees is expected to be relatively small, and the disciplinary caseload expected to be minimal. Since RAs will be regulated under the Board of Medicine and the Advisory Board on Radiologic Technology and licensed and disciplined with existing staff, there are few additional administrative costs for licensure.

Summary:

The proposed amendments add the new profession of radiologist assistants (RAs) to 18VAC85-101, Regulations Governing the Licensure of Radiologic Technologists and Radiologists-Limited, and change the title of the regulation to Regulations Governing the Practice of Radiologic Technology. The proposed amendments specify (i) the requirements for licensure of RAs, including the education and examination that will assure minimum competency to practice; (ii) provisions for applicant and licensure fees; (iii) requirements for renewal and reinstatement of a license to include evidence of continuing competency to practice; and (iv) provisions for scope of practice, including supervision by a doctor of medicine or osteopathic medicine with a specialty in radiology. Current regulations, such as standards of conduct and renewal schedules, are amended to be applicable to RAs as well as radiologic technologists and radiologic technologists-limited.

Part I
General Provisions

18VAC85-101-10. Definitions.

In addition to definitions in § 54.1-2900 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACRRT" means the American Chiropractic Registry of Radiologic Technologists.

"ARRT" means the American Registry of Radiologic Technologists.

"Bone densitometry" means a process for measuring bone mineral density by utilization of single x-ray absorptiometry (SXA), dual x-ray absorptiometry (DXA) or other technology that is substantially equivalent as determined by the board.

"Direct supervision" means that a licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic or podiatry is present and is fully responsible for the activities performed by radiologic personnel, with the exception of radiologist assistants.

"Direction" means the delegation of radiologic functions to be performed upon a patient from a licensed doctor of medicine, osteopathy, chiropractic, or podiatry, to a licensed radiologic technologist or a radiologic technologist-limited for a specific purpose and confined to a specific anatomical area, that will be performed under the direction of and in continuing communication with the delegating practitioner.

"ISCD" means the International Society for Clinical Densitometry.

"Radiologist" means a doctor of medicine or osteopathic medicine specializing in radiology who is certified by the American Board of Radiology, the American Osteopathic Board of Radiology, the British Royal College of Radiology, or the Canadian College of Physicians and Surgeons.

"RT-R®" means a person who is currently certified by the ARRT as a radiologic technologist with certification in radiology.

"Traineeship" means a period of activity during which an applicant for licensure as a radiologic technologist works under the direct supervision of a practitioner approved by the board while waiting for the results of the licensure examination or an applicant for licensure as a radiologic technologist-limited working under direct supervision and observation to fulfill the practice requirements in 18VAC85-101-60.

18VAC85-101-25. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial licensure fees.

1. The application fee for radiologic technologist or radiologist assistant licensure shall be $130.

2. The application fee for the radiologic technologist-limited licensure shall be $90.

3. All examination fees shall be determined by and made payable as designated by the board.

C. Licensure renewal and reinstatement for a radiologic technologist or a radiologist assistant.

1. The fee for active license renewal for a radiologic technologist shall be $135, and the fee for inactive license renewal shall be $70. If a radiologist assistant holds a current license as a radiologic technologist, the renewal fee shall be $50. If a radiologist assistant does not hold a current license as a radiologic technologist, the renewal fee shall be $150.

2. An additional fee of $50 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a radiologic technologist or a radiologist assistant license that has lapsed for a period of two years or more shall be $180 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

D. Licensure renewal and reinstatement for a radiologic technologist-limited.

1. The fee for active license renewal shall be $70, and the fee for inactive license renewal shall be $35.

2. An additional fee of $25 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be $120 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

E. Other fees.

1. The application fee for a traineeship as a radiologic technologist or a radiologic technologist-limited shall be $25.

2. The fee for a letter of good standing or verification to another state for licensure shall be $10; the fee for certification of scores to another jurisdiction shall be $25.

3. The fee for a returned check shall be $35.

4. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

Part II
Licensure Requirements - Radiologist Assistants

18VAC85-101-27. Educational requirements for radiologist assistants.

An applicant for licensure as a radiologist assistant shall be a graduate of an educational program that is currently recognized by the ARRT for the purpose of allowing an applicant to sit for the ARRT certification examination leading to the Registered Radiologist Assistant credential.

18VAC85-101-28. Licensure requirements.

A. An applicant for licensure as a radiologist assistant shall:

1. Meet the educational requirements specified in 18VAC85-101-27;

2. Submit the required application, fee, and credentials to the board;

3. Hold certification by the ARRT as an RT-R® or be licensed in Virginia as a radiologic technologist;

4. Submit evidence of passage of an examination for radiologist assistants resulting in national certification as an Registered Radiologist Assistant by the ARRT; and

5. Hold current certification in Advanced Cardiac Life Support (ACLS).

B. If an applicant has been licensed or certified in another jurisdiction as a radiologist assistant or a radiologic technologist, he shall provide information on the status of each license or certificate held.

C. An applicant who fails the ARRT examination for radiologist assistants shall follow the policies and procedures of the ARRT for successive attempts.

Part ~~II~~ III
Licensure Requirements - Radiologic Technologist

18VAC85-101-30. Educational requirements for radiologic technologists.

An applicant for licensure as a radiologic technologist shall be a graduate of an educational program acceptable to the ARRT for the purpose of sitting for the ARRT certification examination.

Part ~~III~~ IV
Licensure Requirements - Radiologic Technologist-Limited

18VAC85-101-55. Educational requirements for radiologic technologists-limited.

A. An applicant for licensure as a radiologic technologist-limited shall be trained by one of the following:

1. Successful completion of a program that is directed by a radiologic technologist with a bachelor's degree and current ARRT certification, has instructors who are licensed radiologic technologists or doctors of medicine or osteopathic medicine who are board certified in radiology, and has a minimum of the following coursework:

a. Image production/equipment operation - 25 clock hours;

b. Radiation protection - 15 clock hours; and

c. Radiographic procedures in the anatomical area of the radiologic technologist-limited's practice - 10 clock hours taught by a radiologic technologist with current ARRT certification or a licensed doctor of medicine, osteopathy, podiatry or chiropractic;

2. An ACRRT-approved program;

3. The ISCD certification course for bone densitometry; or

4. Any other program acceptable to the board.

B. A radiologic technologist-limited who has been trained through the ACRRT-approved program or the ISCD certification course and who also wishes to be authorized to perform x-rays in other anatomical areas shall meet the requirements of subdivision A 1 of this section.

Part V

Practice of Radiologist Assistants

18VAC85-101-91. General requirements.

A. A licensed radiologist assistant is authorized to:

1. Assess and evaluate the physiological and psychological responsiveness of patients undergoing radiologic procedures;

2. Perform patient assessment, and assist in patient management and patient education;

3. Evaluate image quality, make initial observations, and communicate observations to the supervising radiologist;

4. Administer contrast media or other medications prescribed by the supervising radiologist; and

5. Perform, or assist the supervising radiologist in performing, imaging procedures consistent with the guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the American Registry of Radiologic Technologists.

B. A licensed radiologist assistant is not authorized to:

1. Provide official interpretation of imaging studies; or

2. Dispense or prescribe medications.

18VAC85-101-92. Supervision of radiologist assistants.

A radiologist assistant shall practice under the direct supervision of a radiologist. Direct supervision shall mean that the radiologist is present in the facility and immediately available to assist and direct the performance of a procedure by a radiologist assistant. The supervising radiologist may determine that direct supervision requires his physical presence for the performance of certain procedures, based on factors such as the complexity or invasiveness of the procedure and the experience and expertise of the radiologist assistant.

Part ~~IV~~ VI

Practice of Radiologic Technologists

18VAC85-101-100. General requirements.

A. All services rendered by a radiologic technologist shall be performed only upon direction of a licensed doctor of medicine, osteopathy, chiropractic, or podiatry.

B. Licensure as a radiologic technologist is not required for persons who are employed by a licensed hospital pursuant to § 54.1-2956.8:1 of the Code of Virginia.

Part ~~V~~ VII

Practice of Radiologic Technologist-Limited

18VAC85-101-130. General requirements.

A. A radiologic technologist-limited is permitted to perform radiologic functions within his capabilities and the anatomical limits of his training and examination. A radiologic technologist-limited is responsible for informing the board of the anatomical area or areas in which he is qualified by training and examination to practice.

B. A radiologic technologist-limited shall not instill contrast media during radiologic examinations or perform mammography, fluoroscopic procedures, computerized tomography, or vascular-interventional procedures. The radiologic technologist-limited is responsible to a licensed radiologic technologist, or doctor of medicine, osteopathy, chiropractic, or podiatry.

18VAC85-101-145. Registration for voluntary practice by out-of-state licensees.

Any radiologist assistant, radiologic technologist, or radiologic technologist-limited who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

Part ~~VI~~ VIII

Renewal of Licensure

18VAC85-101-150. Biennial renewal of license.

A. A radiologist assistant, radiologic technologist, or radiologic technologist-limited who intends to continue practice shall renew his license biennially during his birth month in each odd-numbered year and pay to the board the prescribed renewal fee.

B. A license that has not been renewed by the first day of the month following the month in which renewal is required shall be expired.

C. An additional fee as prescribed in 18VAC85-101-25 shall be imposed by the board.

D. In order to renew an active license as a radiologic technologist, a licensee shall attest to having completed 24 hours of continuing education as acceptable to the ARRT within the last biennium.

E. In order to renew an active license as a radiologic technologist-limited, a licensee shall attest to having completed 12 hours of continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours shall be acceptable to the ARRT, or by the ACRRT for limited licensees whose scope of practice is chiropractic, or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.

F. In order to renew an active license as a radiologist assistant, a licensee shall attest to having completed 50 hours of continuing education as acceptable to the ARRT within the last biennium. A minimum of 25 hours of continuing education shall be recognized by the ARRT as intended for radiologist assistants or radiologists and shall be specific to the radiologist assistant's area of practice. Continuing education hours earned for renewal of a radiologist assistant license shall satisfy the requirements for renewal of a radiologic technologist license.

G. Other provisions for continuing education shall be as follows:

1. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

2. The practitioner shall retain in his records the Continued Competency Activity and Assessment Form available on the board's website with all supporting documentation for a period of four years following the renewal of an active license.

3. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

4. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

5. The board may grant an extension of the deadline for satisfying continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

6. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC85-101-152. Inactive license.

A. A licensed radiologist assistant, radiologic technologist, or radiologic technologist-limited who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain continuing education hours and shall not be entitled to perform any act requiring a license to practice radiography in Virginia.

B. To reactivate an inactive license, a licensee shall:

1. Submit the required application;

2. Pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure; and

3. Verify that he has completed continuing education hours equal to those required for the period in which he held an inactive license in Virginia, not to exceed one biennium.

C. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-101-153. Restricted volunteer license.

A. A licensed radiologist assistant, radiologic technologist, or a radiologic technologist-limited who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a ~~licensed radiologic technologist or a radiologic technologist-limited~~ licensee shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-101-25.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-101-25.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, a

licensed radiologic technologist shall attest to having completed 12 hours of Category A continuing education as acceptable to and documented by the ARRT within the last biennium. A radiologic technologist-limited shall attest to having completed six hours of Category A continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours shall be acceptable to and documented by the ARRT or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.

Part ~~VII~~ IX
Standards of Professional Conduct

18VAC85-101-161. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

REGISTRAR'S NOTICE: The following forms used in administering the regulation have been filed by the Board of Medicine. The forms are not being published; however, the name of each form is listed below and hyperlinks to the actual form. Online users of this issue of the Virginia Register of Regulations may access the form by clicking on the name of the form. The forms are also available for public inspection at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233-1463, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC85-101)

~~Instructions for Completing an Application for Licensure as a Radiologic Technologist By Examination/Endorsement (rev. 9/07).~~

Instructions for Completing an Application for Licensure as a Radiologic Technologist By Examination/Endorsement (rev. 11/10).

Instructions for Completing an Application for Licensure as a Radiologist Assistant (rev. 11/10).

~~Application for a License as a Radiologic Technologist (rev. 9/07).~~

Application for a License as a Radiologic Technologist (rev. 11/10).

Application for a License to Practice as a Radiologist Assistant (rev. 11/10).

~~Form A, Claims History Sheet (rev. 8/07).~~

Form A, Claims History Sheet (rev. 11/10).

Form A, Radiologist Assistant, Claims History (rev.11/10).

~~Form B, Activity Questionnaire (rev. 8/07).~~

Form B, Activity Questionnaire (rev. 11/10).

Form B, Radiologist Assistant, Activity Questionnaire (rev. 11/10).

~~Form C, Clearance from Other States (rev. 8/07).~~

Form C, Clearance from Other States (rev. 11/10).

Form C, Radiologist Assistant, Clearance from Other States (rev. 11/10).

~~Form E, Certification Request from ARRT (rev. 8/07).~~

Form E, Certification Request from ARRT (rev. 11/10).

~~Form F, Traineeship Application (rev. 8/07).~~

Form F, Traineeship Application (rev. 11/10).

~~Form L, Certificate of Radiologic Technology Education (rev. 8/07).~~

Form L, Certificate of Radiologic Technology Education (rev. 11/10).

Form L, Radiologist Assistant, Certificate of Professional Education (rev. 11/10).

~~Instructions for Completing an Application for Licensure as a Radiologic Technologist Limited (rev. 2/08).~~

~~Application for a License to Practice Radiologic Technology Limited (rev. 8/07).~~

~~Form T/A (1) and T/A (2), Radiologic Technologist Limited Training Application for Abdomen/Pelvis pursuant to Virginia Regulations 18VAC85-101-60 B (3) (rev. 8/07).~~

~~Form T/C (1) and T/C (2), Radiologic Technologist Limited Clinical Training Application (rev. 8/07).~~

~~Form T/E, Radiologic Technologist Limited Traineeship Application (rev. 8/07).~~

Instructions for Completing an Application for Licensure as a Radiologic Technologist-Limited (rev. 11/10).

Application for a License to Practice Radiologic Technology-Limited (rev. 11/10).

Form T/A (1) and T/A (2), Radiologic Technologist-Limited Training Application for Abdomen/Pelvis pursuant to Virginia Regulations 18VAC85-101-60 B (3) (rev. 11/10).

Form T/C (1) and T/C (2), Radiologic Technologist-Limited Clinical Training Application (rev. 11/10).

Form T/E, Radiologic Technologist-Limited Traineeship Application (rev. 11/10).

Instructions for Completing Reinstatement of Radiologic Technology Licensure (rev. 8/07).

Application for Reinstatement of License to Practice Radiologic Technologist (rev. 10/07).

Instructions for Completing Reinstatement of Radiologic Technologist-Limited Licensure (rev. 8/07).

Application for Reinstatement of License to Practice Radiologic Technologist-Limited (eff. 10/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

Continued Competency Activity and Assessment Form (eff. 7/08).

VA.R. Doc. No. R10-2130; Filed November 16, 2010, 10:44 a.m.

STATE BOARD OF EDUCATION

Proposed Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools

The Board of Education is seeking comment on the proposed Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools. See: http://www.doe.virginia.gov/boe/meetings/2010/11_nov/agenda_items/item_h.pdf.

The 2008 General Assembly adopted legislation (HB 1439 and SB 241) amending Standard 7 of the Standards of Quality to require school boards to adopt policies addressing sexual abuse of students by teachers and other school board employees:

> § 22.1-253.13:7. Standard 7. School board policies. A. Each local school board shall develop policies and procedures to address complaints of sexual abuse of a student by a teacher or other school board employee.

The Virginia Board of Education developed proposed Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools to help school divisions meet their obligation under the law and create and implement policies and procedures that establish clear and reasonable boundaries for interactions between students and teachers, other school board employees, and adult volunteers.

The model policies and best practices in the document draw from policies and legislation approved by school boards and legislatures in other states and policies and best practices implemented by private and parochial schools and national youth-service organizations.

Contact Information: Charles Pyle, Director of Communications, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2092, FAX (804) 225-2524, or email charles.pyle@doe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Restore Water Quality for Clinch River

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 December 16, 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 the draft study to restore water quality, a public comment opportunity, and a public meeting.

Meeting description: Final public meeting on a study to restore water quality.

Description of study: DEQ has been working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of the 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 have been identified and total maximum daily loads (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 also determined the sources of bacteria contamination and developed 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, December 16, 2010, to January 17, 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 www.deq.virginia.gov/tmdl.

Contact for additional information: Allen J. Newman, P.E., Water Permit Manager, Virginia Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4804, FAX (276) 676-4899, or email shelley.williams@deq.virginia.gov.

Total Maximum Daily Load for Little Dark Run

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the

development of an implementation plan (IP) for bacteria total maximum daily loads (TMDLs) on a 4.26 miles stream segment of Little Dark Run and an 8.86 miles segment of the Robinson River in Madison County. The TMDLs for these stream impairments were completed in January 2008 and can be found in the Upper Rappahannock River Basin Report on DEQ's website at http://www.deq.virginia.gov/tmdl/apptmdls/rapprvr/urappaec.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The second public meeting on the development of the IP for the bacteria TMDLs will be held on Thursday, December 16, 2010, at 7 p.m. at the Madison County Volunteer Fire Company, 1223 North Main Street, Madison, Virginia. At this meeting, the draft implementation plan to restore surface water quality in Little Dark Run and the Robinson River will be presented to the public.

The 30-day public comment period on the draft implementation plan presented at this meeting will end on January 17, 2011. A fact sheet on the development of an IP for the Little Dark Run and Robinson River is available upon request. Questions or information requests should be addressed to Bob Slusser with the DCR. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Bob Slusser, Department of Conservation and Recreation, telephone (540) 351-1590, or email bob.slusser@dcr.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 November 10, 2010, and November 17, 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 Ninety-Three (10)

Virginia's Instant Game Lottery 1210; "Lucky Pair" Final Rules for Game Operation (effective November 10, 2010)

Director's Order Number Ninety-Four (10)

Virginia's Instant Game Lottery 1214; "Cold Hard Ca$h" Final Rules for Game Operation (effective November 10, 2010)

Director's Order Number Ninety-Eight (10)

Virginia's Instant Game Lottery 1234; "Smokin' Hot Cash II" Final Rules for Game Operation (effective November 16, 2010)

Director's Order Number One Hundred-One (10)

Virginia's Instant Game Lottery 1219; "$20,000 Payday Doubler" Final Rules for Game Operation (effective November 16, 2010)

Director's Order Number One Hundred-Two (10)

Virginia's Instant Game Lottery 1235; "Monopoly" Final Rules for Game Operation (effective November 10, 2010)

Director's Order Number One Hundred-Four (10)

Virginia Lottery's "Winner Wednesdays Sweepstakes" Final Rules for Game Operation (effective November 9, 2010)

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/cumultab.htm.

Filing Material for Publication in the Virginia Register of Regulations: Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies

may file petitions for rulemaking, notices of intended regulatory actions, and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track, and emergency regulatory packages.

ERRATA

STATE BOARD OF HEALTH

Petition for Rulemaking - Initial Agency Notice: Title 12 of the Virginia Administrative Code.

Publication: 27:6 VA.R. 595 November 22, 2010.

Correction to Statutory Authority:

Page 595, change "§ 32.1-12 of the Code of Virginia" to "N/A"

Correction to Nature of Petitioner's Request:

Page 595, after environmental and health, change "effects" to "matters"

VA.R. Doc. No. R11-18; Filed November 16, 2010, 2010, 4:04 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waivered Services.**

Publication: 27:5 VA.R. 522-523 November 8, 2010.

Correction to Notice of Extension of Emergency Regulation:

Page 522, Title of Regulation, delete "adding 12VAC30-120-100 through 12VAC30-120-1090; repealing" and insert "amending" before "12VAC30-120-211 through 12VAC30-120-249)."

VA.R. Doc. No. R08-2056; Filed November 29, 2010