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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.dls.virginia.gov).

January 2011 through March 2012

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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27:13	February 9, 2011	February 28, 2011
27:14	February 23, 2011	March 14, 2011
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28:10	December 27, 2011 **(Tuesday)**	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider promulgating the following regulation: **6VAC20-270, Regulations Relating to Campus Security Officers.** The purpose of the proposed action is to establish regulations for campus security officers.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: March 2, 2011.

Agency Contact: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6377, or email lisa.mcgee@dcjs.virginia.gov.

VA.R. Doc. No. R11-2165; Filed January 7, 2011, 4:16 p.m.

TITLE 12. HEALTH

BOARD OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulation: **12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care.** The purpose of the proposed action is to implement reimbursement changes for outpatient hospitals.

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

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Comment Deadline: March 2, 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.

VA.R. Doc. No. R11-2713; Filed January 7, 2011, 1:57 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending the following regulation: **18VAC50-22, Board for Contractors Regulations.** The purpose of the proposed action is to define entry requirements, and list fees and the disciplinary authority of the board for temporary licensure pursuant to Chapters 260 and 280 of the 2010 Acts of Assembly.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: March 2, 2011.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R11-2484; Filed January 7, 2011, 2:14 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: **2VAC5-70. Health Requirements Governing the Control of Equine Infectious Anemia in Virginia (amending 2VAC5-70-20; repealing 2VAC5-70-30).**

Statutory Authority: § 3.2-6002 of the Code of Virginia.

Effective Date: March 2, 2011.

Agency Contact: Doug Saunders, Deputy Director, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8905, FAX (804) 371-2380, or email doug.saunders@vdacs.virginia.gov.

Summary:

The amendments (i) clarify that testing requirements for equine infectious anemia apply to all horses involved in activities on properties where horses belonging to different owners may come into contact with each other and (ii) eliminate the alternate testing requirements for horses assembled for sale or auction in Virginia.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

2VAC5-70-20. Testing requirements for horses exhibited at shows, fairs, or other exhibitions, or coming into contact with horses owned by others in Virginia.

All horses assembled at a show, fair, race meet, or other such function, or participating in any activity on properties where horses [~~owned by two or more~~ belonging to different] owners may come into contact with each other in Virginia, must be accompanied by a report of an official negative test for equine infectious anemia [. The test shall be] conducted [by an approved laboratory on a sample taken by an accredited veterinarian or a State-Federal Regulatory Veterinarian] within [~~12 months~~ 365 days] prior to such event or activity. The person in charge will ensure that a copy of the official negative test results accompanies each horse in the event or activity, and shall make such reports available for inspection by a representative of the State Veterinarian upon request. The person in charge shall exclude any horse which is not accompanied by a negative test report.

2VAC5-70-30. ~~Alternate testing requirements for horses assembled for sale or auction in Virginia.~~ (Repealed.)

~~Horses may be assembled at a sale or auction without a negative test for equine infectious anemia, provided that the State Veterinarian so approves, and that the following requirements are met:~~

~~1. All horses, while assembled at the sale or auction, shall have blood samples drawn for equine infectious anemia testing.~~

~~2. Horses consigned or sold for immediate slaughter to an official slaughtering establishment are exempt from equine infectious anemia testing. Such horses shall be identified in a manner approved by the State Veterinarian, and a written permit shall be issued for their transfer to the slaughtering establishment.~~

~~3. The owner or manager of the sale or auction shall employ a licensed accredited veterinarian, who shall draw blood samples from all horses required to be tested, and shall record all visible markings or other permanent identification for each horse bled.~~

~~4. The owner or manager shall announce, prior to the sale or auction, that all nonslaughter horses will be tested. Each buyer of a nonslaughter horse or horses at the sale or auction shall sign a release form, signifying his agreement to maintain such horse or horses at a specified location until notified of the results of the test. Horses that prove negative to the test may move in normal trade channels. Owners of horses that react to the test must comply with 2VAC5-70-40 of this chapter.~~

~~5. The State Veterinarian may grant such exceptions to these requirements as he feels the circumstances warrant and that are not in variance with other rules and regulations of the Commonwealth of Virginia.~~

VA.R. Doc. No. R09-913; Filed January 4, 2011, 10:16 a.m.

Proposed Regulation

Titles of Regulations: **2VAC5-140. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia (repealing 2VAC5-140-10 through 2VAC5-140-140).**

2VAC5-141. Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia (adding 2VAC5-141-10 through 2VAC5-141-130).

Statutory Authority: §§ 3.2-5902, 3.2-6001, and 3.2-6002 of the Code of Virginia.

Public Hearing Information:

March 24, 2011 - 10 a.m. - Board of Agriculture and Consumer Services, 102 Governor Street, 2nd Floor Board Room, Richmond, VA

Public Comment Deadline: April 1, 2011.

Agency Contact: Dr. Dan Kovich, Staff Veterinarian, Animal Care and Health Policy, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email dan.kovich@vdacs.virginia.gov.

Basis: Section 3.2-5902 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to establish the health of certain pet animals imported into Virginia.

Section 3.2-6001 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations in coordination with other states and the USDA to protect the livestock and poultry of Virginia.

Section 3.2-6002 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to prevent, control, or eradicate infectious or contagious diseases in livestock and poultry in Virginia.

Purpose: The current regulations concerning the importation of animals into Virginia are outmoded. In the two decades since their enactment, significant changes have occurred concerning the priorities and methodology of state, federal, and international animal disease and marketing programs. Primary among these changes have been those impacting the control of bovine tuberculosis and those pertaining to animal disease traceability of agricultural animals in interstate trade. The proposed regulation will make Virginia current with federal and other state animal movement requirements and ensure that Virginia animal producers and owners are not placed at a disadvantage in interstate trade as well as protect the continuing viability of agricultural and companion animal industries. Since Virginia is a net exporter of agricultural animals, the Virginia animal entry requirements should minimize the risk of disease introduction and allow rapid response and control should disease introduction occur, while at the same time allowing for unimpeded commerce.

The proposed regulation also rectifies other identified deficiencies in the current regulation. Definitions are strengthened to fully encompass the scope of animals imported into the state to ensure that all animal species are properly accounted for and subject to reasonable and appropriate requirements. Exemptions to entry requirements for companion animals granted by the Code of Virginia are accounted for in the proposed regulation, removing existing inconsistencies. Outdated testing requirements for goats and camelids are removed in order to facilitate the development of these industries. Significant concessions have been granted to ensure the viability of Virginia's livestock marketing system. These changes will have a significant impact on the practicality of application of this regulation.

Substance: The proposed new regulation contains substantive changes to the existing regulation. These apply to the definitions used in the regulation, required components of certificate of veterinary inspections (CVI), animal identification requirements, and entry requirements for specific classes of animals, as follows:

• Definitions: Scientific nomenclature has been used to define specific classes of animals, to ensure that all species of interest are captured under the defined word.

• CVIs: The required components of CVIs have been updated to reflect current animal disease traceability requirements.

• Animal identification: The proposed regulation creates an animal identification requirement for certain classes of agricultural animals. Required identification for imported animals will enhance the ability for such animals to be traced, which is of crucial importance to mitigating any potential disease risk they may place to Virginia animal populations.

• Avian: The proposed regulations will now be applicable to all classes of birds entering Virginia, and the State Veterinarian's proclamation concerning avian influenza will be linked to them. This approach will give maximum flexibility in ensuring that imported birds do not pose a threat to Virginia's economically significant poultry industry. Testing requirements are brought into line with current needs.

• Cattle: The proposed regulation requires tuberculosis testing of certain classes of cattle, regardless of their origin. This change is in keeping with the requirements of many other states, and reflects the current concern regarding a resurgence of bovine tuberculosis. Virginia is a net exporter of cattle; it is critical that it remains to be considered free from tuberculosis for cattle.

• Companion animal: The proposed regulation takes into account the exemptions granted to the entry of certain companion animals by the Code of Virginia. The current regulation creates an apparent inadvertent inconsistency with the law in this regard.

• Goat and sheep: The proposed regulation brings goat and sheep entry requirements consistent with 2VAC5-206, concerning the control of scrapie. It also removes testing requirements for certain classes of goats to better reflect the risk posed to Virginia animal populations.

• Horses: The proposed regulation accounts for the adoption of equine interstate event permits in lieu of CVIs by Virginia and other signatory states.

• Other ruminants: The proposed regulation ties the importation requirements of other ruminants to the health status of cattle in the state of origin. This association allows for additional testing requirements for other ruminants to be applicable as necessary, and otherwise not create trade barriers. This change will have significant impact on the importation of camelids into Virginia, by greatly reducing the testing requirements such animals currently bear under most circumstances.

• Swine: The proposed regulations modernize Virginia's swine entry requirements in response to industry and federal changes.

• Primates: The proposed regulation imposes an identification requirement for the importation of primates under certain conditions.

Issues: The predominant issues associated with the proposed regulation apply to the identification of agricultural animals and the strengthening of tuberculosis testing requirements for cattle and other dairy animals. In regard to agricultural animal disease traceability, the strengthened CVI and identification requirements are directly linked to the dissolution of the National Animal Identification System by the USDA without easing of international country of origin labeling requirements. It is the stated intent of the federal government that state governments take on more responsibility for traceability of animal movements. The proposed regulation is designed to offer significant flexibility to select an appropriate traceability system for importers of animals, while at the same time ensuring a framework is in place to ensure that Virginia will remain able to export animals to other markets; easing of importation identification requirements may in turn place significant hurdles to those exporting animals.

The proposed regulation strengthens the tuberculosis testing requirements for cattle entering Virginia in response to concern regarding the resurgence of bovine tuberculosis in recent years. Under the current regulation, cattle are exempt from testing if they originate from a state or region considered free of tuberculosis by the USDA whereas other animals of lower risk, such as goats and South American camelids, are subject to testing regardless of origin. The proposed regulation in fact reverses this situation, mandating testing for all cattle (as well as goats and sheep used for dairying purposes) over 12 months of age. All other ruminants (including camelids and non-dairying goats and sheep) are not subject to testing requirements if they originate from an area considered free of tuberculosis for cattle. These proposed regulations better serve to protect Virginia's cattle industry from the threat of introduction of tuberculosis, while at the same time not presenting onerous requirements to other animal industries. Sufficient exemptions for cattle exist in the proposed regulation to protect the cattle slaughter and marketing industries from adverse impact.

Other changes in the proposed regulation should be of benefit to the affected industries, by way of facilitating trade, eliminating outdated or unnecessary testing requirements, or achieving parity with the requirements of neighboring states.

Requirements More Restrictive Than Federal: Federal regulations concerning the interstate movement of animals are designed to ensure the marketability of animals and animal products internationally. These regulations are not in and of themselves sufficient to fully protect the animal health status of an individual state. The proposed regulation, in keeping with those of many other states, is designed to provide comprehensive coverage of all animal species of interest. Therefore, the proposed regulation does include animal species, and testing requirements that are in addition to those imposed by federal regulation. These additional requirements are intended to safeguard Virginia animal industries and ensure their free and ready access to interstate and international markets.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services proposes to repeal the current regulations (2VAC5-140) concerning the requirements for entry of agricultural, companion, and other animals into Virginia; and replace it with a regulatory framework (2VAC5-141) that is consistent with the current status of interstate animal disease control and eradication programs and traceability requirements. Substantive changes include animal identification requirements for certain classes of imported animals, strengthened tuberculosis testing requirements for cattle, alignment of sheep and goat entry requirements with current scrapie control programs, and provision for free movement of agricultural animals from neighboring states to facilitate marketing. The current regulation has not been amended since 1989.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. Animal Identification - The proposed regulation creates an animal identification requirement for certain classes of agricultural animals. Required identification for imported animals will enhance the ability for such animals to be traced, which is beneficial for mitigating potential disease risk they may place to Virginia animal populations. There may be some cost associated with the proposed animal identification requirements.

Avian - The proposed regulations will now be applicable to all classes of birds entering Virginia, and the State Veterinarians proclamation concerning avian influenza will be linked to them. The current regulations only apply to poultry and psittacine birds (parrots). This will give maximum flexibility in ensuring that imported birds do not pose a threat to Virginia's economically significant poultry industry. Testing requirements have been brought into line with current needs.

Cattle - The existing regulations do not define cattle. The proposed regulations define cattle as all domestic and wild members of the genera bos, bison, and bubalus to include domestic cattle, yak, bison, and water buffalo.

The proposed regulation requires tuberculosis testing of certain classes of cattle, regardless of their origin. This change is in keeping with the requirements of many other states, and reflects the current concern regarding a resurgence of bovine tuberculosis. Virginia is a net exporter of cattle; it is critical that it remains considered free of tuberculosis for cattle.

Companion Animal - The proposed regulation takes into account the exemptions granted to the entry of certain companion animals by the Code of Virginia. The current regulation creates an apparent inadvertent inconsistency with the Code in this regard. Under the proposed regulations cats greater than four months of age entering Virginia shall be currently vaccinated for rabies.

Goat and Sheep - The proposed regulation brings goat and sheep entry requirements consistent with 2 VAC 5-206, concerning the control of scrapie. It also removes testing requirements for certain classes of goats to better reflect the risk posed to Virginia animal populations. TB testing is entirely new for sheep.

Horses - The proposed regulation accounts for the adoption of equine interstate event permits in lieu of CVIs by Virginia and other signatory states.

Other Ruminants - The current regulation imposes mandatory tuberculosis, brucellosis, and bluetongue testing for all South American camelids imported into Virginia, but does not require any testing of other, exotic ruminant species including deer (of equal or higher risk of infection) entering Virginia. The proposed regulation ensures that all other ruminants are subject to appropriate testing requirements, based on the disease status of cattle in the state of origin. In practice fewer camelids will require testing. This represents a $100 to $250 cost saving per animal.

Swine - The proposed regulations modernize Virginia's swine entry requirements in response to industry and federal changes. For non-commercial swine there is no proposed change in requirements.

Primates - The proposed regulation imposes an identification requirement for the importation of primates under certain conditions.

Businesses and Entities Affected. The proposed regulation will not have a significant impact on individuals or businesses dealing in avian, companion animal, horse, primate, or swine importations. The proposed regulation will clarify the entry requirements for such animals, but does not place more stringent requirements than the current regulation. The identification requirements for swine and horses are already industry standard. The proposed regulation will have a net positive impact on individuals and businesses importing goats and South American camelids. The proposed regulation will affect individuals and businesses importing sheep and certain classes of cattle, as well as livestock markets that deal in agricultural animals entering from states adjacent to Virginia.

There are approximately 26,000 farms with cattle in Virginia. Not all such farms import cattle. There are approximately 2,100 farms with sheep in Virginia. Not all such farms import sheep. Farms keeping goats and South American camelids are not currently quantified on an annual basis. Per the 2007 USDA Census of Agriculture, the agency estimates there are approximately 4,000 farms with goats and approximately 300 farms with a commercial interest in South American camelids in Virginia. Not all such farms import animals. There are approximately 25 livestock markets in Virginia.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed

regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

This regulatory action proposes to repeal the current regulations (2VAC5-140) concerning the requirements for entry of agricultural, companion, and other animals into Virginia, and replace it with a regulatory framework (2VAC5-141) that is consistent with the current status of interstate animal disease control and eradication programs and traceability requirements. Substantive changes include animal identification requirements for certain classes of imported animals, strengthened tuberculosis testing requirements for cattle, alignment of sheep and goat entry requirements with current scrapie control programs, and provision for free movement of agricultural animals from neighboring states to facilitate marketing. The current regulation has not been amended since 1989.

CHAPTER 141
HEALTH REQUIREMENTS GOVERNING THE ADMISSION OF AGRICULTURAL ANIMALS, COMPANION ANIMALS, AND OTHER ANIMALS OR BIRDS INTO VIRGINIA

2VAC5-141-10. Definitions.

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

"Agricultural animals" means livestock and poultry.

"Approved livestock market" means a livestock market under inspection by the State Veterinarian.

"Avian" means all domestic and wild members of the class Aves.

"Cats" means all domestic and wild members of the family Felidae.

"Cattle" means all domestic and wild members of the genera bos, bison, and bubalus to include domestic cattle, yak, bison, and water buffalo.

"Certificate of veterinary inspection" means an official health certificate endorsed by a state, federal, or international government.

"Commercial swine" means swine that are continuously managed; are intended for the production of meat or breeding for such purposes; and have adequate facilities and practices to prevent exposure to feral swine, captive feral swine, or other swine that may have been exposed to feral or captive feral swine.

"Companion animal" means any vertebrate animal excluding ornamental fish not otherwise defined herein as avian, cattle, goat, horse, other ruminant, sheep, swine, or primate.

"Dairying purposes" means the production of milk or milk products, or the production of breeding stock whose progeny are to be used for the production of milk, milk products, or breeding stock.

"Dogs" means all domestic and wild members of the family Canidae.

"Exhibition purposes" means display at a scheduled event. Exhibition purposes shall not include rodeos and similar events where cattle, goats, sheep, and other ruminants are congregated for entertainment purposes.

"Goat" means all domestic and wild members of the genus capra.

"Hatching eggs" means all poultry eggs that are intended to be hatched.

"Horse" means all domestic and wild members of the family Equidae (horses, asses, zebras, and any hybrids of horses, asses, or zebras).

"Noncommercial swine" means all swine not otherwise herein defined as commercial or slaughter swine, including but not limited to wild hogs, feral swine, exhibition swine, or swine kept as pets.

"Other ruminants" means all members of the order Artiodactyla not otherwise defined herein as cattle, goats, sheep, or swine to include camelidae and cervidae imported for exhibition purposes.

"Permit" means an official document issued for and prior to the interstate shipment of certain classes of livestock, poultry, companion animals, and other animals or birds into Virginia. This permit is issued at the discretion of the State Veterinarian.

"Poultry" means all domestic fowl and game birds and ratites raised in captivity to include, but not be limited to, chickens, turkeys, ducks, geese, ratites, and game birds such as quail or partridge.

"Primate" means all nonhuman members of the order Primates.

"Region" means any premise, political subdivision of a state, country, or other defined geographic area.

"Sheep" means all domestic and wild members of the genus ovis.

"Slaughter establishment" means a livestock slaughter facility that is under inspection by the USDA or the Virginia Department of Agriculture and Consumer Services.

"Slaughter swine" means all swine brought into Virginia solely for the purpose of slaughter.

"State Veterinarian" means the State Veterinarian of the Commonwealth of Virginia or his designee.

"Swine" means all domestic and wild members of the family Suidae.

"USDA" means the United States Department of Agriculture.

"USDA-approved market" means a livestock market approved by the United States Department of Agriculture where livestock sold only for slaughter purposes can be identified and segregated in accordance with applicable state and federal regulations, and from which no such livestock intended for slaughter may be released except directly to another approved USDA market, or to a recognized slaughter establishment for immediate slaughter.

2VAC5-141-20. Certificates of veterinary inspection.

A. No agricultural animals, companion animals, or any other animals or birds of any species that are affected with or that have been exposed to any infectious or contagious disease shall be imported into Virginia except by special written permit of the State Veterinarian.

B. All agricultural animals, companion animals, or any other animals or birds of any species imported into Virginia, except livestock for immediate slaughter, shall be accompanied by a certificate of veterinary inspection, that shall be attached to the bill of lading or shall be in the possession of the person in charge of such animals or birds, and a copy of such certificate shall be forwarded promptly to the State Veterinarian.

C. A certificate of veterinary inspection shall be a written record meeting the requirements of Virginia and executed on an approved form of the state of origin. It shall contain the names and street addresses or premise identification numbers of the consignor and consignee, and premises of origin and destination if different. It shall indicate the health status of the animals or birds, and include the dates and results of all required tests.

D. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 30 days before the date of entry for cattle, goats, horses, other ruminants, poultry, sheep, and swine.

E. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 10 days before the date of entry for avian species not considered poultry, companion animals, and primates.

F. The certificate shall be issued by an accredited veterinarian approved by the animal health official of the state of origin; a veterinarian in the employ of the state of origin; or a veterinarian in the employ of the Veterinary Services Division, Animal and Plant Health Inspection Services, United States Department of Agriculture.

G. All testing required by these regulations shall be considered official if conducted by an accredited veterinarian or collected by an accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

2VAC5-141-30. Animal identification.

A. All shipments of poultry and hatching eggs entering Virginia must be accompanied by an approval number issued by the State Veterinarian.

B. Official identification for cattle can be:

1. Ear tag or other permanently affixed device bearing a unique identification number issued by an official state or federal program;

2. Ear tag or other permanently affixed device bearing a unique identification number issued by a performance registry, animal identification registry, producer cooperative, or other marketing association provided record of the issuance is available to the State Veterinarian; or

3. Other forms of permanent identification approved by the USDA or the State Veterinarian.

C. Official identification for goats and sheep can be:

1. Official ear tags that are approved by the USDA for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program;

2. For goats exempt from identification required by the Scrapie Eradication Program, an ear tag or other affixed device bearing a unique identification number issued by an official state or federal program, or a breed, performance, or marketing association that allows the State Veterinarian access to records;

3. Legible official registry tattoo if accompanied by a registration certificate; and

4. Devices approved by the State Veterinarian that contain a premises identification issued by the state of origin in combination with a unique animal number.

D. Official identification for horses can be:

1. A thorough written or photographic record of the horse's appearance directly noted on or affixed to the official health certificate and endorsed by the issuing veterinarian;

2. Legible breed association tattoo number;

3. Affixed or implanted device bearing a unique identification number issued by a state or federal program, or a breed or performance association that allows the State Veterinarian access to records; and

4. Other forms of identification considered official by the USDA or the State Veterinarian.

E. Official identification for swine can be:

1. Ear tag, ear notch, or tattoo recorded by a purebred registry;

2. Ear tag or other affixed device bearing a unique individual or group identification number issued by an official state or federal program;

3. Official premise identification tattoo including state of origin; and

4. Other forms of identification considered official by the USDA or the State Veterinarian.

2VAC5-141-40. Entry by permit only.

A. When the State Veterinarian is informed of any unusual or serious outbreak of disease among livestock or poultry in any other region that, in his opinion, constitutes a threat to livestock and poultry in Virginia, he shall by proclamation prohibit the entrance of any livestock or poultry that originate either directly or indirectly from that region at his discretion, except by permit. He may also prohibit the entrance of any products as defined in the meat or poultry inspection regulations of the USDA, or in the Virginia Meat and Poultry Products Inspection Act, the Virginia Milk and Cream Law, or any other applicable or related Virginia statutes and regulations, except by permit. Specific classes of animals as listed in these regulations also require a permit for entry into Virginia.

B. Agricultural animals, companion animals, or any other animals or birds of any species imported into Virginia for bona fide scientific research by a recognized agricultural institution or institution licensed by the USDA, and for which compliance with the requirements of these regulations would be a detriment to the research, may be excused from the regulatory requirements at the discretion of the State Veterinarian by the issuance of a permit.

C. All requests for permits must be directed to the State Veterinarian in writing and must give all information as he may require.

2VAC5-141-50. Common carriers; trucks.

A. Owners and operators of common carriers, trucks, or other conveyances are forbidden to move any agricultural animals, companion animals, or any other animals or birds of any species into Virginia except in compliance with the provisions set forth in this regulation.

B. All railway cars, trucks, and other conveyances used for transportation of livestock or poultry must be kept in a sanitary condition. The State Veterinarian may require the cleaning and disinfecting of any conveyance at any time to prevent the spread of infectious or contagious diseases.

2VAC5-141-60. Avian entry requirements.

A. All entry of birds into Virginia must be in compliance with the testing and all other requirements of the State Veterinarian's Avian Influenza (H5 and H7) Proclamation dated December 2009. Certificates of veterinary inspection as required must be dated in accordance with said proclamation.

B. All birds in commerce not classified as poultry must be accompanied by a health certificate issued within 10 days prior to entry into Virginia. Any poultry in commerce that by its nature is fit only as a pet must be accompanied by an official health certificate issued within 10 days prior to entry into Virginia.

C. Approval numbers required for shipments of poultry and hatching eggs.

1. Each shipper of poultry or hatching eggs shall first secure an approval number from the State Veterinarian. This approval number must appear on each shipment of poultry or hatching eggs shipped into Virginia.

2. Applications for approval numbers must be made on forms provided by the State Veterinarian. Each application shall require the following information on each premises from which the poultry or hatching eggs originate:

a. The name and address of each premises owner;

b. The species and the number of birds for each on each premise, or for hatcheries hatching capacity;

c. For chickens and turkeys, and the parent flock of the hatching eggs of chickens and turkeys, the date of the

most recent Pullorum-typhoid test, the total number or the percentage of positive reactions to said test, and the Pullorum-typhoid status attained; and

d. Any additional information the State Veterinarian may require.

3. Applications, when completed, must be forwarded to the official state agency, the state livestock health official, or other competent and recognized authority of the state of origin for verification, approval, and signature and then forwarded to the State Veterinarian for final approval.

4. Poultry and hatching eggs shall not be shipped into Virginia until final approval has been granted and the permit is received.

D. Chickens, turkeys, and hatching eggs of chickens and turkeys shall not be imported into Virginia unless originating exclusively from flocks or hatcheries participating in the National Poultry Improvement Plan (NPIP) or issued a permit and negative to a Pullorum-typhoid test within 30 days prior to entry.

E. Exemptions for hatching eggs and poultry, providing the hatching eggs or poultry remain subject to the State Veterinarian's Avian influenza (H5 and H7) Proclamation dated December 2009.

1. This regulation shall not apply to hatching eggs or poultry passing directly through the Commonwealth of Virginia in interstate commerce.

2. This regulation shall not apply to poultry imported into the Commonwealth of Virginia for immediate slaughter and consigned directly to a poultry processing establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services.

F. Exemptions for birds other than poultry, providing the birds remain subject to the State Veterinarian's Avian Influenza (H5 and H7) Proclamation dated December 2009.

1. This regulation shall not apply to birds other than poultry that are passing directly through Virginia to another state in interstate commerce.

2. This regulation shall not apply to birds other than poultry when the birds are kept properly under control by their owner or custodian when passing through Virginia to another state.

3. This regulation shall not apply to birds other than poultry brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into the Commonwealth with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.

4. This regulation shall not apply to birds other than poultry brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.

G. This regulation shall not be construed to (i) permit the entry into Virginia of any avian species otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

2VAC5-141-70. Cattle entry requirements.

A. All cattle entering Virginia must bear official identification and the official identification number must be noted on the certificate of veterinary inspection. If multiple cattle of similar breed, age and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized.

B. All cattle 12 months of age or older require a negative caudal fold or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to:

1. Cattle consigned directly from an accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection;

2. Cattle that originate from a region considered free of tuberculosis for cattle by the USDA and consigned directly to a slaughter establishment or to a USDA-approved market and from there directly to a slaughter establishment; or

3. Cattle entering Virginia for a period of 10 days or less for exhibition purposes provided they originate from a region considered free of tuberculosis for cattle by the USDA and no change of ownership occurs.

C. All cattle originating from a region not considered free of tuberculosis for cattle by the USDA require a permit and a negative caudal or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to:

1. Cattle consigned directly from an accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection; and

2. Cattle consigned directly to a slaughter establishment.

D. All sexually intact cattle originating from a region not considered free of brucellosis by the USDA require a permit and an individual brucellosis test within 30 days prior to entry into Virginia. Animals allowed entry under a permit will be quarantined on the premises of the consignee until retested at the consignee's expense and found negative to brucellosis no

less than 45 days and no more than 120 days after entry as indicated by the permit. This requirement shall not apply to:

1. Cattle consigned directly from a certified brucellosis-free herd provided the certification number and date of the last herd test are listed on the official health certificate; and

2. Cattle consigned directly to a slaughter establishment.

E. Cattle may be imported for immediate slaughter into Virginia without a certificate of veterinary inspection provided they are consigned directly to a slaughter establishment. Official identification for all cattle under this subsection must be listed on the waybill.

F. Cattle from a farm of origin in a state adjoining Virginia and from a region therein considered free of tuberculosis and brucellosis for cattle by the USDA may enter Virginia for the purpose of sale at an approved livestock market without a certificate of veterinary inspection and without tuberculosis testing if otherwise required provided:

1. The cattle bear required individual identification; and

2. The approved livestock market maintains for at least two years and makes available to the State Veterinarian a record of the consignor of the cattle, the identification numbers of the cattle he consigns, and the buyer of the cattle.

2VAC5-141-80. Companion animal entry requirements.

A. Companion animals must be accompanied by a certificate of veterinary inspection issued within 10 days prior to entry into Virginia.

B. No dog or cat less than eight weeks of age may be imported into Virginia unless accompanied by its dam.

C. Any dog or cat greater than four months of age entering Virginia shall be currently vaccinated for rabies.

D. Exemptions.

1. This regulation shall not apply to companion animals that are passing directly through Virginia to another state in interstate commerce.

2. This regulation shall not apply to companion animals that are kept properly under control by their owner or custodian when passing through Virginia to another state.

3. This regulation shall not apply to companion animals brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into the Commonwealth with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.

4. This regulation shall not apply to companion animals brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.

E. This regulation shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

2 VAC5-141-90. Goat and sheep entry requirements.

A. All goats and sheep entering Virginia must be officially identified and the official identification number must be noted on the certificate of veterinary inspection. If multiple goats or sheep of similar breed, age, and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized.

B. Scrapie control.

1. No sheep or goat may be imported into Virginia that does not originate from a scrapie consistent state unless originating from a flock enrolled in the complete monitored or export monitored category of the USDA Scrapie Flock Certification Program.

2. No goat or sheep infected with scrapie, or the offspring of a goat or sheep infected with scrapie, may enter Virginia.

C. All goats and sheep 12 months of age or older imported into Virginia for dairying purposes shall be negative to a tuberculosis test within 60 days prior to entry. All other goats and sheep originating from a region considered free of tuberculosis for cattle by the USDA may enter Virginia without tuberculosis testing.

D. All goats and sheep originating from a region not considered free of tuberculosis for cattle by the USDA shall be negative to a tuberculosis test within 60 days prior to entry unless consigned directly to a livestock slaughter establishment. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

E. All sexually intact goats and sheep originating from a region not considered free of brucellosis for cattle by the USDA shall be negative to a brucellosis test within 30 days prior to entry unless consigned directly to a livestock slaughter establishment. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

F. Goats and sheep may be imported for immediate slaughter into Virginia without a certificate of veterinary inspection provided they are consigned directly to a livestock slaughter establishment or to a USDA-approved market and from there directly to a livestock slaughter establishment.

G. Goats and sheep from a farm of origin in a state adjoining Virginia and from a region therein considered free of tuberculosis and brucellosis for cattle by the USDA may enter Virginia for the purpose of sale at an approved livestock

market without a certificate of veterinary inspection and without tuberculosis testing if otherwise required provided:

1. The goats and sheep bear required individual identification; and

2. The approved livestock market maintains for at least two years and makes available to the State Veterinarian a record of the consignor of the goats and sheep, the identification numbers of the goats and sheep he consigns, and the buyer of the goats and sheep.

2VAC5-141-100. Horse entry requirements.

A. All horses entering Virginia must be officially identified, and the official identification must be noted on the official health certificate.

B. Equine infectious anemia testing.

1. All horses imported into Virginia shall have been officially tested and found negative for equine infectious anemia within the past 12 months and be accompanied by an official certificate stating this information.

2. Horses that originate from infected premises in other states are not eligible for entry into Virginia except by permit at the State Veterinarian's discretion.

3. Foals six months of age or under accompanying a tested negative dam are exempt from testing.

C. Contagious equine metritis control.

1. No horse over two years of age that either originated in or has passed through premises or a country where contagious equine metritis is known to exist may enter the Commonwealth of Virginia except by permit.

2. Horses that are issued a permit immediately will be placed under quarantine and assigned a testing protocol at the consignee's expense until the State Veterinarian is satisfied that they pose no danger to the Virginia equine population.

D. Horses may enter Virginia with an official equine interstate event permit issued by another state in lieu of certificate of veterinary inspection provided the permit is not expired.

2VAC5-141-110. Other ruminant entry requirements.

A. All other ruminants entering Virginia must bear an individual identification number, and such identification number must be noted on the certificate of veterinary inspection. Identification can be a tattoo, microchip, ear tag issued by a state or federal entity, or other form of identification approved by the State Veterinarian.

B. All other ruminants originating from a region not considered free of tuberculosis for cattle by the USDA shall be negative to a tuberculosis test within 60 days prior to entry. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

C. All sexually intact other ruminants originating from a region not considered free of brucellosis for cattle by the USDA shall be negative to a brucellosis test within 30 days prior to entry. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

D. This regulation shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

2VAC5-141-120. Swine entry requirements.

A. All swine entering Virginia must bear an identification number, and the identification number must be noted on the certificate of veterinary inspection.

B. Commercial swine entry requirements.

1. Commercial swine originating from a herd or region that is considered free from brucellosis and pseudorabies by a federal program or a state program approved by the State Veterinarian may enter Virginia without further testing requirements provided a statement indicating the region is considered free from brucellosis by a federal or state program or verification of herd participation in the federal or state program is indicated on the certificate of veterinary inspection.

2. Sexually intact commercial swine over four months of age not originating from a herd or region considered free of brucellosis by a federal program or a state program approved by the State Veterinarian must be negative to a brucellosis test within 30 days prior to entry into Virginia.

3. Commercial swine not originating from herd or region that is considered free from pseudorabies by a federal program or a state program approved by the State Veterinarian shall be individually tested and negative to a pseudorabies test within 30 days prior to entry into Virginia. Sexually intact swine shall be quarantined at the premises of destination until retested between 30 and 60 days after importation at the consignee's expense.

4. No commercial swine vaccinated for pseudorabies shall be imported into Virginia unless under permit for direct slaughter.

C. Noncommercial swine entry requirements.

1. Noncommercial swine originating from herds considered free from brucellosis and pseudorabies by a federal program or a state program approved by the State Veterinarian may enter Virginia without further testing requirements provided verification of herd participation in the federal or state program is indicated on the certificate

of veterinary inspection and the commercial swine have not had contact with feral swine.

2. Sexually intact noncommercial swine over four months of age not from a herd considered free from brucellosis by a federal program or a state program approved by the State Veterinarian must be negative to a brucellosis test within 30 days prior to entry into Virginia.

3. Noncommercial swine not from a herd considered free from pseudorabies by a federal program or a state program approved by the State Veterinarian shall be negative to a pseudorabies test within 30 days prior to entry into Virginia. Sexually intact swine shall be quarantined at the premises of destination until retested between 30 and 60 days after importation at the consignee's expense.

4. No noncommercial swine vaccinated for pseudorabies shall be imported into Virginia unless under permit at the discretion of the State Veterinarian and subject to any restrictions he deems necessary.

D. Slaughter swine entry requirements.

1. No slaughter swine known to be infected with or exposed to pseudorabies and no swine vaccinated for pseudorabies may enter Virginia unless:

a. It is shipped directly to a slaughter establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services under permit;

b. It is shipped in a sealed vehicle or individually identified on the permit; and

c. The conveyance transporting the swine into Virginia is cleaned and disinfected after the swine is off-loaded but prior to the conveyance leaving the slaughter establishment.

2. Any slaughter swine not known to be infected with or exposed to pseudorabies may enter Virginia without a certificate of veterinary inspection, but only if it is accompanied by a waybill, bill of lading, bill of sale, or other document that identifies the swine to the farm of origin and only if it is sent directly to:

a. A slaughter establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services; or

b. A USDA-approved market and from there directly to a recognized slaughter establishment.

E. Commercial swine intended for feeding purposes and not intended for breeding purposes from a farm of origin in a state adjoining Virginia and from a region therein considered free of pseudorabies by a federal or state program approved by the State Veterinarian may enter Virginia without a certificate of veterinary inspection.

2VAC5-141-130. Primate entry requirements.

A. All primates imported into Virginia require a certificate of veterinary inspection issued within 10 days prior to entry.

B. All primates imported into Virginia must be microchipped, and such microchip number must be noted on the certificate of veterinary inspection.

C. The official health certificate shall include a statement attesting to the fact that the veterinarian has carefully examined the oral mucosa of the primate and has found no evidence of disease lesions or inflammatory processes.

D. Tuberculosis testing requirements.

1. Primates imported into Virginia shall have a negative tuberculosis test performed by an accredited veterinarian within 30 days prior to entry. The official health certificate must indicate the kind and amount of tuberculin used, the date and hour of injection, and the date and hour of reading.

2. Primates that have been associated with a colony where there have been other primates showing response to the tuberculin test shall not be eligible for entry into Virginia unless and until all primates in the colony shall have passed two consecutive tuberculosis tests not less than 30 days apart.

E. Exceptions.

1. This regulation shall not apply to primates that are passing directly through Virginia to another state in interstate commerce.

2. This regulation shall not apply to primates that are kept properly under control by their owner or custodian when passing through Virginia to another state.

3. This regulation shall not apply to primates brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia, except if brought into the Commonwealth with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.

4. This regulation shall not apply to primates brought into Virginia for less than 10 days for the purpose of legal exhibition with no change of ownership.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (2VAC5-141)

Poultry Permit Packet (eff. 01/11).

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-141)

Avian Influenza (H5 and H7) Proclamation, eff. December 4, 2009, Department of Agriculture and Consumer Services, State Veterinarian's Office, P.O. Box 1163, Richmond, VA 23218.

VA.R. Doc. No. R09-1891; Filed January 4, 2011, 10:14 a.m.

Proposed Regulation

Title of Regulation: **2VAC5-405. Regulations for the Application of Fertilizer to Nonagricultural Lands (adding 2VAC5-405-10 through 2VAC5-405-110).**

Statutory Authority: § 3.2-3602.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 1, 2011.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Basis: Section 3.2-3602.1 of the Code of Virginia authorizes and requires the Board of Agriculture and Consumer Services to adopt regulations to certify the competency of contractor-applicators and licensees who apply fertilizer to nonagricultural lands.

Purpose: This regulation is intended to address the growing concern over the environmental impact of off-target applications of fertilizer on impervious surfaces that result primarily from lawn care activities. The Board of Agriculture and Consumer Services is required to promulgate this regulation, which the General Assembly has deemed necessary in order to minimize the potential environmental impact that may result from improper use and over application of fertilizer on nonagricultural lands. Such impact is of particular concern with respect to water quality. This regulation seeks to protect the health and safety of citizens and improve the water quality in streams and rivers of the Commonwealth, as well as the Chesapeake Bay, through the establishment of training, certification, and recordkeeping requirements that will ultimately impact the flow of excess nutrients into those bodies of water. At present, there are no such training, certification, and recordkeeping requirements for contractor-applicators or licensees.

Substance: The proposed regulation sets forth the application process to become a certified fertilizer applicator, the general knowledge requirements for certified fertilizer applicators, the core areas on which applicants for certification will be tested, and the certification renewal process. The proposed regulation also sets forth the qualifications for trained applicators and the recordkeeping requirements for the application of fertilizer. The proposed regulation also prescribes the penalties that may be assessed for violations of the regulation.

Issues: The primary advantage of this regulation to the public, the department, and the Commonwealth is that it will serve to address the growing concern over the environmental impact of off-target applications of fertilizer on impervious surfaces that result primarily from lawn care activities. The expected reduction in excess nutrient run-off will have a beneficial impact on the quality of the water in Virginias streams, lakes, and rivers and, ultimately, on the environmental health of the Chesapeake Bay. This regulation will not pose a disadvantage to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 686 of the 2008 Acts of the Assembly, the Board of Agricultural and Consumer Services (Board) proposes to promulgate new regulations for the certification of fertilizer applicators. Specifically, these regulations will establish:

• The application process for becoming a certified fertilizer applicator,

• Exemptions from the requirements of these regulations for certain categories of individuals,

• Core areas of testing for certification applicants,

• The certification renewal process,

• Supervision requirements for noncertified individuals who apply fertilizer to nonagricultural lands,

• Recordkeeping requirements for fertilizer applicators and

• The $250 civil penalty that will be assessed for to individuals who offer their services as certified fertilizer applicators without first obtaining Board certification or who supervise the application of fertilizer to nonagricultural land when they have not been certified by the Board.

Result of Analysis. There is insufficient information to ascertain whether the benefits of this proposed certification program will outweigh its costs.

Estimated Economic Impact. In 2008, the General Assembly passed a bill that requires the Board to set training requirements and proper nutrient management practices for individuals who apply fertilizer to nonagricultural land. The Board now proposes to promulgate new regulations to fulfill these legislative requirements.

The proposed regulations do not contain specifics for the training that will be required for fertilizer applicators. Instead,

these regulations give the Commissioner of Agricultural and Consumer Services the authority to approve courses of training and allow individuals who have complete a non-approved training program that is comparable to those that are approved to petition for program approval. The Virginia Department of Agricultural and Consumer Services (VDACS) reports that no training courses have been approved yet and that the Board is still contemplating the appropriate scope of the training that will be required. These regulations will specifically require two hours of continuing education every two years which VDACS estimates will cost approximately $100 per certificate holder and that the training for individual fertilizer applicators will cost approximately $50. Although VDACS does not know yet how many hours of initial training will be required for certified fertilizer applicators, they estimate that this training will cost approximately $500 per person. Certification is valid for four years from the date it is issued and then must be renewed by making application to VDACS and providing proof of completed continuing education.

Pursuant to Chapter 686, affected individuals will have 12 months after the effective date of these regulations to comply with the mandates of both the regulations and the relevant legislative code. After that point, and with three exceptions, any business that applies fertilizer to nonagricultural land will have to employ at least one certified fertilizer applicator or contract with a certified fertilizer applicator for his services. Other employees who have gone through individual applicator training will be able to apply fertilizer independent of the supervision of a certified fertilizer applicator. Employees who have not undergone the individual applicator training will only be able to work under the direct supervision of a certified fertilizer applicator. These regulations allow three exemptions from these requirements; individuals will not have to become certified if 1) they are conducting research in laboratories or field test plots involving fertilizer, 2) they are employees and only apply fertilizer to land belonging to their employer or 3) they already have a turf and landscape certification from the Department of Conservation and Recreation. After the point in time that landscaping businesses and any other business that applies fertilizer would be required to comply with these regulations, VDACS will assess a $250 fine to anyone who offers their services as certified fertilizer applicators without first obtaining Board certification or who supervises the application of fertilizer to nonagricultural land when they have not been certified by the Board. VDACS will also assess the $250 fine to any business that does not comply with the recordkeeping requirements of these regulations.

These regulations, and the legislation that mandates them, will likely increase costs for businesses that offer services that include spreading fertilizer on nonagricultural land. These costs will likely include higher wage costs since they will be required by law to have at pay for the services of a certified fertilizer applicator. This will allow them less flexibility to hire the mix of employees that they believe will allow them to provide services in the most efficient way possible. They will likely also incur recordkeeping costs because these proposed regulations will require businesses to keep very specific records of any jobs that include the application of fertilizer for at least three years. These records will have to include:

• The name, mailing address and phone number of the customer as well as the address where the fertilizer was applied,

• Name of the person applying the fertilizer of supervising the application,

• Day, month and year of the application,

• Weather conditions at the start of the application,

• Acreage, area, square footage or number of plants treated,

• Analysis of fertilizer applied,

• Amount of fertilizer used by weight of volume and

• Type of application equipment used.

The aim of these proposed regulations is to reduce water pollution that can be traced to the misapplication and over-application of fertilizer to nonagricultural lands. Whether the benefits of these regulations outweigh the costs will largely depend on whether the forgone costs of prevented pollution are greater in magnitude than the costs that will be imposed on the affected businesses and individuals.

Businesses and Entities Affected. VDACS reports that there are approximately 1,000 individuals who have VDACS issued permits that allow them to distribute and/or apply fertilizer. Older information from the Virginia Employment Commission (VEC) indicates that there were approximately 2,500 landscaping businesses in the Commonwealth as of the fourth quarter of 2007. This information from the VEC, although older, indicates that there is likely a large population of affected entities who do not currently hold permits from VDACS and may not know that they will be subject to these proposed regulations. Most of the affected businesses likely meet the requirements to be classified as small businesses.

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

Projected Impact on Employment. The costs that businesses will likely incur to comply with this legislatively mandated certification program may cause some of these businesses to close, particularly if they are only marginally profitable. The landscaping businesses that remain may choose to employ fewer people because their costs will be higher.

Effects on the Use and Value of Private Property. This regulatory action will likely increase the costs for businesses that apply fertilizer to nonagricultural lands. Other factors held constant, these increasing costs will likely raise the price

of landscaping services and decrease the quantity demanded for these services. These likely changes in business costs and quantity demanded mean that the profits, and therefore the value, of affected landscaping businesses may decrease by a small amount after these certification requirements go into effect.

Small Businesses: Costs and Other Effects. Affected small businesses in the Commonwealth will incur costs for training and testing as well as for complying with recordkeeping requirements.

Small Businesses: Alternative Method that Minimizes Adverse Impact. VDACS can minimize the adverse impact of this certification program by only requiring training that is absolutely necessary to meet the legislatures goal of reducing pollution caused by nonagricultural application of fertilizer.

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 686 of the 2008 Acts of the Assembly, the proposed regulations establish requirements for certification of fertilizer applicators. Specifically, the proposed regulations establish: (i) the application process for becoming a certified fertilizer applicator; (ii) exemptions from the requirements of these regulations for certain categories of individuals; (iii) core areas of testing for certification applicants; (iv) the certification renewal process; (v) supervision requirements for noncertified individuals who apply fertilizer to nonagricultural lands; (vi) recordkeeping requirements for fertilizer applicators; and (vii) the $250 civil penalty that will be assessed to individuals who offer their services as certified fertilizer applicators without first obtaining board certification or who supervise the application of fertilizer to nonagricultural land when they have not been certified by the board.

CHAPTER 405
REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS

2VAC5-405-10. Definitions.

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

"Accident" means an unexpected, undesirable event involving the use of fertilizer or the presence of a fertilizer that adversely affects the environment.

"Agricultural activity" means any activity used in the production of food and fiber for commercial purposes, including farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural products" means any livestock, aquacultural, poultry, horticultural, floricultural, viticultural, silvicultural, or other farm crops produced for commercial purposes.

"Board" means the Board of Agriculture and Consumer Services.

"Board-approved training" means training offered by a state agency or private entity approved by the board that includes, at a minimum, study and review of course material pertaining to the application of fertilizer on nonagricultural land. Such training shall include testing and certification of the individual's successful completion of the training.

"Certificate" means the document issued to a fertilizer applicator upon satisfactory completion of board-approved training.

"Certification" means the recognition granted by the board to a fertilizer applicator upon satisfactory completion of board-approved training.

"Certified fertilizer applicator" means any individual who has successfully completed board-approved training.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.

"Contractor-applicator" means any person required to hold a permit to distribute or apply any fertilizer pursuant to § 3.2-3608 of the Code of Virginia.

"Department" means the Department of Agriculture and Consumer Services.

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter the chemical or physical characteristics of a fertilizer, or to offer for sale, sell, barter, warehouse, or otherwise supply fertilizer in the Commonwealth.

"Fertilizer" means any substance containing one or more recognized plant nutrients that is used for its plant nutrient content and that is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and other products exempted by regulation.

"Incident" means a definite and separate occurrence or event involving the use of fertilizer or the presence of a fertilizer that adversely affects the environment.

"Individual applicator training" means training provided to individuals by a certified fertilizer applicator or training offered to individuals by any state agency or private entity approved by the board that includes, at a minimum, a study and review of fertilizer equipment calibration; handling of accidents involving fertilizer; proper methods of storing, mixing, loading, transporting, handling, applying, and disposing of fertilizer; and safety and health concerns related to fertilizer, including proper use of personal protective equipment.

"Label" means the display of all written, printed, or graphic matter upon the immediate container or a statement accompanying a fertilizer, including an invoice.

"Licensee" means the person who receives a license to distribute any fertilizer under the provisions of § 3.2-3606 of the Code of Virginia.

"Nonagricultural land" means land upon which no agricultural activities are conducted and from which no agricultural products are derived.

"Noncertified fertilizer applicator" means either a trained applicator or an untrained applicator, neither of whom has received certification as a certified fertilizer applicator.

"Trained applicator" means an individual who is not a certified fertilizer applicator but who has successfully completed individual applicator training.

"Under the direct on-site supervision of" means the act or process whereby the application of a fertilizer is made by an individual acting under the instructions and control of a certified fertilizer applicator who is responsible for the actions of that person and who is physically present on the land upon which the fertilizer is being applied.

"Untrained applicator" means an individual who is not seeking or has not successfully completed individual applicator training.

"Use of fertilizer" includes application or mixing and handling, transfer, or any act with respect to a particular fertilizer that is consistent with the label directions for that particular fertilizer.

2VAC5-405-20. General requirements.

A. The board authorizes the commissioner to approve all courses of training required in this regulation.

B. All licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural land shall:

1. Employ or retain the services of a certified fertilizer applicator.

2. Apply fertilizer at rates, times, and methods that are consistent with standards and criteria for nutrient management promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

3. Ensure that fertilizer applications are conducted as prescribed by board-approved training or individual applicator training.

4. Comply with all applicable recordkeeping requirements in this regulation.

C. Certified fertilizer applicators may apply fertilizer to nonagricultural land for commercial purposes.

D. The following individuals may apply fertilizer to nonagricultural land for commercial purposes provided they are under the control and instruction of a certified fertilizer applicator who is responsible for the actions of those individuals:

1. Trained applicators. The certified fertilizer applicator does not need to be physically present on the land upon which trained applicators are applying fertilizer. Trained applicators are not authorized to supervise the application of fertilizer by untrained applicators.

2. Untrained applicators provided that they are under the direct on-site supervision of a certified fertilizer applicator.

3. Individuals engaged in training required for certification as a certified fertilizer applicator provided that the individuals are under the direct on-site supervision of a certified fertilizer applicator.

2VAC5-405-30. Qualifications for certification as a certified fertilizer applicator.

All persons desiring certification as certified fertilizer applicators shall successfully complete board-approved training.

2VAC5-405-40. Application process.

A. The application to become a certified fertilizer applicator shall be in writing to the commissioner on a form as specified and approved by the commissioner and shall contain:

1. Last name, first name, and middle initial of the applicant;

2. Mailing address; and

3. Documentation of successful completion of board-approved training.

B. Any individual desiring certification as a certified fertilizer applicator who has completed a comparable course of training not yet approved by the board may petition the commissioner to approve the course. The petition shall include verifiable documentation of successful course completion.

C. Any individual who is denied certification as a certified fertilizer applicator may appeal the decision to the board through an appeal process that is compliant with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The procedure for appealing a decision shall be specified by the commissioner and shall be made available to the person denied certification.

D. Upon certification, a card will be issued to the certified fertilizer applicator, which will remain valid for four years from the date of issuance. A certified fertilizer applicator may request a duplicate of the certification card if the card has been lost, stolen, mutilated, or destroyed. The department shall issue a duplicate card to the certified fertilizer applicator upon payment of the costs of duplication.

2VAC5-405-50. Exemptions from certification.

The following individuals are exempt from certification:

1. Individuals conducting research in laboratories or field test plots involving fertilizers.

2. Individuals who use fertilizer or supervise the use of fertilizer as part of their duties only on nonagricultural land owned or leased by their employers.

3. Individuals holding turf and landscape certification from the Department of Conservation and Recreation as nutrient management planners.

2VAC5-405-60. General knowledge requirements for certified fertilizer applicators; continuing education.

A. All applicants for certification as a certified fertilizer applicator shall demonstrate practical knowledge of the principles and practices of the environmentally safe use of fertilizer.

B. Applicants shall be tested on their knowledge and qualifications concerning the use of fertilizer and the handling of fertilizer in the board-approved training. Testing will be based on problems and situations in the following core areas:

1. Proper nutrient management practices such as allowable rate of application for nutrients for various types of vegetation and determining quantity of product to apply based on nutrient analysis;

2. Timing of application during appropriate seasons for various types of vegetation and restrictions on intervals for reapplication;

3. Soil analysis techniques and interpretation of soil analysis results such as proper frequency and depth of sampling and determining appropriate rates of application based on soil analyses;

4. Equipment calibration techniques and procedures for liquid and dry fertilizer applicators and determination of size of application areas;

5. Understanding and interpreting fertilizer labels;

6. Proper handling and appropriate notification procedures of accidents and incidents;

7. Proper methods of storing, mixing, loading, transporting, handling, applying, and disposing of fertilizer;

8. Managing applications near impervious surfaces such as streets, driveways, sidewalks, or paved ditches, as well as near water bodies to avoid off-target applications;

9. Safety and health, including proper use of personal protective equipment; and

10. Recordkeeping requirements of this regulation.

C. Continuing education requirement. Certified fertilizer applicators shall complete a minimum of two hours of course work every two years on at least one of the following:

1. Proper nutrient management practices;

2. Timing of fertilizer application;

3. Soil analysis techniques and interpretation;

4. Equipment calibration;

5. Understanding and interpreting fertilizer labels; or

6. Management of fertilizer applications near impervious surfaces.

The courses may be offered by any state agency or private entity recognized by the board.

2VAC5-405-70. Renewal of certification.

A. Every certification shall be valid for a period of four years. Upon expiration of certification, the certified fertilizer applicator's certificate shall become invalid and the holder

shall not be allowed to offer his services as a certified fertilizer applicator.

B. Any certified fertilizer applicator who desires to renew his certification shall submit an application for renewal. The application shall be in writing to the commissioner on a form as specified and approved by the commissioner and shall contain:

1. Last name, first name, and middle initial of the applicant;

2. Mailing address; and

3. Documentation of satisfactory compliance with the continuing education requirements in 2VAC5-405-60.

C. The application for certification renewal shall be submitted within the 60 days immediately prior to or the 60 days immediately following the expiration of the certification. Any certified fertilizer applicator who desires to renew his certification but fails to do so within this timeframe shall be subject to the application process requirements of 2VAC5-405-40. The 60 days following expiration of the certification is a grace period to allow certified fertilizer applicators to renew their certification. A certified fertilizer applicator whose certification has expired shall not offer his services as a certified fertilizer applicator during this 60-day grace period.

2VAC5-405-80. Qualifications for trained applicators.

All noncertified applicators desiring to apply fertilizer for commercial purposes on nonagricultural land while not under the direct on-site supervision of a certified fertilizer applicator shall successfully complete individual applicator training.

2VAC5-405-90. Recordkeeping requirements for trained applicators.

A. Licensees and contractor-applicators subject to this regulation shall maintain training records for each trained applicator employed by the licensee or contract-applicator.

B. The training record shall include (i) the name of the trained applicator; (ii) the name of the state agency or private entity approved by the board or the name and affiliation of the certified fertilizer applicator providing the training; (iii) the type of training received; and (iv) the date when the trained applicator successfully completed individual applicator training.

C. The training records shall be maintained for as long as the trained applicator continues to apply fertilizer on nonagricultural land on behalf of the licensee or contractor-applicator and for three years following separation and shall be available for inspection by the commissioner.

2VAC5-405-100. Recordkeeping requirements for the application of fertilizer.

Licensees and contractor-applicators shall maintain records of each application of fertilizer to nonagricultural land for at least three years following the application. These records shall be available for inspection by the commissioner. Each record shall contain the:

1. Name, mailing address, and telephone number of customer, as well as address of application site if different from customer's mailing address;

2. Name of the person making or supervising the application;

3. Day, month, and year of application;

4. Weather conditions at the start of the application;

5. Acreage, area, square footage, or plants treated;

6. Analysis of fertilizer applied;

7. Amount of fertilizer used, by weight or volume; and

8. Type of application equipment used.

2VAC5-405-110. Violations and penalties for noncompliance.

A. Any individual who offers his services as a certified fertilizer applicator or who supervises the application of any fertilizer on nonagricultural land without obtaining prior registration certification from the commissioner shall be assessed a penalty of $250.

B. Violations of the provisions of these regulations shall be handled in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Any penalties assessed for violations of this regulation shall be handled in accordance with a board-approved administrative process.

D. In addition to any monetary penalties provided in this section, certified fertilizer applicators who violate any provision of this regulation may also be subject to the provisions of § 3.2-3621 of the Code of Virginia regarding the cancellation of certification.

VA.R. Doc. No. R09-1656; Filed January 4, 2011, 10:15 a.m.

TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

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

Statutory Authority: §§ 12.1-13 and 13.1-1062 of the Code of Virginia.

Public Hearing Information: Public hearing scheduled upon request.

Public Comment Deadline: February 16, 2011.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 692-0681, or email joel.peck@scc.virginia.gov.

Summary:

The proposed amendments to 5VAC5-40-20 place in regulation the schedule outlined in subdivision B 2 of § 13.1-1062 of the Code of Virginia, which permits the State Corporation Commission to determine the schedule for assessing limited liability companies in Virginia. Currently, limited liability companies are assessed annually in July, and assessments must be paid by the end of September. The State Corporation Commission's Order to Take Notice and proposed regulations set forth a schedule for assessing each limited liability company annually during the month the limited liability company was originally organized.

AT RICHMOND, JANUARY 10, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2010-00009

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

ORDER TO TAKE NOTICE

Section 13.1-1062 of the Code of Virginia requires each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth to pay an annual registration fee of $50, assessed in accordance with a schedule set by the State Corporation Commission ("Commission"). The schedule shall be in accordance with subsection B of § 13.1-1062. That subsection requires the Commission to set, by order, the schedule for assessment of limited liability companies organized or registered to transact business in the Commonwealth.

The Office of the Clerk of the Commission ("Clerk") has reported to the Commission that an assessment schedule for limited liability companies based on the date of organization or registration to transact business in Virginia is more efficient for the conduct of the Commission's operations and, specifically, will facilitate the use of electronic commerce for increased customer service. The Clerk has recommended that, if the new schedule based on anniversary dates is adopted, registration fee assessments should begin in May 2011 for limited liability companies that were organized or registered to transact business in the month of July, and continue on a monthly basis thereafter. Payment of assessments under the new schedule for limited liability companies organized or registered to transact business in the months of January through June will not be due until 2012.

NOW THE COMMISSION, based on information supplied by the Clerk, proposes to adopt a regulation revising Rule 5 VAC 5-40-20, with a proposed effective date of April 30, 2011.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revised regulation, entitled "Assessment of limited liability companies," is appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before February 16, 2011. 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. CLK-2010-00009. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

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

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

AN ATTESTED COPY hereof shall be sent to the Clerk of the Commission, who shall forthwith mail a copy of this

Order, including a copy of the proposed regulation, to interested parties as he may designate.

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

Each year, the commission shall ascertain from its records each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth, as of ~~July 1 of each year~~ the first day of the second month preceding the month in which it was organized or registered to transact business in the Commonwealth, and shall assess against each such limited liability company the annual registration fee imposed in subsection A of § 13.1-1062 of the Code of Virginia, and, except as provided in subsection C of § 13.1-1062, that each such limited liability company shall pay the assessment due into the state treasury on or before ~~September 30 in each year after the calendar year in which it was formed~~ the last day of the 12th month next succeeding the month in which it was organized or registered to transact business in the Commonwealth, and by such date in each year thereafter; provided that the initial annual registration fee to be paid by a domestic limited liability company created by conversion shall be due in the year after the calendar year in which it converted.

Each limited liability company will be sent a notice of assessment approximately two months prior to its anniversary month of formation or registration. The assessment payment is due by the last day of the anniversary month of formation or registration. For example, a limited liability company with an anniversary month of formation or registration of July will be assessed an annual registration fee on the preceding May 1, and payment of the fee will be due on or before July 31.

VA.R. Doc. No. R11-2702; Filed January 10, 2011, 3:23 p.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Emergency Regulation

Title of Regulation: **6VAC20-270. Regulations Relating to Campus Security Officers (adding 6VAC20-270-10 through 6VAC20-270-130).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Effective Dates: January 31, 2011, through January 30, 2012.

Agency Contact: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6377, or email lisa.mcgee@dcjs.virginia.gov.

Preamble:

The board and the department are required by § 9.1-102 (49) of the Code of Virginia to establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers. At the present time there are no regulations in place regarding campus security officers. As a result the department is unable to enforce training standards that are necessary for certification. The issue of safety and security on college campuses was addressed in the 2006 Crime Commission Study on Campus Safety.

College populations represent a large concentration of students between the ages of 18-25 years with limited supervision and life experience. In terms of homeland security, campuses are identified as "soft targets" and are frequently targeted by domestic and foreign terrorists. Campuses also house volatile materials and research facilities that are also targeted by radical elements in society. Campuses also host large stadium events and concerts, which are potential targets for terrorism and riots. Most campuses are also open access facilities to the public and relatively difficult to secure and lockdown.

Campus Security Officers are primary first responders to incidents of crime and violence on campus. Currently, little or no standardized training for Campus Security Officers exists. Additionally, there is not any established standard employment criteria or background check requirements. The regulations will address these issues.

CHAPTER 270
REGULATIONS RELATING TO CAMPUS SECURITY OFFICERS

6VAC20-270-10. Definitions.

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

"Approved instructor" means a person who has been approved by the department to instruct the Campus Security Officer Training Course.

"Approved training" means training approved by the department to meet training standards.

"Approved training session" means a training session that is approved by the department for the specific purpose of training campus security officers.

"Board" means the Criminal Justice Services Board.

"Campus Security Officer" means any person employed by or contracted to a college or university for the sole purpose of maintaining peace and order and who is primarily responsible for ensuring the safety, security, and welfare of students, faculty, staff, and visitors. Certified law enforcement officers as defined in § 9.1-101 are not included in this definition.

"Campus Security Contact Person" is the person designated by the college, university or private security services business to serve as the point of contact between the department and the college, university or private security services business on matters concerning the certification of campus security officers.

"Certification" means that a qualified person has met the minimum compulsory requirements mandated for a campus security officer.

"College or university" means an institution of higher education created to educate and grant certificates or degrees in a variety of subjects.

"Contracted" means a person employed by a licensed private security services business under contract to perform the functions of a campus security officer.

"Date of hire" means the date an employee is hired to provide campus security officer services for a college, university or private security services business, and whom the department must regulate.

"Department" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Employee" means a person providing campus security services hired directly by the employing college or university, or a person hired by a licensed private security services business supplying campus security services to the college or university on a contract basis.

"Entry-level training requirement" means the compulsory modules, determined by the department, to comprise the necessary training required as a basis for certification.

"Faculty" means any of the divisions or comprehensive branches of learning at a college or university, or any individual within such a division.

"In-service training requirement" means the compulsory in-service training standards adopted by the board for campus security officers.

"Private security services business" or "PSS" means any person engaged in the business of providing, or who undertakes to provide security officers to another person under contract, express or implied as defined in § 9.1-138 of the Code of Virginia. For the purpose of this chapter, private security services business is utilized for businesses that contract campus security services to a college or university.

"Special events" means those events at which large numbers of people gather on campus or at college or university facilities creating a need for additional or specialized security actions.

"This chapter" means the Regulations Relating to Campus Security Officers.

"Training certification" means verification of the successful completion of any compulsory minimum training requirements established by this chapter.

"Training requirement" means any entry-level or in-service training or retraining standard established by this chapter.

6VAC20-270-20. Exemption from certification.

A. Contracted personnel who hold a valid private security services registration as an unarmed or armed security officer as defined under § 9.1-138 are exempt from these training standards provided that their duties are limited to security at special events.

B. Part-time officers employed or contracted to any one college or university, or any combination of colleges or universities in Virginia, are exempt from the provisions of this chapter provided that the aggregate hours worked by the officer during the calendar year do not exceed 120 hours.

6VAC20-270-30. Initial certification and training requirements.

A. In addition to meeting all the hiring requirements of the employing college, university or private security services business supplying campus security services to the college or university, all campus security officers are required to meet the following minimum certification and training requirements. Such person shall:

1. Be a United States citizen or legal resident eligible under United States law for employment in the United States.

2. Undergo a background investigation to include a criminal history inquiry. Results of such inquiries shall be examined by the employer.

3. Possess a high-school diploma, General Education Diploma or other accepted secondary school credential.

4. Be a minimum of 18 years of age.

5. Possess a valid driver's license issued by his or her state of residence if required by the duties of office to operate a motor vehicle.

6. Successfully complete or hold valid certification of first aid training. The level and substance of such training shall be at the discretion of the employing college, university or licensed PSS business.

7. Complete the online course Introduction to Incident Command System as provided by the Emergency Management Institute at the Federal Emergency Management Agency (FEMA).

8. Comply with compulsory minimum entry-level training requirements approved by the board.

a. Every campus security officer hired before January 31, 2011, is required to comply with the compulsory minimum training standards within 365 days of the effective date of this regulation. Every campus security officer hired on or after January 31, 2011, is required to comply with the compulsory minimum training standards within 180 days of the date of hire.

b. The compulsory minimum training shall consist of modules of content developed and approved by the department. Such training shall include but not be limited to:

(1) The role and responsibility of campus security officers;

(2) Relevant state and federal laws;

(3) School and personal liability issues;

(4) Security awareness in the campus environment;

(5) Mediation and conflict resolution;

(6) Disaster and emergency response; and

(7) Behavioral dynamics.

c. The compulsory minimum training shall include a test for each module approved and provided by the department with a minimum passing grade of 70% on each module. Any officer not receiving a minimum grade of 70% on each module, shall, at the discretion of the approved instructor, be given remedial training and thereafter the opportunity to be tested again on the questions incorrectly answered on the first attempt. If this option is utilized, the initial test score shall be recorded with an asterisk followed by the signature of the approved instructor who provided the remedial training. The approved instructor's signature shall be accepted as verification that the officer successfully answered enough of the questions missed on the initial test to achieve a passing score of 70%. A second unsuccessful test, subsequent to remedial training, shall result in a grade of "FAIL" after which the officer may, at the discretion of the employing college, university or PSS business be enrolled in a future session for the failed module.

9. Submit to the department a properly completed and signed application for certification from the employing college, university or PSS business, in a format provided by the department.

B. All costs associated with meeting the certification requirements are the responsibility of the employer.

C. The department may grant an extension of the time limit for completion of the compulsory minimum training and certification standards under the following documented conditions:

1. Illness or injury;

2. Military service;

3. Special duty required and performed in the public interest;

4. Administrative leave, full-time educational leave or suspension pending investigation or adjudication of a crime; or

5. Any other reasonable situation documented by the employing college, university or PSS business.

6VAC20-270-40. Certification procedures.

A. The department will notify the applicant for campus security officer certification and the designated campus security contact person for the employing college, university or PSS business, that the campus security officer is certified in accordance with this regulation after the following conditions are met:

1. Notification to the department by the designated campus security contact person, that the applicant for campus security officer certification has successfully met the following compulsory minimum entry-level requirements:

a. The total of modules that comprise the entry-level Campus Security Officer training and as required by this chapter;

b. Complete background investigation as required by this chapter;

c. First-aid training consistent with the standard set by the employing college, university or PSS business; and

d. Completion of the online course Introduction to Incident Command System as provided by the Emergency Management Institute at the Federal Emergency Management Agency (FEMA) and as indicated by the department.

2. Receipt by the department of application for certification, signed by the designated contact person for the employing college, university or PSS business.

B. If a campus security officer seeking certification is denied by the department, the department will notify the designated campus security person for the employing college, university or PSS business, and the applicant in writing, outlining the basis for the denial and the process for appeal of the decision to deny.

C. The department shall maintain a current database of certified campus security officers as well as relevant training records.

D. Certification shall be for a period not to exceed 24 months.

6VAC20-270-50. Suspension of certification.

A. Campus security officers will only be certified while employed by a college, university, or a PSS business while assigned to a college or university.

B. Certification of the campus security officer will be suspended upon the termination of the officer's employment with the college, university, or PSS business. For the purposes of this chapter, a previously certified campus security officer's status shall be changed to suspended, upon the department receiving notice that the officer is no longer employed by a college, university, or PSS business.

C. Upon obtaining employment at another college, university or PSS business, a previously certified campus security officer will not be required to repeat the entry-level campus security officer training, provided the officer's employment starts within the two-year period of the previous certification.

6VAC20-270-60. Training waiver for experienced officers.

A. Subject to the approval of the department, an entry-level training waiver may be obtained for experienced campus security officers with a minimum of five years of experience, who successfully complete the module tests with a minimum score of 70% on each test. The application for a waiver shall be submitted on the form prescribed by the department and must contain the signature of the designated campus security officer contact person.

B. If any module test grade is less than 70%, the experienced officer shall be required to complete the prescribed entry-level training as outlined in this chapter.

6VAC20-270-70. Educational requirement waiver for experienced officers.

Subject to the approval of the department, an educational requirement waiver may be obtained for campus security officers who have been continuously employed in that capacity at a college, university, or PSS business under contract at a college or university for a minimum of five years prior to January 31, 2011.

6VAC20-270-80. Standards of conduct.

A campus security officer shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter;

2. Maintain at all times with the employing college, university or PSS business, a valid mailing address. Written notification of any address change shall be submitted to the campus security contact person for the employing college, university or PSS business, no later than 10 days after the effective date of the change;

3. Inform the designated campus security contact person for the employing college, university or PSS business in writing, 72 hours or the beginning of the next work day, whichever comes first, after an arrest for any felony or misdemeanor;

4. Inform the designated campus security contact person for the employing college, university or PSS business in writing, within 72 hours or the beginning of the next work day, whichever comes first, after having been convicted of any felony or misdemeanor;

5. Inform the designated campus security contact person for the employing college, university or PSS business in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the campus security officer statutes or regulations of that jurisdiction.

6VAC20-270-90. Recertification requirements.

A. Applications for recertification must be received by the department prior to certification expiration. It is the responsibility of the campus security officer employer to ensure recertification applications are filed with the department. A valid certification as a campus security officer is required in order to remain eligible for employment as a campus security officer. If the campus security officer has met the required in-service training requirements, and the required in-service training documents and recertification application are on file with the department prior to expiration, the campus security officer is deemed recertified and may continue to operate in the campus security officer capacity.

B. Applicants for recertification must have completed 16 hours of in-service training during each two-year period after initial certification. The in-service training must be directly related to the duties of the campus security officer, to include a legal update and other relevant topics approved by the department.

C. Individuals whose certification is expired shall comply with the initial certification requirements set forth in this chapter.

D. The department, subject to its discretion, retains the right to grant an extension of the recertification time limit and requirements under the following conditions:

1. Illness or injury;

2. Military service;

3. Administrative leave, full-time educational leave or suspension pending investigation or adjudication of a crime; or

4. Any other reasonable situation documented by the employing college, university or PSS business.

E. Request for extensions shall:

1. Be submitted in writing and signed by the designated campus security contact person for the employing college,

university or PSS business prior to the expiration date of the time limit for completion of the requirement;

2. Indicate the projected date for the completion of the requirement.

6VAC20-270-100. Decertification and appeal procedure.

A. The department may decertify a campus security officer who has:

1. Been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in Virginia;

2. Failed to comply with or maintain compliance with compulsory minimum training requirements;

3. Refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employer where the positive result cannot be explained to the employer's satisfaction;

4. Lied on or failed to provide required information on an employment application for the current position;

5. Been terminated for just cause by the employing college, university or PSS business.

B. Such campus security officer shall not have the right to serve as a campus security officer within this Commonwealth until the department has reinstated the certification.

C. The findings and the decision of the department may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court).

6VAC20-270-110. Instructor approval.

A. The department may approve instructors to deliver campus security officer training and may revoke such approval for cause.

B. Each person applying for instructor approval shall:

1. Submit an instructor application, signed by the designated contact person of the employing college, university, or PSS business, on the form prescribed by the department;

2. Have a high school diploma or equivalent (GED) or have passed the National External Diploma Program;

3. Have a minimum of:

a. Two years management or supervisory experience as a campus security officer or supervisory experience with any federal, state, county or municipal law-enforcement agency in a related field; or

b. Three years general experience as a campus security officer, or with a federal, state or local law-enforcement agency in a related field; and

4. One year experience and demonstrated success as an instructor or teacher in an accredited educational institution or law-enforcement or security agency.

C. Each person applying for instructor approval shall file with the department a properly completed application provided by the department. The department maintains the right to require additional documentation of instructor qualifications.

D. The department will evaluate qualifications based upon the justification provided.

E. Upon completion of the instructor application requirements, the department may approve the instructor for an indefinite period.

F. Each instructor shall conduct himself in a professional manner and the department may revoke instructor approval for cause.

G. The department has the authority to accept a waiver application with supporting documentation demonstrating related training and/or experience that meets or exceeds standards established by the department within the three years immediately preceding the date of the instructor application.

6VAC20-270-120. Instructor standards of conduct.

An instructor shall:

A. Conform to all requirements pursuant to the Code of Virginia and this chapter;

B. Maintain a current mailing address, phone number, and email address with the department. Written notification of any address, phone number or email change shall be received by the department no later than 30 days after the effective date of the change;

C. Inform the department in writing within 72 hours or the beginning of the next work day, whichever comes first, after an arrest for any felony or misdemeanor;

D. Inform the department in writing within 72 hours or the beginning of the next work day, whichever comes first, after having been convicted of any felony or misdemeanor;

E. Inform the department in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the campus security officer statutes or regulations of that jurisdiction;

F. Conduct training sessions pursuant to requirements established in this chapter;

G. Notify the department within 10 calendar days following termination of employment; and

H. Be professional in conduct.

6VAC20-270-130. Instructor administrative requirements.

A. Campus security officer instructors shall ensure that training sessions are conducted in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance, and standards of conduct are the responsibility of the instructor of the training session.

B. Administrative requirements.

1. An approved instructor must submit, in a manner approved by the department, a notification to conduct a training session. All notifications shall be received by the department, no less than 30 calendar days before the beginning of each training session to include the date, time, instructors, and location of the training session. The department may waive the 30 day notification at its discretion.

2. The instructor must submit notification of any changes to the date, time, location, or cancellation of a future training session to the department. This notice must be received by the department at least 24 hours in advance of the scheduled starting time of the session. In the event that a session must be cancelled on the scheduled date, the department must be notified as soon as practical.

3. A test approved by the department shall be administered at the conclusion of each module of the entry-level training session. The student must attain a grade of 70% on each module. All test documents must be returned to the department with an accompanying training roster in a manner approved by the department.

4. The instructor shall submit tests and training roster to the department. These shall be received by the department within seven calendar days, or postmarked if mailed, no later than five business days following the training completion date.

5. Instructors will conduct training sessions utilizing the curriculum developed or approved by the department including, at a minimum, any compulsory minimum training standards established pursuant to this chapter. Instructors must maintain accurate and current information on relevant laws and make necessary changes to the curriculum. It is the instructor's responsibility to assure they have the most recent curriculum supplied or approved by the department.

6. The instructor shall permit the department to inspect and observe any training session.

7. Mandated training conducted not in accordance with the Code of Virginia and this chapter is invalid.

C. Attendance.

1. Campus security officers enrolled in an approved training session are required to be present for the modules required for each training session.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. Such training must be completed by the certification process deadline, and cannot be used to extend that deadline. Individuals not completing the required training within this period may not be certified or recertified and may be required to complete the entire training session.

3. Each individual attending an approved session shall comply with the regulations promulgated by the board and any other rules applicable to the session. If the instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on tests, the instructor may expel the individual from the session. The instructor shall immediately report such action to the designated campus security contact person for the employing college, university, or PSS business, and the department.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (6VAC20-270)

Campus Security Officer Certification Application (1/11).

Campus Security Officer Training Class Request (1/11).

Campus Security Officer Recertification Application (1/11).

Campus Security Officer Permission for Extension (1/11).

Campus Security Officer Instructor Application (1/11).

Campus Security Officer Instructor Approval Waiver Application (1/11).

VA.R. Doc. No. R11-2165; Filed January 7, 2011, 4:16 p.m.

STATE BOARD OF JUVENILE JUSTICE

Final Regulation

Title of Regulation: **6VAC35-30. Regulations for State Reimbursement of Local Juvenile Residential Facility Costs (amending 6VAC35-30-10, 6VAC35-30-20, 6VAC35-30-40, 6VAC35-30-60 through 6VAC35-30-190; adding 6VAC35-30-35, 6VAC35-30-45, 6VAC35-30-65; repealing 6VAC35-30-30, 6VAC35-30-50).**

Statutory Authority: §§ 16.1-309.5, 16.1-309.9, 16.1-322.7, and 66-10 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Janet VanCuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin Street, 4th floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Summary:

The amendments (i) incorporate the requirement for the state to reimburse at a 50% rate as provided by statute; (ii) change the square footage requirements depending on the size of the facility; (iii) amend the board-approved funding formula to come into accord with the funding formula utilized for state facilities; (iv) add a pre-screening requirement to clarify what construction is subject to the regulation; (v) add the board's ability to review for efficiency and an efficiency ratio for construction; and (vi) add factors for the board to consider adjusting reimbursement, as is currently the practice at the Department of Corrections. The changes from the proposed to the final stage are generally technical in nature.

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

CHAPTER 30
[~~REGULATIONS~~ REGULATION] ~~FOR~~ GOVERNING
STATE REIMBURSEMENT OF LOCAL JUVENILE RESIDENTIAL FACILITY COSTS

Part I
General Information

6VAC35-30-10. Introduction.

~~The state Board of Youth and Family Services is charged with the responsibility for approving all requests from localities for financial assistance relative to the development and operation of new programs and services; for purchase of property; and for construction, enlargement, or renovation of detention homes, group homes or other residential care facilities for children; whether publicly or privately constructed.~~

~~The Department of Youth and Family Services exercises oversight responsibility in the establishment and maintenance of programs, services and residential care facilities for children.~~

~~The Office of Capital Outlay Management within the Department of Youth and Family Services is responsible for architectural and engineering review of residential care facilities which are constructed, enlarged or renovated, and reimbursed with state funds.~~

Section 16.1-309.5 of the Code of Virginia requires the Board of Juvenile Justice and the Governor to evaluate all plans for, specifications of, and requests for reimbursement from a locality or localities for the construction, enlargement, purchase, or renovation of projects governed by this chapter. No reimbursements for costs and construction for such projects shall be made unless the plans, specifications, and construction are approved by the board and the Governor in accordance with the provisions contained herein.

Section 16.1-309.9 of the Code of Virginia further mandates the board to approve minimum standards for the construction and equipment of detention homes and other facilities governed by this chapter. Any such project shall be subject to this regulation and all applicable statutes, regulations, and guidance documents, including, but not limited to, the following:

1. The Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia;

2. The Construction and Professional Services Manual (CPSM), October 2004, issued by the Department of General Services, Division of Engineering and Building;

3. The Step-by-Step Procedures for Approval and Reimbursement for Local Facility Construction, Enlargement, and Renovation, March 2001, issued by the Department of Juvenile Justice; and

4. The Agency Procurement and Surplus Property Manual (1VAC30-130), issued by the Department of General Services, Division of Purchases and Supply.

~~Approval of projects for which state funding is requested is vested by the Governor in the Office of the Secretary of Public Safety.~~ Such projects are best accomplished as a cooperative venture between a locality or localities and the Department of ~~Youth and Family Services~~ Juvenile Justice. Using ~~Board of Youth and Family Services (BYFS) approved and American Correctional Association (ACA) standards~~ regulations promulgated by the board and by working together as partners from project planning ~~to~~ through project construction and program implementation, the locality or localities and the department ensure that ~~an~~ the optimum number of children are provided high quality services at a minimum cost to the locality or localities and to the Commonwealth.

~~As a basis for this regulation:~~

~~1. The Virginia Public Procurement Act applies generally to every public body in the Commonwealth which § 11-37 of the Code of Virginia defines to include any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty. Therefore, the Commonwealth of Virginia Agency Procurement and Surplus Property Manual, current edition, will apply when construction of juvenile facilities is reimbursed by state funds.~~

~~2. The Agency Procurement and Surplus Property manual incorporates the Commonwealth of Virginia Capital Outlay manual for policy and guidelines for Capital Outlay Projects. Generally, construction or renovation of juvenile facilities would constitute Capital Outlay. The Department of Youth and Family Services shall therefore apply the Commonwealth of Virginia Capital Outlay manual, current edition, whenever reimbursement with state funds is requested. Special emphasis on Chapters V, VIII, and X shall be considered whenever reimbursement is requested.~~

~~3. The Department of Youth and Family Services does not intend to replace or relieve responsibilities of the architectural and engineering firms and applicable regulatory authorities (i.e., Building Official, State Fire Marshal, etc.).~~

~~For the purposes of this chapter and reimbursement recommendations to the Secretary and the Governor, the Department of Youth and Family Services (DYFS) or its designee shall be the reviewing authority.~~

Part II
Definitions ~~and Legal Basis~~

6VAC35-30-20. Definitions.

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

~~"ACA" means American Correctional Association.~~

"Area allowance per bed" means the gross square footage of the facility divided by the facility's design capacity as provided herein.

~~"Architectural/Engineering (A/E) services" means an individual or firm that is licensed by the Virginia Department of Commerce to provide professional services appropriate for the specific project, and is hired by the owner to provide those specific services for the project.~~

"Board" means the Virginia Board of ~~Youth and Family Services~~ Juvenile Justice.

"Board-approved funding formula" means the method by which construction costs are calculated as provided for in [~~6VAC35-30-60~~ 6VAC35-30-65].

"Board ~~approved standards~~ regulation" means ~~standards~~ a regulation or section or subsections thereof promulgated and approved by the ~~Board of Youth and Family Services~~ board. ~~These standards include:~~

~~1. Chapter 50 of Title 6 (6VAC35-50-10 et seq.), Standards for Interdepartmental Regulation of Residential Facilities for Children;~~

~~2. Chapter 100 of Title 6 (6VAC35-100-10 et seq.), Standards for Secure Detention; and~~

~~3. Chapter 40 of Title 6 (6VAC35-40-10 et seq.), Standards for Predispositional and Post-Dispositional Group Homes.~~

"Department" or ~~DYFS~~ "DJJ" means the Department of ~~Youth and Family Services~~ Juvenile Justice.

"Efficiency ratio" means the proportion of a building's net usable area to its gross floor area.

~~"Enlargement" or "Expansion" means to expand an existing local facility by constructing additional areas.~~

~~"Furnishings and equipment" means built-in equipment or fixtures normally included in a structure at the time of construction.~~

"Local facility" [or "facility"] means a juvenile residential facility ~~which~~ that is or may be regulated by the board and is owned, maintained, or operated by any political subdivision or combination of political subdivisions of the Commonwealth, or a privately owned or operated juvenile residential facility ~~which~~ that has contracted with any political subdivision or combination of political subdivisions of the Commonwealth and is or may be regulated by the board.

~~"Locality's representative" means an individual who is licensed by the Virginia Department of Commerce as an architect or engineer.~~

"Needs assessment" means an evaluation of trends and factors at the local or regional level ~~which~~ that may affect current and future local facility needs~~,~~ and the assessment of local facilities and nonresidential programs available to meet such needs. The needs assessment for each proposed project shall identify the target population, the specific need of the target population the project is seeking to address, why the specific need cannot be met with existing resources, all alternatives considered to meet identified need, and the reason for rejecting the alternatives.

~~"New construction" means to erect a new local facility or replace an outdated existing local facility.~~

~~"Operating capacity" means operating capacity as established by the Department of Youth and Family Services, based on "per bed area allowances." 6VAC35-30-60 C 2.~~

"Planning study" means an overall description of a proposed project consisting of new construction, renovation of existing

facilities, or both. The planning study shall include a program description and a program design as detailed in approved department procedures, architectural and engineering drawings at the Schematic Design [(15%)] Document level, the relationship of the project to existing facilities or structures, the project's schedule, a detail of the project's total projected design, construction, operation, maintenance costs, and a cost/benefit analysis.

~~"Procedures" means the Department of Youth and Family Services Procedures for Receiving State Reimbursement for Local Facility Construction, Enlargement, Renovation, and Operating Funds, and for the Development and Operation of New Programs.~~

"Project" means any proposed or actual new construction, renovation, enlargement, or expansion of a juvenile residential facility that is or will be subject to approval by the department or regulation by the board.

~~"Renovation" means altering or otherwise modifying an existing local facility or piece of stationary equipment for the purpose of modernizing or changing its use or capability. Renovation does not include routine maintenance. Renovation renders the facility, item or area superior to the original.~~

~~"Replacement" means constructing a local facility in place of a like local facility or purchasing equipment to replace stationary equipment which cannot be economically renovated or repaired.~~

~~"Reviewing authority" means the department, division or agency to which the Governor has delegated authority to act in his behalf in reviewing local facility construction projects for reimbursement approval.~~

"Routine maintenance" means the normal and usual type of repair or replacement necessary as the result of periodic maintenance inspections or normal wear and tear of a local facility or equipment.

"Sponsor" means a city, county, commission, or any combination thereof, or any private entity under contract or arrangement with any city, county, commission, or any combination thereof, that is actually or proposing to build, renovate, expand, or operate a local facility.

"Substantive change" means ~~user generated design changes affecting~~ any deviation from an approved plan or design that will affect the operational and functional performance of the facility, that potentially impacts the facility's compliance with any board regulation, that would result in a change in capacity, or that would result in the sponsor seeking additional reimbursement, as detailed in approved department procedures.

6VAC35-30-30. ~~Legal basis.~~ (Repealed.)

~~A. This chapter has been promulgated by the board to carry out the provisions of §§ 16.1-313 and 16.1-322.5 through 16.1-322.7 of the Code of Virginia. This chapter:~~

~~1. Serves as a guideline in evaluating requests for reimbursement of local facility construction costs;~~

~~2. Includes criteria to assess need and establish priorities;~~

~~3. Ensures the fair and equitable distribution of state funds provided for reimbursing local facility construction costs; and~~

~~4. Provides criteria for private construction of detention or other residential facilities.~~

~~B. The board is authorized to promulgate regulations pursuant to § 66-10 of the Code of Virginia.~~

Part III
Procedures

6VAC35-30-35. Prescreening.

A. Any sponsor planning any construction, renovation, enlargement, or expansion of a local facility shall submit an initial writing to the department that shall include a graphic showing any proposed structural changes and a brief description of all operating capacity or programmatic changes to be accommodated by the structure. The department shall review the initial writing and inform the sponsor in writing whether the project is subject to this regulation as soon as practicable but no later than 30 days from the receipt of the initial writing from the sponsor. If the department fails to respond in the required time frame, the sponsor may proceed with the reimbursement request in accordance with this chapter.

B. Any request shall be determined to be in one of the following categories:

1. For any new construction, change, or modification of an existing local facility or piece of stationary equipment, including security related upgrades, that will affect the facility's compliance with a board regulation, result in a change in certification or licensure status, or result in increased square footage, bed space, or capacity shall be subject to this regulation.

2. For any facility enhancements not provided for in subdivision 1 of this subsection for which the sponsor seeks reimbursement, the sponsor shall submit a project overview and cost estimates to the board for approval and shall be subject to the requirements of 6VAC35-30-180. The department and board may require additional documentation.

3. Minor changes, such as routine maintenance, shall not be subject to this regulation and shall be managed informally in accordance with department procedures.

~~Part III~~
~~Reimbursement Request Procedures~~

6VAC35-30-40. Reimbursement request.

A. Requests ~~for reimbursement shall be submitted as follows: 1. Requests for reimbursement shall be approved by the board by June 1 of each year for inclusion in the department's budget request to the Governor and consideration during the next General Assembly session. Incomplete submissions, or submissions not received by the department prior to or on April 1 will not be submitted to the board for inclusion in the department's budget request~~. For all projects subject to this regulation, the department shall advise the sponsor of the deadline for submissions necessary to obtain approval, for inclusion in the department's budget request to the Governor, and for consideration during the next General Assembly session.

~~2.~~ B. Needs assessment. The ~~locality~~ sponsor shall ~~direct a letter to the department requesting the board to recommend to the Governor reimbursement for construction, enlargement or renovation. The letter shall be accompanied by the information required by subsection B.~~, prior to the applicable deadline, submit a needs assessment that shall demonstrate the need for the particular service, program, or facility. The board shall consider the needs assessment at its next regularly scheduled meeting and shall approve, reject, or return the needs assessment.

1. If the needs assessment is approved by the board, the department shall advise the sponsor of the board's decision and of the deadline for submitting the planning study for the project.

2. If the needs assessment is returned to the sponsor, the board shall provide the sponsor with additional factors to be considered prior to resubmission.

3. The department shall advise the sponsor of the board's decision, in writing, within seven business days of the board's decision.

~~3.~~ C. Planning study. The ~~department shall submit the completed request for reimbursement to the board for review and approval by the second board meeting or within 60 days following submission by the locality~~ sponsor shall, upon approval of the needs assessment by the board and prior to the applicable deadline, submit a complete planning study that shall explain how the proposed project is the most appropriate and cost-effective response to the specific need identified in the needs assessment.

1. The planning study shall be accompanied by an estimate of the total amount of reimbursement to be requested and a resolution from the governing body of the sponsor or sponsors requesting reimbursement.

2. The board shall consider the planning study at its next regularly scheduled meeting and shall utilize the criteria outlined in 6VAC35-30-60 when reviewing a sponsor's planning study and accompanying materials. Upon approval of a planning study, the board shall recommend the amount of state reimbursement for the project and shall forward the sponsor's submissions and the board's recommendation to the Governor or the Governor's designee for approval.

~~B. Requests for reimbursement of local facility construction, enlargement or renovation costs shall be accompanied by:~~

~~1. A needs assessment as specified in the procedures;~~

~~2. A resolution from the locality or localities requesting reimbursement;~~

~~3. An estimate of the reimbursement amount being requested;~~

~~4. A planning study as specified in the procedures; and~~

~~5.~~ 3. Requests for regional facilities shall also include a copy of the agreement between the participating localities including the allocation of financial and operational responsibilities.

6VAC35-30-45. Effect of legislative moratorium.

A. In such times when the Virginia General Assembly has imposed a moratorium on construction and reimbursement of construction costs, the sponsor shall follow the requirements of this chapter.

B. To obtain any reimbursement thereafter, the sponsor shall:

1. Pursue a legislative exception to the moratorium on construction and reimbursement of construction costs; or

2. Request reimbursement at such time as the Virginia General Assembly authorizes funding for such projects.

6VAC35-30-50. ~~Preliminary review.~~ (Repealed.)

~~Localities wishing a review of their needs assessment prior to formally submitting a reimbursement request may submit only the needs assessment as specified in 6VAC35-30-40 B. Upon review of the needs assessment, the board will notify the locality or localities as to whether it appears to the board that they are ready to proceed with the formal reimbursement request.~~

6VAC35-30-60. Criteria for board funding recommendation.

A. Demonstrated need. The board ~~will~~ shall evaluate the need for the project as demonstrated by the information provided in the Needs Assessment and Planning Study.

B. Operational cost efficiency. The board shall take into consideration the operational cost efficiency of the interior design of the facility with special concern for the number of staff required, functional layout, material selection, and

energy efficiency, with special emphasis on meeting the needs of youth and the mission of the facility. ~~Design of the program facility shall meet the standards of the board and ACA.~~

C. Construction cost. All sponsors shall calculate construction costs in accordance with the funding formula provided in 6VAC35-30-65. Construction economy shall be reviewed in relation to the adjusted median cost of local facilities. ~~The adjusted median cost of local facilities will be calculated by the department as a per bed cost using the following procedure:~~

~~1. A cost per square foot base figure will be the national median square foot cost for jails (location factor applied), published in the latest edition of "Means Facilities Cost Data" published by R. S. Means Company, Inc. The "Means Facilities Cost Data" takes into consideration the "location factor" which is the materials and labor cost differential specific to a geographical location;~~

~~2. The adjusted square foot costs will be converted to per bed costs using per bed area allowances based on the average gross square footage of actual and proposed local facilities in Virginia; the area allowances must be in accordance with all applicable codes and standards according to the following formula:~~

~~National cost per square foot (Means)~~

~~X Location Factor (Means)~~

~~X Area allowance per bed (maximum 900 sq. ft. per bed)~~

~~= Adjusted median construction cost of local facility;~~

~~3. The total project cost will include:~~

~~a. Construction (subdivision C 2 above);~~

~~b. Site and utilities (Means);~~

~~c. Architectural and engineering (Virginia Capital Outlay Manual);~~

~~d. Furnishings and equipment (as itemized);~~

~~e. Project inspection (Virginia Capital Outlay Manual);~~

~~f. Contingency (3.0%);~~

~~g. Property purchased specifically for this facility; and~~

~~h. Other.~~

D. Board review of construction costs. The economy of construction cost is necessary and shall be reviewed as follows:

1. Review for efficiency.

a. Projects or portions of projects involving renovation of existing facilities shall be reviewed in relation to the efficiency of the renovated spaces, the appropriateness of the proposed changes, and the relationship of the changes to the project of a whole.

b. Projects of new construction shall be reviewed for the building's appropriate efficiency ratio. The board may request further information from the sponsor on projects with a building's efficiency ratio of less than 65%.

2. The board may adjust the amount being requested for reimbursement funding as follows:

a. A reduction in funding when functional areas of the facility, such as the kitchen, recreation area, educational facilities, visiting area, and laundry facilities are not included or are included at a size not in conformance with applicable regulations or normal practice;

b. An increase in funding when support services areas are proposed at sizes larger than necessary in anticipation of future enlargements or expansions of the facility;

c. A decrease in funding when the building's efficiency ratio is less than 65%; and

d. An increase in funding when the facility includes areas for extraordinary program activities.

3. Any adjustments made by the board in funding shall be based upon the gross square footage of the various conditions multiplied by a cost equal to the adjusted median cost or the proposed gross square foot cost of the facility, whichever is less.

~~D.~~ E. Phased reimbursement of projects. ~~When localities wish~~ A sponsor may request, when submitting the planning study for review, to ~~meet the requirements outlined in the needs assessment~~ receive portions of the total project reimbursement based upon the completion of the project in phases~~.~~, In response to such requests, the board may approve reimbursement based on the total estimated cost of the project as if it were to be completed as a single endeavor; however, reimbursement will be in amounts proportional to the phases of construction and payment will be made only as each approved phase is completed and that portion of the building is ready to be placed in service.

6VAC35-30-65. Funding formula.

A. The following funding formula shall be used to calculate estimated construction costs at the Schematic Design [(15%)] Documents level in the planning study phase:

1. A cost per square foot base figure shall be the national median square-foot cost for jails published in the 24th annual edition of R. S. Means Facilities Construction Cost Data 2009 (Means) with consideration taken of the "location factor," which is the materials and labor cost differential specific to the project's geographical location.

2. The cost per square foot, adjusted using the location factor, must be in accordance with all applicable codes and standards and in accordance with the following formula:

National cost per square foot (from Means)

X Location Factor (from Means)

X Area allowance per bed (as provided for in subsection B of this section)

= Adjusted median construction cost of local facility.

3. The total project cost shall include:

a. Construction cost;

b. Site and utilities (from Means);

c. Architectural and Engineering services (services as defined in the Construction and Professional Services Manual (CPSM));

d. Furnishing and equipment (as itemized by the sponsor);

e. Project inspection (services as defined in the CPSM);

f. Contingency (10.0%);

g. Inflation factor (yearly market inflation rate applied from January 1 of the year of the submitted design through the midpoint of construction, compounded [ )] ;

h. Property purchased specifically for this facility; and

i. Other.

B. The following area allowances per bed shall be used to calculate the adjusted median construction cost of a local facility:

1. A maximum of 700 square feet per bed for facilities up to 35 residents;

2. A maximum of 650 square feet per bed for facilities of 36 to 79 residents; and

3. A maximum of 550 square feet per bed for facilities with 80 or more residents.

6VAC35-30-70. Funding priorities.

~~A. The following criteria, as determined by the needs assessment shall serve as a guide for determining the level of priority given to requests for reimbursement:~~

~~1. New construction or renovation is needed because the existing facility is closed by the court, Board of Youth and Family Services or local governing authority due to its failure to meet state or local operating standards;~~

~~2. An unsafe physical plant which fails to meet life, health, safety standards, or a court ordered renovation, expansion, or new construction;~~

~~3. Replacement or renovation of bedspace lost due to fire, earthquake or other disaster;~~

~~4. An existing local facility is experiencing overcrowding which is expected to continue based on population forecasts;~~

~~5. A locality with no existing local facility;~~

~~6. An addition to or renovation of support facilities;~~

~~7. Phased projects; and~~

~~8. Cost overruns.~~

~~B. Regional projects.~~ The board ~~will~~ shall prioritize reimbursement requests in a manner to ensure an equitable distribution of state funds across the Commonwealth; and, absent a health, safety, or welfare risk requiring priority, the board shall ordinarily give preference to requests for reimbursement for regionalized local facilities. Regionalized local facilities shall normally serve three or more localities as determined by the needs assessment.

6VAC35-30-80. Board recommendations to the Governor.

A. The department ~~will direct a letter to the locality notifying the governing body~~ shall notify the sponsor in writing within seven business days of the board's decision to recommend or not to recommend a project for reimbursement~~, and~~. If the recommendation is not to recommend reimbursement, the department shall briefly explain the rationale for the decision.

B. The board shall submit to the Governor, or his designee (i) its recommendations with respect to reimbursement requests and the rationale therefor; and (ii) such information as the Governor may require with respect to a request for approval of reimbursements.

C. Final appropriations are subject to the Governor's approval and legislative enactment.

~~Sections 16.1-313 and 16.1-322.7 of the Code of Virginia establish the rate of reimbursement to localities for construction, enlargement or renovation.~~

Part IV
Project Development

6VAC35-30-90. Preliminary design.

A. The ~~locality~~ sponsor shall submit preliminary design [(35%)] documents to the department as ~~specified in the~~ defined in the CPSM and required by approved department procedures ~~and the Virginia Capital Outlay manual. The locality may also be required to submit preliminary design documents to other regulatory agencies~~.

B. Preliminary design [(35%)] documents shall be ~~approved~~ reviewed by the department for compliance with applicable statutes, regulations, and any guidance documents that are incorporated herein.

1. If the department requires changes to the preliminary design [(35%)] documents, all such required changes ~~will~~ shall be communicated in writing to the ~~locality~~ sponsor.

2. The ~~locality's representative, or its A/E,~~ sponsor shall respond in writing to the department to all comments received from the department in the preliminary design review. Necessary revisions to the project documents may be incorporated in the submission of the construction documents (referred to as the "working drawings" in the CPSM); however, all issues ~~in question between the locality's representative, or A/E, and the department~~ detailed in these writings shall be resolved before the project is advanced to the construction document phase ~~is begun~~ (referred to as the "working drawings phase" in the CPSM).

C. When all review comments have been addressed and resolved, the department shall notify the sponsor that the project has progressed to the construction documents phase.

6VAC35-30-100. Construction documents.

A. ~~Localities~~ The sponsor shall submit construction documents to the department as ~~specified in the~~ defined in the CPSM and required by approved department procedures ~~and the Virginia Capital Outlay manual. The locality may also be required to submit construction documents to other regulatory agencies~~. ~~The fire official of the authority having jurisdiction over the proposed facility shall conduct a plans review and approve the construction~~. The construction documents shall include 100% complete working drawings, 100% complete specifications, and all required review approvals from local building, health, and fire officials.

B. The ~~department will review~~ construction documents shall be reviewed by the department for compliance with ~~board standards, Code requirements,~~ applicable statutes, regulations, and any guidance documents incorporated herein, and for incorporation of all changes required by the department at the preliminary document review stage. This review in no way releases the ~~A/E~~ sponsor from ~~his~~ other applicable responsibilities and requirements.

1. If the department requires changes to the construction documents, all such required changes ~~will~~ shall be communicated in writing to the ~~locality~~ sponsor.

2. The ~~locality's representative, or its A/E,~~ sponsor shall respond in writing to the department to all comments received from the department in the construction document review. All issues ~~in question between the architect, the locality and the department~~ detailed in these writings shall be resolved before the project is ~~bid~~ advanced to the bidding phase.

C. ~~Upon satisfactory resolution of~~ When all review comments have been addressed and resolved, the department shall approve the construction documents and advise the ~~locality~~ sponsor in writing ~~within 10 working days~~, as required in approved department procedures, that the project may progress to the bidding phase (referred to as the "bid documents phase" in the CPSM).

6VAC35-30-110. ~~Changes during project development~~ Change order process.

If, during the project development stage, any substantive change in the scope of the project, any increase in the estimated cost of construction, or any change in the operational staff requirements occurs, the review process [~~will~~ shall] be suspended until the project is resubmitted to the board for further review and possible change in the status of reimbursement recommendation.

Part V
Project Construction

6VAC35-30-120. ~~Bids~~ Bidding.

After bids for construction have been received and opened~~,~~ and the ~~locality~~ sponsor has determined to proceed with the project, the ~~locality~~ sponsor shall ~~require its A/E to~~ submit to the department a bid tabulation, analysis, and recommendation as to the award of the contract. Any comments by the department shall be forwarded to the ~~locality~~ sponsor within ~~10 working days~~ five business days of receipt; and the sponsor shall respond to the comments in writing within 10 business days of receipt of the department's comments. The department's failure to respond in the required time frame shall serve as acceptance of the sponsor's recommendation as to the award of the contract.

6VAC35-30-130. Construction.

A. During the construction of all projects, the ~~locality~~ sponsor shall ~~require its architect to~~ submit monthly inspection or progress reports to the department. The sponsor shall submit the reports to the department no later than the 15th day of the month following the inspection or when the progress report became due. The department ~~must respond~~ shall notify the sponsor in writing within 10 ~~working~~ business days after receipt ~~if there are~~ of any issues or problems with the project or the reports. ~~Failure to do so serves~~ The department's failure to respond in the required time frame shall serve as acceptance of the inspection and progress report. Any failure to timely submit the monthly inspection or progress reports may constitute grounds to deny the requested reimbursement, in whole or in part.

B. Any substantive ~~changes, single change orders of $10,000 or more, and accumulative change orders exceeding the project contingency~~ change during the construction phase shall be submitted in writing to the department for review and approval before any such change is executed. Only those changes that are approved through ~~this~~ the approved department procedure shall be eligible for reimbursement. Any failure to seek and obtain approval of a substantive

change may constitute grounds to deny the requested reimbursement, in whole or in part.

~~C. A representative of the department may visit the project site during the construction period to observe the work in progress. Any observed deviations from approved documents having the effect of voiding or reducing compliance with board standards or Code requirements shall be reported in writing to the locality within 10 working days and shall be corrected.~~

6VAC35-30-140. Final inspection.

A. Upon construction completion, the ~~locality's representative, or the A/E,~~ sponsor shall establish a schedule for final inspection of the project ~~as follows~~. This schedule shall include: ~~1. The locality shall notify~~ (i) notification to the department and all regulatory agencies ~~which~~ that reviewed preliminary design or construction documents of the schedule ~~for final inspection. The fire official of the authority having jurisdiction shall conduct a plan review and approve the construction~~; ~~2. The locality shall~~ (ii) a request to the personnel or agencies involved in the final inspection to submit comments or recommendations in writing to the ~~locality~~ sponsor and ~~forward copies~~ to the department~~.~~; ~~3. The locality shall require its architect to take necessary corrective action on~~ (iii) documentation of the correction of all deficiencies noted in the comments; and ~~submit~~ (iv) the submission of a report of completed actions to the appropriate reviewing agencies and ~~forward a copy of the report~~ to the department.

B. Upon completion of the final inspection and corrective actions as required, the ~~locality~~ sponsor shall provide to the department copies of all required regulatory agency letters verifying approval of the completed project~~. The A/E~~ and shall certify to the department the completion of the project.

6VAC35-30-150. Record documents.

The ~~locality~~ sponsor shall require its architect to modify original drawings and specifications to reflect the condition of the project as actually constructed, and such documents shall be marked "Record." The record documents shall be prepared as defined in the CPSM and in accordance with approved department procedures.

Part VI
Private Construction of Juvenile Facilities

6VAC35-30-160. ~~Legal basis~~ Private construction of juvenile facilities.

Section 16.1-322.5 of the Code of Virginia ~~provides for~~ allows the ~~Board of Youth and Family Services~~ board to authorize a county or city or any combination of counties, cities, or towns established pursuant to § 16.1-315 of the Code of Virginia to contract with a private entity for the financing, site selection, acquisition, or design and construction of a local or regional detention home or other secure facility. Localities authorized to contract for private construction of a juvenile detention facility shall receive state reimbursement authorized by § ~~16.1-313,~~ 16.1-309.5 of the Code of Virginia, in accordance with Parts I through VI of this chapter.

6VAC35-30-170. ~~Contract~~ Requirements for contract authorization.

Prior to receiving the ~~Board of Youth and Family Services~~ board's authorization to enter into a contract for private construction, ~~localities~~ sponsors shall certify and submit documentation demonstrating that all requirements mandated by § 16.1-322.5 of the Code of Virginia have been met by both the ~~locality~~ sponsor and the contractor.

Part VII
Final Reimbursement

6VAC35-30-180. Request for final reimbursement for all projects.

A. Upon completion of the project, the ~~locality~~ sponsor shall submit the documentation specified by ~~the~~ approved department procedures to the department.

B. If the final amount of reimbursement requested is ~~no more~~ not greater than the reimbursement amount initially recommended, including the contingency, the department ~~will~~ shall authorize reimbursement within 90 days of receiving a complete reimbursement request. The reimbursement request shall be in the form specified by the department.

C. If the final amount of reimbursement requested is ~~more~~ greater than the reimbursement amount initially recommended, the sponsor shall justify the cost increase ~~shall be justified by the locality~~ and ~~resubmitted~~ submit the adjusted reimbursement request to the board and the Governor, or his designee, for approval.

6VAC35-30-190. Compliance.

Failure to comply with these regulations will delay the review process and recommendation for disbursement of funds, ~~and~~ may result in the denial of reimbursement, and may result in the failure to obtain board certification or department approval to house [~~juveniles~~ residents] in the facility as provided for in [~~6VAC35-20-69~~ the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20)].

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-30)

~~Procedures for Receiving State Reimbursement for Local Facility Construction, Enlargement, Renovation, and Operating Funds, and for the Development and Operation of New Programs.~~

The Step-by-Step Procedures for Approval and Reimbursement for Local Facility Construction, Enlargement,

and Renovation, revised March 2001, Department of Juvenile Justice.

Construction and Professional Services Manual, Revision 1, October 2004, Department of General Services, Division of Engineering and Buildings [~~(http://www.dgs.virginia.gov/LinkClick.aspx?fileticket=kn4ZKoyodZc%3d&tabid=404&mid=1128)~~].

R.S. Means Facilities Construction Cost Data 2009, 24th Annual Edition, R.S. Means-Reed Construction Data (http://rsmeans.reedconstructiondata.com).

VA.R. Doc. No. R08-1330; Filed January 3, 2011, 1:13 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: **8VAC20-120. Career and Technical Education Regulations (amending 8VAC20-120-10 through 8VAC20-120-50, 8VAC20-120-70, 8VAC20-120-80, 8VAC20-120-100 through 8VAC20-120-170).**

Statutory Authority: §§ 22.1-16 and 22.1-227 of the Code of Virginia.

Public Hearing Information:

March 24, 2011 - 11 a.m. - James Monroe Building, 101 N. 14th Street, 22nd Floor Conference Room, Richmond, VA

Public Comment Deadline: April 4, 2011.

Agency Contact: Anne Rowe, CTE Coordinator, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2838, FAX (804) 371-2456, or email anne.rowe@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia authorizes the Board of Education to promulgate such regulations as may be necessary to carry out its powers and duties. Section 22.1-227 of the Code of Virginia authorizes the board to carry out the provisions of the federal Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act of 2006).

Purpose: Changes in both federal and state laws pertaining to career and technical education necessitate revisions to the Virginia Regulations Governing Career and Technical Education, 8VAC20-120. The regulations have been examined in their entirety, including the requirements for general provisions, administration of career and technical education programs, and operation of career and technical education programs. The goals of this review are to (i) update the regulations to comply with new state and federal laws, such as an identification and clarification of the U.S. Department of Education's approved Virginia requirements for meeting the performance standards of the Perkins Act of 2006; and (ii) update definitions for consistency with other state and federal regulations dealing with similar issues such as a clarification of definition of terms impacted by the Perkins Act of 2006, for example "career cluster," "career pathways," and "performance measures"; and (iii) eliminate any duplicative regulations.

Substance: The Perkins Act of 2006 has expanded to include student attainment of career and technical skill proficiencies, including student achievement on technical assessments, that are aligned with industry-recognized standards. Virginia has identified a combination of student competency achievement (existing requirement) with attainment of an industry credential as approved by the Virginia Board of Education. State and federal funds are available to assist school divisions in meeting this requirement. Another substantive addition is the infusion of Career Clusters and Pathways into CTE instructional programs and the use of program/plans of study and/or the academic and career plan to map out students' courses of study based on career assessment and career investigation. One other change to the regulations has a positive fiscal impact on school divisions. That change is requiring maintenance of effort rather than a full equal match of funds when purchasing equipment. All other changes are an inclusion of regulations from other regulatory documents that had not been included in the past, clarifications of existing regulations, and updating wording to reflect current state and federal terminology.

The proposed revisions will have no negative affect on the health, safety, or welfare of citizens or regulated entities. The provisions provide additional protections to communities and citizens by ensuring high quality career and technical programs in the public schools.

Issues: The primary advantage of the proposed revisions to the localities would be that the regulations would be in accordance with new state and federal laws. Localities would know what they must do to be in compliance with the state and federal laws pertaining to career and technical education.

The proposed revisions would not present any disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes several updates for these regulations that include additional and amended definitions and clarifications of current policy. The clarifications of current policy include but are not limited to: 1) specifying the federal Perkins Act requirements that no less than 60 percent of federal funds may be expended on required expenditures and up to 40 percent could be spent on permissive uses, 2) clarifying that local school divisions can

ask for approval on items not listed on the recommended equipment lists maintained by the Department of Education, 3) modifying language to allow the possibility for a change in the frequency of plan submission, 4) adding language referring to the 2006 Perkins grant and 2009 Standards of Accreditation career plans, 5) amending the section concerning maximum class size for greater clarity, 6) clarifying that categorical funding is available to students who take industry credentials approved by the Board, 7) specifying reporting requirements, and 8) adding a reference to alignment with Standards of Accreditation requirements. Further the Board proposes to allow localities to fund equipment on a maintenance of effort basis as opposed to the current requirement of a local match equal to the amount of state funding for career and technical education equipment.

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

Estimated Economic Impact. Under the current regulations, localities are required to provide a full equal match of funds for career and technical education equipment when receiving state dollars to pay for the equipment. The Board proposes to require a maintenance of effort instead of a full dollar for dollar match of local funds for equipment. Maintenance of effort is defined as the assurance that localities continue to provide funding for CTE programs at least at the level of support of the previous year. This proposed change will provide greater flexibility for local school divisions and may in some cases allow for the purchase of equipment for career and technical education classes when otherwise it would not be affordable. For example, when state dollars are available to pay for all or most of the cost of a piece of equipment, but the locality has less than half the funds needed to pay for the equipment, the school division could potentially purchase the equipment under the proposed language, but could not under the current language. All other proposed changes are consistent with current policy and will have no impact beyond helping inform affected entities and other members of the public.

Businesses and Entities Affected. The regulations affect the 131 public school divisions in the Commonwealth, the 11 jointly operated vocational technical centers, the Virginia Community College System (23 institutions), and the Department of Correctional Education.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The Board of Education proposes several updates to include regulations from other regulatory documents that previously had not been included, add and amend definitions to reflect current state and federal terminology, and clarify current policy. The clarifications of current policy include but are not limited to: (i) specifying the federal Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act) requirements that no less than 60% of federal funds may be expended on required expenditures and up to 40% may be spent on permissive

uses, (ii) clarifying that local school divisions can ask for approval on items not listed on the recommended equipment lists maintained by the Department of Education, (iii) modifying language to allow the possibility for a change in the frequency of plan submission, (iv) adding language referring to the 2006 Perkins grant and 2009 Standards of Accreditation career plans, (v) amending the section concerning maximum class size for greater clarity, (vi) clarifying that categorical funding is available to students who take industry credentials approved by the board, (vii) specifying reporting requirements, and (viii) adding a reference for alignment with Standards of Accreditation requirements. Further the board proposes to allow localities to fund equipment on a maintenance of effort basis as opposed to the current requirement of a local match equal to the amount of state funding for career and technical education equipment.

Part I
General Provisions

8VAC20-120-10. Authority to promulgate; requirements for compliance with state and federal regulations.

These regulations are promulgated by the Board of Education pursuant to ~~§ 22.1-216~~ § 22.1-16 of the Code of Virginia for career and technical education programs funded in whole or in part with state funds. Federal laws pertaining to such programs permit state regulations in addition to federal requirements (see Carl D. Perkins ~~Vocational and Technical Education~~ Act of ~~1998~~ 2006 (Perkins Act of 2006), § 121 (20 USC § 2341)).

Local education agencies operating career and technical education programs shall comply with these regulations of the Board of Education and requirements of applicable federal legislation, including the Education Department General Administrative Regulations (EDGAR) (34 CFR Part 74.2) and the ~~Carl D.~~ Perkins ~~Vocational and Technical Education~~ Act of ~~1998~~ 2006.

8VAC20-120-20. Definitions.

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

"Academic and career plan" means the student's program of study for high school graduation and postsecondary career pathway based on the student's academic and career interests. The academic and career plan shall be developed in accordance with guidelines established by the Board of Education. (Also see the definition of "program of study.")

"All aspects of an industry" ~~includes, with respect to a particular industry that a student is preparing to enter: planning, management, finances, technical and production skills, underlying principles of technology, labor and environmental issues related to that industry~~ means strong experience in, and comprehensive understanding of, the industry that the individual is preparing to enter.

"Board" means the ~~Virginia~~ Board of Education, that is designated as the State Board for Career and Technical Education to carry out the provisions of the federal Perkins Act of 2006 and any new amendments or acts, and as such shall promote and administer the provisions of agricultural education, business and information technology, marketing, family and consumer sciences, health and medical services, technology education, trade, and industrial education in the public middle and high schools, regional schools established pursuant to § 22.1-26 of the Code of Virginia, postsecondary institutions, and other eligible institutions for youth and adults.

"Career clusters and pathways" means a grouping of occupations and industries based on commonalities. Sixteen career clusters provide an organizing tool for schools, small learning communities, academies, and magnet schools. Within each career cluster, there are multiple career pathways that represent a common set of skills and knowledge, both academic and technical, necessary to pursue a full range of career opportunities within that pathway, ranging from entry level to management and including technical and professional career specialties. Based on the skills sets taught, all CTE courses are aligned with one or more career clusters and career pathways. The states' career clusters refers to a clearinghouse for career clusters research, products, services and technical assistance for implementation of the states' career cluster framework for lifelong learning.

"Career and technical student ~~organizations~~ organization" means ~~those organizations~~ an organization for individuals enrolled in a career and technical education ~~programs~~ program that ~~engage~~ engages in ~~an annual program of work including~~ career and technical activities ~~that are~~ as an integral part of the instructional program. These organizations may have state and national units that aggregate the work and purposes of instruction in career and technical education at the local level; if so, these organizations shall be (i) National FFA Organization; (ii) Future Business Leaders of America; (iii) Future Educators Association; (iv) Health Occupations Students of America; ~~(iv)~~ (v) Family, Career and Community Leaders of America; ~~(v)~~ (vi) DECA: An Association of Marketing Students; ~~(vi)~~ (vii) Technology Student Association; ~~and (vii)~~ (viii) Skills USA—VICA; and (ix) other student organizations that may be approved at the state and national levels.

"Categorical entitlement" means the amount of funding a local education agency is eligible to receive for a specific purpose, subject to state or federal regulations and the availability of funds.

"Competency-based education" means ~~an instructional system that focuses on competencies needed for specific jobs, evaluation~~ applied learning that contributes to the academic

knowledge, higher-order reasoning and problem-solving skills, work attitudes, general workplace readiness skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual. Evaluation of student progress is based on standards of the occupation or field, and the maintenance of student records of achievement in skill development.

"Cooperative education" means a method of ~~instruction that combines career and technical classroom instruction with paid employment directly related to the classroom instruction. Both student instruction and employment are planned and supervised by the school and the employer so that each contributes to the student's career objectives and employability.~~ education for individuals who, through written cooperative arrangements between a school and employers, receive instruction, including required rigorous and challenging academic courses and related career and technical education instruction, by alternation of study in school with paid employment in any occupation field, which alternation (i) shall be planned and supervised by the school and employer so that each contributes to the education, employability, and career objective of the individual; and (ii) may include an arrangement in which work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

"Data" means information, both written and verbal, concerning career and technical education programs, activities, and students. Data include financial, administrative, demographic, student performance, and programmatic information and statistics.

"Department" means the Virginia Department of Education.

~~"Disadvantaged" means individuals (other than individuals with disabilities) who have economic or academic disadvantages and who require special services and assistance to enable them to succeed in career and technical education programs. Such term includes individuals who are members of economically disadvantaged families, migrants, and individuals who are dropouts from or who are identified as potential dropouts from secondary schools.~~

"Disability" means, with respect to an individual (i) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) a record of such impairment; or (iii) being regarded as having such an impairment.

"Displaced homemaker" means an individual who (i) has worked primarily without remuneration to care for a home and family, and for that reason has diminished marketable skills; has been dependent on the income of another family member but is no longer supported by that income; or is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 USC § 601 et seq.) not later than two years after the date on which the parent applies for assistance under such title; and (ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

~~"Employability skills" means the generic skills related to seeking, obtaining, keeping and advancing in an occupation.~~

"Entitlement" means the amount of funding a local education agency is eligible to receive, subject to state or federal regulations and the availability of funds.

"Equipment" means ~~any instrument, machine, apparatus, or set of articles which meets all of the following criteria:~~ tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year.

~~1. It retains its original shape, appearance, and character with use;~~

~~2. It does not lose its identity through fabrication or incorporation into a different or more complex unit or substance;~~

~~3. It is nonexpendable;~~

~~4. Under normal use, it can be expected to serve its principal purpose for at least one year; and~~

~~5. Excludes supplies and materials as defined by the Virginia Department of Planning and Budget's Expenditure Structure, May 2001.~~

"Extended contract" means a period of time provided to instructors for employment beyond the regular contractual period.

"Federal program monitoring" means monitoring and evaluation program effectiveness and ensuring compliance with all applicable state and federal laws.

"Follow-up survey" means the collection of information regarding the status of students following completion of a career and technical education program.

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs (34 CFR 300.22).

"Individual with limited English proficiency" means a secondary school student, an adult, or an out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English language and (i) whose native language is a language other than English and (ii) who lives

in a family or community environment in which a language other than English is the dominant language.

"Industry credential" means the successful completion of an industry certification examination or an occupational competency assessment in a career and technical education field that confers certification of skills and knowledge from a recognized industry or trade or professional association or the acquiring of a professional license in a career and technical education field from the Commonwealth of Virginia. The certification examination or occupational competency assessment used to verify student achievement must be approved by the Board of Education.

"Local career and technical education plan" means a document submitted by a local education agency as prescribed by the Board of Education ~~setting forth proposed career and technical education programs, services, activities, and specific assurances of compliance with federal regulations~~ describing how the career and technical education programs required for funding will be maintained and how career and technical education activities will be carried out with respect to meeting state and local adjusted levels of performance established under Perkins Act of 2006, Accountability, § 113 (20 USC § 2323).

"Local education agency" means ~~the local school division responsible for providing educational services to students; a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, town, school division, or political subdivision in a state, or any other public educational institution or agency having administrative control and direction of a career and technical education program~~ a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a state, in a state as an administrative agency for its public elementary schools or secondary schools.

"Maintenance of effort" means the assurance that localities continue to provide funding for career and technical education (CTE) programs at least at the level of support of the previous year.

"Nontraditional fields" means occupations or fields of work, including careers in computer science, technology, and other current and emerging high skill occupations, for which individuals from one gender comprise less than 25% of the individuals employed in each such occupation or field of work.

"Performance measures" means core indicators of performance for careers and technical education students at the secondary level that are valid and reliable and that include measures identified in the Accountability section of the Perkins Act of 2006 (20 USC § 2323).

"Program of study" or "plan of study" means planning a sequence of academic, career and technical, or other elective courses that (i) incorporate secondary education and postsecondary elements; (ii) include coherent and rigorous content aligned with challenging academic standards and relevant career and technical content in a coordinated, nonduplicative progression of courses that align secondary education with postsecondary education to adequately prepare students to succeed in postsecondary education; (iii) may include opportunity for secondary students to participate in dual or concurrent enrollment programs or other ways to acquire postsecondary education credits; and (iv) lead to an industry-recognized credential, license, or certificate or an associate degree at the secondary or postsecondary level or a baccalaureate or higher degree at the postsecondary level. (Also see the definition of "academic and career plan.")

"Section 504" means that section of the Rehabilitation Act of 1973 (29 USC § 791 et seq.), as amended, that is designed to eliminate discrimination on the basis of a disability in any program or activity receiving federal financial assistance.

"Special populations" means (i) individuals with disabilities; (ii) individuals from economically disadvantages families, including foster children; (iii) individuals preparing for nontraditional fields; (iv) single parents, including single pregnant women; (v) displaced homemakers; or (vi) individuals with limited English proficiency.

"Training agreement" means a ~~formal document, signed by the instructor, employer, parent or guardian, student, and school administrator, which states the requirements affecting the cooperative education student, the terms of the student's employment, and the responsibilities of all parties involved~~ written statement of commitment from the student, the parent, the training station, and the teacher-coordinator. It is a required formal document that spells out the responsibilities of all involved parties in the cooperative education method of instruction.

"Training plan" means a required formal document that identifies classroom and on-the-job instruction ~~which~~ that contributes to the employability of each cooperative education student. (A recommended format is available from the Department of Education.)

"Work station" means an area in a classroom/laboratory that includes the necessary environment, instructional and consumable materials, and equipment to enable each student to accomplish competencies within a career and technical education course.

"Workplace readiness skills" means a list of personal qualities and people skills, professional knowledge and skills, and technology knowledge and skills identified by Virginia employers that are essential for individual workplace success

and critical to Virginia's economic competitiveness. These skills will be updated as required.

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and achieves a passing score on a corresponding end-of-course Standards of Learning (SOL) test or an additional test approved by the Board of Education as part of the Virginia assessment program.

Part II
Administration of Career and Technical Education Programs

8VAC20-120-30. State/federal financial assistance.

Financial assistance shall be provided to support the operation, improvement, and expansion of career and technical education.

1. Financial assistance provided through entitlements resulting from full-time equivalent student enrollments shall be used to support career and technical education program operation.

2. Financial assistance provided through categorical entitlements shall be used to support the following:

a. Principals and assistant principals of technical education centers if at least 50% of their time is spent in career and technical education program administration or supervision;

b. Extended contracts of instructors for activities related to the coordination, development, or improvement of career and technical education programs;

c. Equipment included on the Recommended Equipment Approved for Career and Technical Education Programs lists by the Department of Education or local option approved by the Department of Education; ~~and~~

d. Adult occupational career and technical education to provide opportunities for adults to prepare for initial employment, retraining, or career advancement~~.~~; and

e. Funding for industry credentials appearing on the Virginia Board of Education approved list.

3. No less than 60% of federal funds may be expended on required expenditures and up to 40% may be spent on permissive uses of funds as identified in the Perkins Act of 2006. If a school division does not meet the Perkins Act of 2006 performance measures, then the department may direct local expenditures toward uses of funds to improve the division's performance.

8VAC20-120-40. Local career and technical education plan.

Each eligible participant shall submit to the Department of Education a local career and technical education plan for review and approval. The local plan will be submitted as specified in federal legislation. ~~In addition to the local career and technical education plan, an~~ An annual budget funding application ~~will~~ shall be submitted to the department for review and approval.

8VAC20-120-50. Career and Technical Education Advisory Council.

Each local education agency or region shall establish a general career and technical education advisory council to provide recommendations to the local educational agency (or board) on current job needs and the relevancy of career and technical education programs offered and to assist in the development, implementation, and evaluation of the local plan and application.

1. Councils shall be composed of members of the public, including students, teachers, parents, and representatives from business, industry, and labor, with appropriate representation of both sexes and racial and ethnic ~~minorities~~ groups found in the school, community, or region served by the council.

2. The council shall meet at regular intervals during the year to assist in the planning, implementing, and assessing of career and technical education programs.

8VAC20-120-70. Reporting requirements.

Local education agencies shall provide data on career and technical education for federal and state accountability requirements, planning, and evaluation as prescribed by federal legislation and the Department of Education.

Local education agencies shall participate in the federal program monitoring as prescribed by the Department of Education and as required by the Perkins Act of 2006.

8VAC20-120-80. Management of equipment inventory.

Local education agencies shall maintain a current inventory of all equipment items purchased in whole or in part with federal or state funds. Equipment purchased with state funds must:

1. Be acquired in accordance with state procurement laws and regulations;

2. Include ~~a~~ local ~~match equal to the amount of state~~ funding that would provide maintenance of effort; and

3. Be ~~listed~~ itemized on the Recommended Equipment Approved for Career and Technical Education Programs list provided by the ~~department.~~ Department of Education or local option approved by the Department of Education.

Equipment purchased with combined state and federal funds must be used in accordance with provisions of the Carl D. Perkins ~~Vocational~~ Career and Technical Education Act of ~~1998~~ 2006, and acquired and disposed of in accordance with federal Education Department General Administrative

Regulations (EDGAR) and appropriate state procurement laws and regulations.

Part III
Operation of Career and Technical Education Programs

8VAC20-120-100. Access to career and technical education programs.

Career and technical education programs administered by local education agencies receiving federal or state education funds shall be made equally available and accessible to all persons and~~, regardless~~ specifically prohibits discrimination on the basis of sex, race, ~~creed, age~~, color, ~~disability, or~~ national origin, religion, age, political affiliation, or veteran status, or against otherwise qualified persons with disabilities.

8VAC20-120-110. New career and technical education programs.

The need for new ~~occupational~~ career and technical preparation programs shall be based on student interests and labor market ~~demands~~ needs.

8VAC20-120-120. Program requirements.

A. Career and technical education programs shall be competency based and meet the following criteria:

1. Career and technical education programs are aligned with states' career clusters and career pathways that allow for utilization with academic and career plans;

2. State-established, industry-validated competencies are identified and stated;

~~2.~~ 3. Competencies are specified to students prior to instruction;

~~3.~~ 4. Measures for successful performance of individual competencies are identified, stated, and used to evaluate achievement of competencies;

~~4.~~ 5. A system exists for rating and documenting the competency performance of each student; and

~~5.~~ 6. Competencies shall address all aspects of ~~the~~ an industry and ~~employability~~ workplace readiness skills.

B. Performance measures, as determined by the Department of Education, will be achieved annually.

C. Career and technical education programs must be provided in middle and secondary schools. The middle school must include a minimum of one career and technical offering. Each secondary school shall provide a minimum of three career and technical program areas to include a minimum of 11 course offerings.

D. Career and technical education programs must provide industry credentialing, certification, and licensure as approved by the Board of Education to meet requirements for verified credit.

8VAC20-120-130. Individualized programs for students with disabilities.

Essential competency profiles provided by the Department of Education for career and technical education courses may be modified for students with Individualized Education Programs ~~(IEP's)~~ (IEPs) or Section 504 Plans who are enrolled in career and technical education courses. Such modification shall be made in conformance with IEP requirements as stated in Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81). The modified list of essential competencies must, as a group, be selected so that student attainment of the essential competencies prepares the student for a job or ~~occupation~~ career.

8VAC20-120-140. Cooperative education.

~~A~~ Career and technical education programs using the cooperative education method of instruction shall:

1. Develop and follow a training plan and training agreement ~~shall be developed and followed~~ for each student receiving training through cooperative education.

~~1. Career and technical education programs using the cooperative education method of instruction shall:~~

~~a. Be limited to an average of 20 students per instructor per class period with no class being more than 24 where the cooperative education method of instruction is required;~~

~~b. Have a class period assigned to the instructor for on-the-job coordination for each 20 students participating in on the job training; and~~

~~c. Specify provisions for instructor travel for on the job coordination.~~

~~2.~~ Parties to the training agreement shall include the student, parent or guardian, instructor, employer, and a school administrator.

2. Specify provisions for instructor travel for on-the-job coordination.

8VAC20-120-150. Maximum class size.

Enrollments in career and technical education courses shall not exceed the number of individual work stations.

1. Career and technical education laboratory classes that use equipment that has been identified by the U.S. Department of Labor for hazardous occupations shall be limited to a maximum of 20 students per laboratory. The career and technical education courses that have this restriction are published annually by the Virginia Department of Education.

2. Career and technical education courses designed specifically and approved for students who are

disadvantaged shall be limited to an average of 15 students per instructor per class period with no class being more than 18.

3. Career and technical education courses designed specifically and approved for students with disabilities shall be limited to an average of 10 students per instructor per class period with no class being more than 12 or up to an average of 12 students per class period with no class being more than 15 where an instructional aide is provided.

4. Career and technical education programs offering classes that require the cooperative education method of instruction shall:

a. Be limited to an average of 20 students per instructor per class period with no class being more than 24; and

b. Have a class period assigned to the instructor for on-the-job coordination for each 20 students participating in the on-the-job training.

8VAC20-120-160. Career and technical education student organizations.

A. All career and technical education students shall be provided opportunities to participate in instructional activities of the local organization.

B. A career and technical education student ~~organizations~~ organization shall be an integral and active part of each secondary career and technical program (grades 9, 10, 11, 12) offered.

C. Each middle school career and technical education program (grades 6, 7, 8) offered shall include co-curricular instructional activities related to the respective career and technical education student organization.

D. Where dues are collected for membership in such organizations, payment of such dues shall not determine a student's participation in instructional activities of the local organization.

8VAC20-120-170. Student safety.

A. Each career and technical education program shall include health and safety standards, including protective eye devices, that are applicable to the operation of that program, ~~which~~ that shall be made an integral part of program instruction.

B. Each career and technical education program shall comply with applicable federal and state laws and regulations related to health and safety.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-120)

~~Expenditure Structure, May 2001, Department of Planning and Budget.~~

Guidelines for Academic and Career Plans, Virginia Department of Education, September 17, 2009.

VA.R. Doc. No. R10-2244; Filed January 7, 2011, 11:20 a.m.

Fast-Track Regulation

Title of Regulation: **8VAC20-630. Standards for State-Funded Remedial Programs (amending 8VAC20-630-20; repealing 8VAC20-630-50).**

Statutory Authority: § 22.1-199.2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 4, 2011.

Effective Date: March 21, 2011.

Agency Contact: Margaret Roberts, Executive Assistant for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

Basis: Section 22.1-199.2 of the Code of Virginia requires the Board of Education to promulgate regulations for establishing standards for remediation programs. Chapter 61 of the 2010 Acts of Assembly removed the local school division reporting requirements for state-funded remedial programs.

Purpose: The proposed technical amendment removes reporting requirements for local school divisions as data needed for the Virginia Department of Education to analyze state-funded remedial programs is now available through the department's internal data information management system. Specifically, the department can track and analyze data for students coded as remediation recovery. In the Guidance Document Governing Certain Provisions of the Regulations Establishing Standards for Accrediting Public Schools in Virginia, remediation recovery is defined as a voluntary program that schools may implement to encourage successful remediation of students who do not pass certain Standards of Learning (SOL) tests in grades K-8 and high school reading and mathematics. Schools are required to maintain evidence of a student's participation in a remediation recovery program along with the scores of any SOL tests taken following remediation in the student's record. There is no need to burden school divisions with unnecessary reporting as a student's participation in a remediation recovery program is now documented within the student's test record. The amendments remove the burden of reporting requirements for state-funded remedial programs for school divisions.

Rationale for Using Fast-Track Process: The amendments to 8VAC20-630 are technical amendments to conform with the intent and requirements of Chapter 61 of the 2010 Acts of Assembly.

Substance: The amendments remove the burden of reporting requirements for state-funded remedial programs for school divisions. At the time the regulation was approved, data

regarding state-funded programs was not available to the department by any other means. Presently, data related to an analysis of state-funded remedial programs can be obtained through the department's internal data information management system.

Issues: The primary advantage of this regulation is to eliminate the burden of reporting data that can be obtained through the department's internal data management system. There are no disadvantages to the public or to regulated entities.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapter 61 of the 2010 Acts of Assembly implemented a reduction in reporting requirements for local school divisions. In particular, the changes to § 22.1-199.2 of the Code of Virginia governing remediation standards removes specific types of data that must be reported to the Board of Education (Board). Consequently, the Board proposes to repeal from these regulations specified reporting requirements for state-funded remedial programs. Additionally the Board proposes to no longer require that local school divisions submit their local remediation plans for approval.

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

Estimated Economic Impact. The current regulations require that annually each local school division collect and report to the Department of Education (Department) the following data pertaining to eligible students:

1. The number of students failing a state-sponsored test required by the Standards of Quality or Standards of Accreditation;

2. A demographic profile of students attending state-funded remedial programs;

3. The academic status of each student attending state-funded remedial programs;

4. The types of instruction offered;

5. The length of the program;

6. The cost of the program;

7. The number of un-graded and disabled students, and those with limited English proficiency;

8. As required, the pass rate on Standards of Learning assessments; and

9. The percentage of students at each grade level who have met their remediation goals.

Pursuant to Chapter 61 of the 2010 Acts of Assembly, the Board proposes to no longer require that school divisions report the above data. All of the above data is now available to the Department and Board independent of the school divisions reporting through the Department's internal data information management system. The Department estimates that on average each of the 132 local school divisions spend approximately 20 hours of staff time to collect and report the data and the Department spends about 40 hours of staff time handling the incoming information. Thus, the repeal of this reporting requirement will save approximately 2,680 hours[1] of staff time statewide, while not reducing the availability of useful data.

Also, the current regulations require that local school divisions submit their local remediation plans to the Board for approval. According to the Department, in practice the plans are essentially a checklist of requirements that are (and will continue to be) stated elsewhere in the regulations; and there is little practical value for the Board and the Department to receive them. Thus, the Board also proposes to repeal the requirement that local school divisions submit their local remediation plans to the Board for approval. The Department estimates that this would save on average 8 hours of staff time per school division and 20 to 25 hours of Department staff time, totaling approximately 1,080 hours[2] of saved staff time statewide.

Businesses and Entities Affected. The proposed amendments affect the 132 public school divisions in the Commonwealth as well as the Board of Education and the Department of Education.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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.

[1] (132 x 20) + 40 = 2,680
[2] (132 x 8) + 20 = 1, 076; (132 x 8) + 25 = 1, 081; or approximately 1,080

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

Chapter 61 of the 2010 Acts of Assembly implemented a reduction in reporting requirements for local school divisions. In particular, the changes to § 22.1-199.2 of the Code of Virginia governing remediation standards remove specific types of data that must be reported to the Board of Education. Consequently, the board proposes to repeal the specified reporting requirements for state-funded remedial programs from the regulations. Additionally the board proposes to no longer require that local school divisions submit their local remediation plans for approval.

8VAC20-630-20. Remediation plan development and approval.

Each local school division shall develop a local remediation plan designed to strengthen and improve the academic achievement of eligible students. ~~Local school divisions shall submit these plans at a time to be determined by the Superintendent of Public Instruction for approval by the Board of Education. Following approval of the plan, each local school division shall submit a budget for the remediation plan that identifies the sources of state funds in the plan.~~

8VAC20-630-50. ~~Reporting requirements.~~ (Repealed.)

~~Annually, each local school division shall collect and report to the Department of Education, on-line or on forms provided by the department, the following data pertaining to eligible students:~~

~~1. The number of students failing a state-sponsored test required by the Standards of Quality or Standards of Accreditation;~~

~~2. A demographic profile of students attending state-funded remedial programs;~~

~~3. The academic status of each student attending state-funded remedial programs;~~

~~4. The types of instruction offered;~~

~~5. The length of the program;~~

~~6. The cost of the program;~~

~~7. The number of ungraded and disabled students, and those with limited English proficiency;~~

~~8. As required, the pass rate on Standards of Learning assessments; and~~

~~9. The percentage of students at each grade level who have met their remediation goals.~~

VA.R. Doc. No. R11-2497; Filed January 4, 2011, 12:33 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

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

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (Rev. G10) (amending 9VAC5-50-400, 9VAC5-50-410).**

9VAC5-60. Hazardous Air Pollutant Sources (Rev. G10) (amending 9VAC5-60-60, 9VAC5-60-90, 9VAC5-60-100).

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 112 of the federal Clean Air Act; 40 CFR Parts 61 and 63.

Effective Date: March 2, 2011.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2010. Below is a list of the new standards in the federal regulations that are being incorporated into the regulations by reference:

1. 40 CFR Part 60, Standards of performance for new stationary sources: No new NSPSs are being incorporated; new provisions to the current standard for Coal Preparation and Processing Plants (Subpart Y) have been added, and the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

2. 40 CFR Part 61, National emissions standards for hazardous air pollutants: No new NESHAPs are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

3. 40 CFR Part 63, national emissions standards for hazardous air pollutants for source categories: 5 new MACTs are being incorporated: Chemical Manufacturing Area Sources (Subpart VVVVVV, 40 CFR 63.11494-11503), Asphalt Processing and Asphalt Roofing Manufacturing Area Sources (Subpart AAAAAAA, 40 CFR 63.11559-11567), Paints and Allied Products Manufacturing Area Sources (Subpart CCCCCCC, 40 CFR 63.11599-11638), Chemical Preparations Industry Area Sources (Subpart BBBBBBB, 40 CFR 63.11579-11588), and Prepared Feeds Manufacturing Area Sources (Subpart DDDDDDD, 40 CFR 63.11619-11638). The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

Article 5
Environmental Protection Agency Standards of Performance for New Stationary Sources (Rule 5-5)

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2009)~~ (2010) in effect July 1, ~~2009~~ 2010. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-50-410. Designated standards of performance.

Subpart A - General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart Ca - Reserved.

Subpart Cb - Not applicable.

Subpart Cc - Not applicable.

Subpart Cd - Not applicable.

Subpart Ce - Not applicable.

Subpart D - Fossil-Fuel Fired Steam Generators for which Construction is Commenced after August 17, 1971.

40 CFR 60.40 through 40 CFR 60.46

(fossil-fuel fired steam generating units of more than 250 million Btu per hour heat input rate, and fossil-fuel fired and wood-residue fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978.

40 CFR 60.40a through 40 CFR 60.49a

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel); electric utility combined cycle gas turbines capable of combusting more than 250 million Btu per hour heat input in the steam generator)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb - Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec - Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.64

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart K - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L - Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M - Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O - Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P - Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q - Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R - Primary Lead Smelters

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S - Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.204

(reactors, filters, evaporators, and hot wells)

Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.214

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through 40 CFR 60.224

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.234

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through 40 CFR 60.244

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y - Coal Preparation and Processing Plants.

40 CFR 60.250 through 40 CFR ~~60.254~~ 60.258

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z - Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA - Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE - Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF - (Reserved)

Subpart GG - Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH - Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

Subparts II through JJ - (Reserved)

Subpart KK - Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL - Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the benefication of uranium ore are exempted from the provisions of this subpart)

Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN - Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO - (Reserved)

Subpart PP - Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447

(pressure sensitive tape and label material coating lines)

Subpart SS - Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456

(surface coating operations in large appliance coating lines)

Subpart TT - Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474

(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and On or Before November 7, 2006.

40 CFR 60.480 through 40 CFR 60.489

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart VVa - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

40 CFR 60.480a through 40 CFR 60.489a

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW - Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX - Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ - (Reserved)

Subpart AAA - New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(wood heaters)

Subpart BBB - Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC - (Reserved)

Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE - (Reserved)

Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and On or Before November 7, 2006.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart GGGa - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

40 CFR 60.590a through 40 CFR 60.593a

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL - Onshore Natural Gas Processing: Sulfur Dioxide Emissions.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - (Reserved)

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart AAAA - Small Municipal Waste Combustors for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001.

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB - Not applicable.

Subpart CCCC - Commercial/Industrial Solid Waste Incinerators for which Construction is Commenced after November 30, 1999, or for which Modification or Construction is Commenced on or after June 1, 2001.

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD - Not applicable.

Subpart EEEE - Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF - Reserved.

Subpart GGGG - Reserved.

Subpart HHHH - Reserved.

Subpart IIII - Stationary Compression Ignition Internal Combustion Engines.

40 CFR 60.4200 through 40 CFR 60.4219

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart JJJJ - Stationary Spark Ignition Internal Combustion Engines.

40 CFR 60.4230 through 40 CFR 60.4248

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart KKKK - Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - (Reserved)

Appendix F - Quality Assurance Procedures.

Appendix G - (Not applicable)

Appendix H - (Reserved)

Appendix I - Removable label and owner's manual.

Part II
Emission Standards

Article 1
Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2009)~~ (2010) in effect July 1, ~~2009~~ 2010. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

Article 2
Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories
(Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2009)~~ (2010) in effect July 1, ~~2009~~ 2010. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

9VAC5-60-100. Designated emission standards.

Subpart A - General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B - Not applicable.

Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62 and 40 CFR 63.63

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether)

Subpart D - Not applicable.

Subpart E - Not applicable.

Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G - Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart K - Reserved.

Subpart L - Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M - Perchlorethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchlorethylene)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P - Reserved.

Subpart Q - Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R - Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S - Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T - Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchlorethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U - Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V - Reserved.

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X - Secondary Lead Smeltering.

40 CFR 63.541 through 40 CFR 63.550

(at all secondary lead smelters: blast, reverbatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y - Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z - Reserved.

Subpart AA - Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.610

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB - Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.631

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC - Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.654

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD - Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE - Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF - Reserved.

Subpart GG - Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.752

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH - Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II - Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ - Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK - Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL - Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN - Reserved.

Subpart OO - Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP - Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ - Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR - Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT - Equipment Leaks - Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU - Equipment Leaks - Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV - Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW - Storage Vessels (Tanks) - Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY - Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ - Reserved.

Subpart AAA - Reserved.

Subpart BBB - Reserved.

Subpart CCC - Steel Pickling - Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD - Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE - Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF - Reserved.

Subpart GGG - Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH - Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III - Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ - Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK - Reserved.

Subpart LLL - Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM - Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN - Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO - Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP - Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ - Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR - Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS - Reserved.

Subpart TTT - Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV - Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW - Reserved.

Subpart XXX - Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY - Reserved.

Subpart ZZZ - Reserved.

Subpart AAAA - Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)

Subpart BBBB - Reserved.

Subpart CCCC - Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD - Plywood and Composite Wood Products.

40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE - Organic Liquids Distribution (Nongasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)

Subpart FFFF - Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that are used to produce a product or isolated intermediate)

Subpart GGGG - Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH--Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176.

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ - Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK - Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one- and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL - Reserved.

Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN - Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and

refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO - Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP - Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ - Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR - Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS - Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT - Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU - Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV - Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW - Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX - Rubber Tire Manufacturing.

40 CFR 63.5980 through 40 CFR 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYY - Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.

(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

(NOTE: Authority to enforce provisions related to affected facilities located at a major source as defined in 40 CFR 63.6675 is being retained by the Commonwealth. Authority to enforce the area source provisions of the above standard is being retained by EPA. The provisions of this subpart as they apply to area sources are not incorporated by reference into these regulations)

Subpart AAAAA - Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBBB - Semiconductor Manufacturing.

40 CFR 63.7180 through 40 CFR 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCCC - Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDDD - Industrial, Commercial, and Institutional Boilers and Process Heaters.

40 CFR 63.7480 through 40 CFR 63.7575

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart EEEEE - Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF - Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGG - Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHH - Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII - Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJJ - Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart KKKKK - Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart LLLLL - Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM - Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN - Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO - Reserved.

Subpart PPPPP - Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ - Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579

(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR - Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652

(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS - Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824

(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles,

and other materials for liming furnaces and other high temperature process units)

Subpart TTTTT - Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942

(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUU - Reserved.

Subpart VVVVV - Reserved.

Subpart WWWWW - Hospital Ethylene Oxide Sterilizer Area Sources.

40 CFR 63.10382 through 40 CFR 63.10448

(any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilization)

Subpart XXXXX - Reserved.

Subpart YYYYY - Electric Arc Furnace Steelmaking Facility Area Sources.

40 CFR 63.10680 through 40 CFR 63.10692

(a steel plant that produces carbon, alloy, or specialty steels using an electric arc furnace)

Subpart ZZZZZ - Iron and Steel Foundries Area Sources.

40 CFR 63.10880 through 40 CFR 63.10906

(a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce)

Subpart AAAAAA - Reserved.

Subpart BBBBBB - Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources.

40 CFR 63.11080 through 40 CFR 63.11100

(gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service)

Subpart CCCCCC - Gasoline Dispensing Facilities, Area Sources.

40 CFR 63.11110 through 40 CFR 63.11132

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart DDDDDD - Polyvinyl Chloride and Copolymers Production Area Sources.

40 CFR 63.11140 through 40 CFR 63.11145

(plants that produce polyvinyl chloride or copolymers)

Subpart EEEEEE - Primary Copper Smelting Area Sources.

40 CFR 63.11146 through 40 CFR 63.11152

(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart FFFFFF - Secondary Copper Smelting Area Sources.

40 CFR 63.11153 through 40 CFR 63.11159

(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)

Subpart GGGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

40 CFR 63.11160 through 40 CFR 63.11168

(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations Area Sources.

40 CFR 63.11169 through 40 CFR 63.11180

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart IIIIII - Reserved.

Subpart JJJJJJ - Reserved.

Subpart KKKKKK - Reserved.

Subpart LLLLLL - Acrylic and Modacrylic Fibers Production Area Sources.

40 CFR 63.11393 through 40 CFR 63.11399

(production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber)

Subpart MMMMMM - Carbon Black Production Area Sources.

40 CFR 63.11400 through 40 CFR 63.11406

(carbon black production process units including all waste management units, maintenance wastewater, and

equipment components that contain or contact HAP that are associated with the carbon black production process unit)

Subpart NNNNNN - Chemical Manufacturing Area Sources: Chromium Compounds.

40 CFR 63.11407 through 40 CFR 63.11413

(any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide)

Subpart OOOOOO - Flexible Polyurethane Foam Production and Fabrication Area Sources.

40 CFR 63.11414 through 40 CFR 63.11420

(a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates)

Subpart PPPPPP - Lead Acid Battery Manufacturing Area Sources.

40 CFR 63.11421 through 40 CFR 63.11427

(grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant)

Subpart QQQQQQ - Wood Preserving Area Sources.

40 CFR 63.11428 through 40 CFR 63.11434

(pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers)

Subpart RRRRRR - Clay Ceramics Manufacturing Area Sources.

40 CFR 63.11435 through 40 CFR 63.11447

(manufacture of pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware)

Subpart SSSSSS - Glass Manufacturing Area Sources.

40 CFR 63.11448 through 40 CFR 63.11461

(manufacture of flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers, or other shapes)

Subpart TTTTTT - Secondary Nonferrous Metals Processing Area Sources.

40 CFR 63.11462 through 40 CFR 63.11474

(all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facility)

Subpart UUUUUU - Reserved.

Subpart VVVVVV - ~~Reserved~~ Chemical Manufacturing Area Sources.

40 CFR 63.11494 through 40 CFR 11503

(each chemical manufacturing process unit that uses as feedstocks, generates as byproducts, or produces as products any of the following: 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; or compounds of arsenic, cadmium, chromium, lead, manganese, or nickel)

Subpart WWWWWW - Plating and Polishing Operations, Area Sources.

40 CFR 63.11504 through 40 CFR 63.11513

(new and existing tanks, thermal spraying equipment, and mechanical polishing equipment used in non-chromium electroplating, electroless or non-electrolytic plating, non-electrolytic metal coating, dry mechanical polishing, electroforming, and electropolishing)

Subpart XXXXXX - Nine Metal Fabrication and Finishing Source Categories, Area Sources.

40 CFR 63.11514 through 40 CFR 63.11523

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart YYYYYY - Ferroalloys Production Facilities, Area Sources.

40 CFR 63.11524 through 40 CFR 63.11543

(manufacture of silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces or other reaction vessels)

Subpart ZZZZZZ - Aluminum, Copper, and Other Nonferrous Foundries, Area Sources.

40 CFR 63.11544 through 40 CFR 63.11558

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart AAAAAAA - Asphalt Processing and Asphalt Roofing Manufacturing Area Sources.

40 CFR 63.11559 through 40 CFR 63.11567

(asphalt processing operations that prepare asphalt flux at standalone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities that include one or more asphalt flux blowing stills; and asphalt roofing manufacturing operations that manufacture asphalt roofing products through a series of sequential process steps depending upon whether the type of substrate used is organic or inorganic)

Subpart BBBBBBB - Chemical Preparations Industry Area Sources.

40 CFR 63.11579 through 40 CFR 63.11588

(any facility-wide collection of chemical preparation operations, including the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations that contain metal compounds for chromium, lead, manganese, and nickel)

Subpart CCCCCCC - Paints and Allied Products Manufacturing Area Sources.

40 CFR 63.11599 through 40 CFR 63.11638

(paints and allied products manufacturing processes, including, weighing, blending, mixing, grinding, tinting, dilution or other formulation, as well as cleaning operations, material storage and transfer, and piping)

Subpart DDDDDDD - Prepared Feeds Manufacturing Area Sources.

40 CFR 63.11619 through 40 CFR 63.11638

(production of animal feed from the point in the process where a material containing chromium or manganese is added, to the point where the finished product leaves the facility, including areas where materials containing chromium and manganese are stored, areas where materials containing chromium and manganese are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer feed materials)

Appendix A - Test Methods.

Appendix B - Sources Defined for Early Reduction Provisions.

Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R11-2537; Filed January 6, 2011, 3:25 p.m.

Final Regulation

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

Title of Regulation: **9VAC5-80. Permits for Stationary Sources (Rev. L07) (amending 9VAC5-80-60, 9VAC5-80-1615, 9VAC5-80-1695, 9VAC5-80-2010, 9VAC5-80-2140).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: March 2, 2011.

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

Summary:

The amendments revise the definitions of "major stationary source" and "major source" and the lists of exempted facilities to exclude chemical processing plants that are ethanol production facilities that produce ethanol by natural fermentation. The amendments are necessary to meet the requirements of the federal Clean Air Act.

9VAC5-80-60. Definitions.

A. For the purpose of Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meanings given them in ~~9VAC5 Chapter 10 (9VAC5-10-10 et seq.)~~ 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Part 72, 73, 75, 76, 77 or 78.

"Allowable emissions" means the emission rates of a stationary source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

a. Applicable emission standards.

b. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.

c. Any other applicable emission limitation, including those with a future compliance date.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements or orders.

b. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.

c. Any standard or other requirement prescribed under the Regulations for the Control and Abatement of Air Pollution, particularly the provisions of ~~9VAC5 Chapter 40 (9VAC5-40-10 et seq.), 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) or 9VAC5 Chapter 60 (9VAC5-60-10 et seq.)~~ 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), adopted pursuant to requirements of the federal Clean Air Act or under § 111, 112 or 129 of the federal Clean Air Act.

d. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

e. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or the Regulations for the Control and Abatement of Air Pollution.

f. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

g. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

h. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

j. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1700 et seq.) of this part.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.

b. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

"Area source" means any stationary source that is not a major source. For purposes of this article, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to 9VAC5-80-80 and 9VAC5-80-90 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this regulation, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program. Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.

"Draft permit" means the version of a permit for which the board offers public participation under 9VAC5-80-270 or affected state review under 9VAC5-80-290.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in 40 CFR Part 72.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited, to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved implementation plan.

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the board under this article that has completed all review procedures required by 9VAC5-80-270 and 9VAC5-80-290.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-120.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Insignificant activity" means any emission unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9VAC5-80-720 C.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plant.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative determination under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO_x requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, lack of or poor preventative maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9VAC5-80-10 or Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1700 et seq.) or Article 9 (9VAC5-80-2000 et seq.) of this part, promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit," unless the context suggests otherwise, means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9VAC5-80-210 on minor permit modifications, 9VAC5-80-220 on group processing of minor permit modifications, or 9VAC5-80-230 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9VAC5-80-210, 9VAC5-80-220 or 9VAC5-80-230 or any administrative permit amendment that meets the requirements of 9VAC5-80-200.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted,

stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9VAC5-80-290.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated.

c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

e. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.

f. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Research and development facility" means all the following as applied to any stationary source:

a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or into refining and improving existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.

b. The source is operated under the close supervision of technically trained personnel.

c. The source is not engaged in the manufacture of products in any manner inconsistent with subdivision a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Responsible official" means one of the following:

a. For a business entity, such as a corporation, association or cooperative:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision making functions for the business entity, or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board;

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

d. For affected sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative or any other person specified in this definition for any other purposes under this article.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9VAC5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21). At the request of the applicant, any research and

development facility may be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or § 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

9VAC5-80-1615. Definitions.

A. As used in this article, all words or terms not defined herein shall have the ~~meaning~~ meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-80-280 and applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the ~~meaning~~ meanings given them in subsection C of this section:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;

b. The applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required under this article, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the board has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established.

b. Area redesignations under § 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(1) Establishes a minor source baseline date; or

(2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) In the case of nitrogen dioxide, February 8, 1988.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

(1) In the case of particulate matter and sulfur dioxide, August 7, 1977; and

(2) In the case of nitrogen dioxide, February 8, 1988.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case

of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9VAC5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a (1) of the definition of "major stationary source " in 9VAC5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.

(3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

(9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9VAC5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(x) Fossil fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants.

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds or NO_X shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plants.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-1605 G; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and (ii) the board has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory

authorities, and compliance plans under the approved implementation plan;

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

c. Is equipped with low-NOX burners prior to the time of commencement of operations following reactivation; and

d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

a. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and NO_X are precursors for ozone);

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or

d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The board may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy
Ozone	40 tpy of volatile organic compounds or NO_X
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H_2S)	10 tpy
Total Reduced Sulfur (including H_2S)	10 tpy
Reduced Sulfur Compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

9VAC5-80-1695. Exemptions.

A. The requirements of this article shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

a. Coal cleaning plants (with thermal dryers).

b. Kraft pulp mills.

c. Portland cement plants.

d. Primary zinc smelters.

e. Iron and steel mills.

f. Primary aluminum ore reduction plants.

g. Primary copper smelters.

h. Municipal incinerators capable of charging more than 250 tons of refuse per day.

i. Hydrofluoric acid plants.

j. Sulfuric acid plants.

k. Nitric acid plants.

l. Petroleum refineries.

m. Lime plants.

n. Phosphate rock processing plants.

o. Coke oven batteries.

p. Sulfur recovery plants.

q. Carbon black plants (furnace process).

r. Primary lead smelters.

s. Fuel conversion plants.

t. Sintering plants.

u. Secondary metal production plants.

v. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

y. Taconite ore processing plants.

z. Glass fiber processing plants.

aa. Charcoal production plants.

bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would affect no class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

C. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would affect no class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

D. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The board may exempt a proposed major stationary source or major modification from the requirements of 9VAC5-80-1735 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide -- 575 $\mu g/m^3$, 8-hour average

Nitrogen dioxide -- 14 $\mu g/m^3$, annual average

Particulate matter -- 10 $\mu g/m^3$ of PM_{10}, 24-hour average

Sulfur dioxide -- 13 $\mu g/m^3$, 24-hour average

Ozone*

Lead -- 0.1 μg/m^3, 3-month average

Fluorides -- 0.25 μg/m^3, 24-hour average

Total reduced sulfur -- 10 μg/m^3, 1-hour average

Hydrogen sulfide -- 0.2 μg/m^3, 1-hour average

Reduced sulfur compounds -- 10 μg/m^3, 1-hour average; or

*No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or NO_X subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

F. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

9VAC5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 40 CFR Parts 60, 61 and 63;

b. Any applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while

the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for

a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

"Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter values on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d), or § 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Lowest achievable emissions rate (LAER)" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a (1) of the definition of "major stationary source."

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source.

b. Any significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9VAC5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of a regulated NSR pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9VAC5-20-204, (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9VAC5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60, 61 or 63.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under the NSR program that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-2000 H; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this article which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that

requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit

resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;

b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined under the definition of potential to emit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

"Regulated NSR pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound;

b. Any pollutant for which an ambient air quality standard has been promulgated; or

c. Any pollutant that is a constituent or precursor of a general pollutant listed under subdivisions a and b of this definition, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

a. Ozone nonattainment areas classified as serious or severe in 9VAC5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 py

b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9VAC5-80-2140. Exemptions.

A. The provisions of this article do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric acid plants;

10. Sulfuric acid plants;

11. Nitric acid plants;

12. Petroleum refineries;

13. Lime plants;

14. Phosphate rock processing plants;

15. Coke oven batteries;

16. Sulfur recovery plants;

17. Carbon black plants (furnace process);

18. Primary lead smelters;

19. Fuel conversion plants;

20. Sintering plants;

21. Secondary metal production plants;

22. Chemical process plants <u>(which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140)</u>;

23. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input;

24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

25. Taconite ore processing plants;

26. Glass fiber processing plants;

27. Charcoal production plants;

28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

29. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Parts 60, 61 or 63.

B. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

VA.R. Doc. No. R11-2564; Filed January 6, 2011, 3:34 p.m.

Final Regulation

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

Title of Regulation: **9VAC5-151. Regulation for Transportation Conformity (Rev. E10) (amending 9VAC5-151-40, 9VAC5-151-70).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 176(c) of the federal Clean Air Act.

Effective Date: March 2, 2011.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Summary:

This regulation requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. In particular, 9VAC5-151-70 outlines specifically how the various government agencies, federal, state and local, will interact and consult with each other and the public in developing transportation plans and projects.

The U.S. Environmental Protection Agency (EPA) promulgated amendments to the federal transportation regulation on March 24, 2010 (75 FR 14260). Under 40 CFR 51.390, Virginia is required to submit to the EPA a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at 40 CFR Part 93. In order to implement the federal transportation conformity requirements, the Virginia regulation must reflect the recent revisions made to the federal regulations. This regulation is amended to include the 2010 CFR revisions.

Part III
Criteria and Procedures for Making Conformity Determinations

9VAC5-151-40. General.

The Environmental Protection Agency (EPA) regulations promulgated at 40 CFR Part 93, Subpart A (Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws) and designated in 9VAC5-151-50 are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9VAC5-151-60. The 40 CFR section numbers appearing in 9VAC5-151-50 identify the specific provisions incorporated by reference. The specific version of the provisions incorporated by reference shall be that contained in the CFR ~~(2008)~~ (2010) in effect July 1, ~~2008~~ 2010.

9VAC5-151-70. Consultation.

A. The MPOs, LPOs, DEQ, VDOT and VDRPT shall undertake the procedures prescribed in this section for interagency consultation, conflict resolution and public consultation with each other and with local or regional offices of EPA, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, transportation plans, TIPs, and associated conformity determinations required by this chapter.

B. Until EPA grants approval of this chapter, the MPOs, and VDOT and VDRPT, prior to making conformity determinations, shall provide reasonable opportunity for consultation with LPOs, DEQ and EPA on the issues in subdivision D 1 of this section.

C. The provisions of this subsection shall be followed with regard to general factors associated with interagency consultation.

1. Representatives of the MPOs, VDOT, VDRPT, FHWA, and FTA shall undertake an interagency consultation process, in accordance with subdivisions 1 and 3 of this subsection and subsection D of this section, with the LPOs, DEQ and EPA on the development of implementation

plans, transportation plans, TIPs, any revisions to the preceding documents, and associated conformity determinations.

a. MPOs, or their designee, shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any amendments or revisions thereto. In the case of nonmetropolitan areas, VDOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the statewide transportation plan, the statewide TIP, and any amendments or revisions thereto. The MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this chapter for which the MPO is responsible.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare summaries of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on major activities (such as the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs) shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

2. Representatives of the LPOs, DEQ, and EPA shall undertake an interagency consultation process, in accordance with this subdivision and subdivision 3 of this subsection, with MPOs, VDOT, VDRPT, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, and any revisions to the preceding documents.

a. The DEQ, in conjunction with the LPOs, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of control strategy implementation plan revisions, the credits associated with the list of TCMs in the applicable implementation plan, and any amendments or revisions thereto.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare minutes of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on the development of any control strategy implementation plan revision shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The

views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

3. The specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

a. The MPOs shall be responsible for the following:

(1) Developing metropolitan transportation plans and TIPs in accordance with 23 CFR Part 450 and 49 CFR Part 613 and the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (Public Law No. 109-59).

(2) Adopting conformity determinations in conjunction with the adoption of transportation plans and TIPs and any revisions to the documents.

(3) In cooperation with VDOT, with assistance from VDRPT:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

(c) (i) Developing or approving transportation and related socio-economic data and planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for implementation plan tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

b. The VDOT, with assistance from the VDRPT, shall be responsible for the following:

(1) Developing statewide transportation plans and statewide TIPs.

(2) Providing demand forecasting and on-road mobile source emission inventories.

(3) Circulating draft and final project environmental documents to other agencies.

(4) Convening air quality technical review meetings on specific projects as needed or when requested by other agencies.

(5) In cooperation with the MPOs:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

(c) (i) Developing or approving transportation and related planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for implementation plan tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs need for conformity assessments.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

c. The LPOs shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Developing control strategy implementation plan revisions and maintenance plans.

(3) Providing a staff liaison to the MPOs for conformity and to be responsive to MPO requests for information and technical guidance.

(4) Involving the MPOs, VDOT AND VDRPT continuously in the process.

d. The DEQ shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Tracking attainment of air quality standards, and emission factor model updates.

(3) Gaining final approval at state level for control strategy implementation plan revisions and maintenance plans.

(4) Providing a staff liaison to the LPOs for conformity and to be responsive to LPO requests for information and technical guidance.

(5) Involving the LPOs continuously in the process.

e. The FHWA and FTA shall be responsible for the following:

(1) Assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section.

(2) Providing guidance on conformity and the transportation planning process to agencies in interagency consultation.

f. The EPA shall be responsible for the following:

(1) Reviewing and approving updated motor vehicle emissions factors.

(2) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(3) Assuring timely action on conformity analysis and findings and implementation plan revisions.

4. The MPOs, LPOs, DEQ, VDOT and VDRPT may enter into agreements to set forth specific consultation procedures in more detail that are not in conflict with this section.

D. The provisions of this subsection shall be followed with regard to specific processes associated with interagency consultation.

1. An interagency consultation process involving the MPOs, LPOs, DEQ, VDOT, VDRPT, EPA, FHWA, and FTA shall be undertaken for the following:

a. Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emission analyses, including vehicle miles traveled (VMT) forecasting, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

b. Determining which transportation projects should be considered "regionally significant" for the purpose of regional emission analysis (in addition to those functionally classified as principal arterial or higher; or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

c. Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 40 CFR 93.127 should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

d. Making a determination, as required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by VDOT as lead agency, in consultation with the MPOs and VDRPT, and conducted in accordance with subdivisions C 1 and 3 of this section. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

e. Notifying all parties to the consultation process of transportation plan or TIP amendments that merely add or delete exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

f. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by ~~40 CFR 93.109(l)(2)(iii)~~ 40 CFR 93.109(n)(2)(iii), to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

g. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions

budgets, developing transportation plans, TIPs, or control strategy implementation plan revisions, or making conformity determinations, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

2. An interagency consultation process in accordance with subsection C of this section involving the MPOs, LPOs, DEQ, VDOT, and VDRPT shall be undertaken for the following:

a. Evaluating events that may trigger new conformity determinations in addition to those triggering events established by 40 CFR 93.104, to be initiated by VDOT, in consultation with the MPOs and DEQ, and conducted in accordance with subdivisions C 1 and 3 of this section.

b. Consulting on emissions analysis for transportation activities that cross the borders of MPOs or nonattainment areas, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with subdivisions C 1 and 3 of this section involving the MPOs and VDOT shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

4. To assure that plans for construction of regionally significant projects that are not FHWA or FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 USC or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed, an interagency consultation process shall be undertaken, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section involving the MPO, VDOT, VDRPT, and recipients of funds designated under Title 23 USC or the Federal Transit Act.

5. An interagency consultation process in accordance with subsections C 1 and 3 of this section involving the MPOs and other recipients of funds designated under Title 23 USC or the Federal Transit Act shall be undertaken for developing assumptions regarding the location and design concept and scope of projects that are disclosed to the MPO as required by subdivision 4 of this subsection but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

6. An interagency consultation process in accordance with subdivisions C 1 and 3 of this section shall be undertaken for the design, schedule, and funding of research and data collection efforts and model developments in regional transportation (such as household or travel transportation surveys) to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

E. The provisions of this subsection shall be followed with regard to conflict resolution associated with interagency consultation.

1. Unresolved conflicts among state agencies, or between state agencies and the MPO(s), or among MPO member jurisdictions, shall be identified by an MPO or agency in writing to the other MPO, DEQ, VDOT, or VDRPT, with copies to FHWA, FTA and EPA. The MPO's or agency's written notice shall:

a. Explain the nature of the conflict;

b. Review options for resolving the conflict;

c. Describe the MPO's or agency's proposal to resolve the conflict;

d. Explain the consequences of not reaching a resolution; and

e. Request that comments on the matter be received within two weeks.

2. If the above action does not result in a resolution to the conflict, either of the following shall apply:

a. If the conflict is between the MPOs or between the MPO(s) and VDOT or VDRPT or both, then the parties shall follow the coordination procedures of 23 CFR 450.210.

b. If the conflict is between the MPO(s) or VDOT or VDRPT and the DEQ and the conflict can not be resolved by the affected agency heads, then the DEQ Director may elevate the conflict to the Governor in accordance with the procedures of subdivision 3 of this section. If the DEQ Director does not appeal to the Governor within 14 days as provided in subdivision 3 a of this subsection, the MPO or VDOT or VDRPT may proceed with its final conformity determination.

3. Appeals to the Governor by the DEQ Director under the provisions of subdivision 2 b of this subsection shall be in accordance with the following procedures:

a. The DEQ Director has 14 calendar days to appeal to the Governor after the MPO(s) or VDOT or VDRPT has

notified the DEQ Director of the agency's or MPO's resolution of DEQ's comments. The notification to the DEQ Director shall be in writing and shall be hand-delivered. The 14-day clock shall commence when VDOT or VDRPT or the MPO has confirmed receipt by the DEQ Director of the agency's or MPO's resolution of the DEQ's comments.

b. The appeal to the Governor shall consist of the following: the conformity determination and any supporting documentation; DEQ's comments on the determination; the MPO(s) or VDOT or VDRPT resolution of DEQ's comments; and DEQ's appeal document.

c. The DEQ shall provide a complete appeal package to the MPO, VDOT and VDRPT within 24 hours of the time the appeal is filed with the Governor's Office.

d. If the Governor does not concur with the conformity determination, he may direct revision of the applicable implementation plan, revision of the planned program of projects, revision of the conformity analysis or any combination of the preceding.

e. If the Governor concurs with the conformity determination made by the MPO and VDOT, the MPO and VDOT may proceed with the final conformity determination.

f. The Governor may delegate his role in this process, but not to the agency head or staff of DEQ, VDOT or VDRPT or the Commonwealth Board of Transportation.

4. Nothing in this section shall prevent the state agencies and MPOs from making efforts upon their own initiative to obtain mutual conflict resolution through conference or other appropriate means.

F. The provisions of this subsection shall be followed with regard to public consultation.

1. The MPOs shall establish a proactive involvement process that provides reasonable opportunity for review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the MPO at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR 450.316(a).

2. The MPOs shall specifically address in writing public comments regarding plans for a regionally significant project, not receiving FHWA or FTA funding or approval, and how the project is properly reflected in the emission analysis supporting a proposed conformity finding for a transportation plan or TIP.

3. The MPOs shall also provide an opportunity for public involvement in conformity determinations for projects where otherwise required by law.

VA.R. Doc. No. R11-2517; Filed January 6, 2011, 3:33 p.m.

Final Regulation

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

Title of Regulation: **9VAC5-160. Regulation for General Conformity (Rev. F10) (amending 9VAC5-160-20, 9VAC5-160-30, 9VAC5-160-110 through 9VAC5-160-190; adding 9VAC5-160-181 through 9VAC5-160-185; repealing 9VAC5-160-200).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: March 2, 2011.

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The Virginia general conformity regulation is revised to meet new federal requirements. The federal Clean Air Act requires that federal agencies must make determinations that general federal actions, such as prescribed burning, military base closings, and real estate developments, conform to Virginia's state implementation plan (SIP) for air quality. On July 17, 2006 (71 FR 40420), the U.S. Environmental Protection Agency (EPA) revised its general conformity regulations to add $PM_{2.5}$ de minimis emission levels for general conformity applicability. On April 5, 2010 (75 FR 17254), EPA further revised its general conformity requirements to address a number of implementation issues and improve the program's ability to facilitate federal agency compliance with conforming their activities to the SIPs, thereby preventing violations of the national ambient air quality standards. EPA deleted 40 CFR 51.850 and 40 CFR 51.51.852 through 51.860, since those sections merely repeated the language in 40 CFR 93.150 and 40 CFR 93.152 through 93.160. EPA then included a requirement in 40 CFR 51.851 that the general conformity SIP must meet the requirements in 40

CFR Part 93, subpart B, which were in turn revised to effect the needed program changes.

9VAC5-160-20. Terms defined.

"Administrator" means the Administrator of EPA or an authorized representative.

"Affected federal land manager" means the federal agency or the federal official charged with direct responsibility for management of an area designated as class I under the federal Clean Air Act, and located within 100 kilometers of the proposed federal action.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Applicability analysis" means the process of determining if the federal action shall be supported by a conformity determination.

"Applicable implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110(k) of the federal Clean Air Act, or a federal implementation plan promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Areawide air quality modeling analysis" means an assessment on a scale that includes the entire nonattainment area or maintenance area ~~which uses~~ using an air quality dispersion model or photochemical grid model to determine the effects of emissions on air quality, for example, an assessment using EPA's community multi-scale air quality (CMAQ) modeling system.

"Board" means the State Air Pollution Control Board or its designated representative.

"Cause or contribute to a new violation" means a federal action that:

1. Causes a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

2. Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

"Caused by" means, as used in the terms "direct emissions" and "indirect emissions," emissions that would not otherwise occur in the absence of the federal action.

"Confidential business information" or "CBI" means information that has been determined by a federal agency, in accordance with its applicable regulations, to be a trade secret, or commercial or financial information obtained from a person and privileged or confidential and is exempt from required disclosure under the federal Freedom of Information Act (5 USC § 552(b)(4)).

"Conformity determination" means the evaluation (made after an applicability analysis is completed) that a federal action conforms to the applicable implementation plan and meets the requirements of this regulation.

"Conformity evaluation" means the entire process from the applicability analysis through the conformity determination that is used to demonstrate that the federal action conforms to the requirements of this regulation.

"Consultation" means that one party confers with another identified party, provides all information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds to those views in a timely, substantive, written manner prior to any final decision on the action. The views and written response shall be made part of the record of any decision or action.

"Continuing program responsibility" means a federal agency has responsibility for emissions caused by (i) actions it takes itself; or (ii) actions of nonfederal entities that the federal agency, in exercising its normal programs and authorities, approves, funds, licenses, or permits, provided the agency can impose conditions on any portion of the action that could affect the emissions.

"Continuous program to implement" means that the federal agency has started the action identified in the plan and does not stop the actions for more than an 18-month period, unless it can demonstrate that such a stoppage was included in the original plan.

"Control" means the ability to regulate the emissions from the action. The ability to regulate may be demonstrated directly, such as through the use of emission control equipment, or indirectly, such as through the implementation of regulations or conditions on the nature of the activity that may be established in permits or approvals or by the design of the action. An example of control includes the ability of a federal agency to control the level of vehicle emissions by controlling the size of a parking facility and setting requirements for employee trip reductions.

"Criteria pollutant" means any pollutant for which there is established a national ambient air quality standard in 40 CFR Part 50.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Direct emissions" means those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable.

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

"Emergency" means, in the context of 9VAC5-160-30, a situation where extremely quick action on the part of federal agencies involved is needed and where the timing of the federal activities makes it impractical to meet the requirements of this regulation, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

"Emergency" means, in the context of 9VAC5-160-40, a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emissions budgets" ~~are~~ means those portions of the total allowable emissions defined in the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or any class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system shall be specific enough to assure meeting the criteria of § 176(c)(1)(B) of the federal Clean Air Act. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan.

"Emissions inventory" means a listing of information on the location, type of source, type and quantity of pollutant emitted as well as other parameters of the emissions.

"Emissions offsets" means, for the purposes of 9VAC5-160-160, emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable future progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the timeframe specified by that program. Emissions reductions intended to be achieved as emissions offsets under this regulation shall be monitored and enforced in a manner equivalent to that under the new source review program.

~~"Emissions that a federal agency has a continuing program responsibility for" means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless the activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, the emissions are covered by the meaning of a continuing program responsibility.~~

"EPA" means the ~~United States~~ U.S. Environmental Protection Agency.

"Facility" means something that is built, installed, or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal action" means any activity engaged in by a federal agency, or any activity that a federal agency supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC § 5301 et seq.). Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant action is the part, portion, or phase that the nonfederal undertaking that requires the federal permit, license, or approval.

"Federal agency" means a department, agency, or instrumentality of the federal government.

"Federal Clean Air Act" means ~~42 USC § 7401 et seq~~ Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Increase the frequency or severity of any existing violation of any standard in any area" means to cause a nonattainment area to exceed a standard more often, or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

"Indirect emissions" means those emissions of a criteria pollutant or its precursors that:

1. Are caused or initiated by the federal action and originate in the same nonattainment or maintenance area, but ~~may~~ occur ~~later in time, or may be farther removed in distance from the action itself but are still reasonably foreseeable; and~~ at a different time or place as the action;

2. ~~The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:~~

~~a. Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other~~

~~changes in the scale or timing of operations of the facility;~~

~~b. Emissions related to the activities of employees of contractors or federal employees;~~

~~c. Emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality; and~~

~~d. Emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States~~ That are reasonably foreseeable;

3. That the agency can practically control; and

4. For which the agency has a continuing program responsibility.

For the purposes of this definition, even if a federal licensing, rulemaking, or other approving action is a required initial step for a subsequent activity that causes emissions, such initial steps do not mean that a federal agency can practically control any resulting emissions.

"Lead planning organization" means the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the federal Clean Air Act. The organization includes elected officials of local governments in the affected nonattainment area, and representatives of the department, the Virginia Department of Transportation, the metropolitan planning organizations for the affected area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making.

"Local air quality modeling analysis" means assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested ~~roadway intersections and highways or transit terminals~~ roadways on a federal facility~~, which~~ that uses an air quality dispersion model (e.g., Industrial Source Complex Model or Emission and Dispersion Model System) to determine the effects of emissions on air quality.

"Maintenance area" means ~~any geographic region of the United States previously~~ an area that was designated as ~~a~~ nonattainment ~~area~~ and ~~subsequently~~ has been redesignated in 40 CFR Part 81 to attainment ~~subject to the requirement to develop a maintenance plan~~, meeting the provisions of § 107(d)(3)(E) of the federal Clean Air Act and has a maintenance plan approved under § 175A of the federal Clean Air Act.

"Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of § 175A of the federal Clean Air Act.

"Metropolitan planning organization" means the policy board of an organization ~~designated as being responsible, together with the Commonwealth of Virginia, for conducting the continuing, cooperative, and comprehensive planning process under~~ created as a result of the designation process in 23 USC § 134(d) ~~and 49 USC 1607~~.

"Milestone" means as defined in §§ 182(g) and 189(c)(1) of the federal Clean Air Act. A milestone consists of an emissions level and the date on which it is required to be achieved.

"Mitigation measure" means any method of reducing emissions of the pollutant or its precursor taken at the location of the federal action and used to reduce the impact of the emissions of that pollutant caused by the action.

"National ambient air quality standards" means those standards established pursuant to § 109 of the federal Clean Air Act.

"NEPA" means the National Environmental Policy Act of 1969 as amended (42 USC § 4321 et seq.)

"New source review (NSR) program" means ~~a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act~~ a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 110 (a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations, and (iii) Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) of the Regulations for the Control and Abatement of Air Pollution.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Precursors of a criteria pollutant" means:

1. For ozone,

a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and

b. Volatile organic compounds~~; and~~.

2. For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable implementation plan as significant contributors to the ~~particulate matter~~ PM_{10} levels.

3. For $PM_{2.5}$, (i) sulfur dioxide in all $PM_{2.5}$ nonattainment and maintenance areas, (ii) nitrogen oxides in all $PM_{2.5}$ nonattainment and maintenance areas unless both the department and EPA determine that it is not a significant precursor, and (iii) volatile organic compounds and ammonia only in $PM_{2.5}$ nonattainment or maintenance areas where either the department or EPA determines that they are significant precursors.

"Reasonably foreseeable emissions" ~~are~~ means projected future direct and indirect emissions that are identified at the time the conformity determination is made; the location of ~~the~~ such emissions is known ~~to the extent adequate to determine the impact of the emissions~~; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

"Regional water or wastewater projects" means construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

~~"Regionally significant action" means a federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.~~

"Restricted information" means information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, executive orders, or regulations. Such information includes, but is not limited to, classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft, or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Take or start the federal action" means the date that the federal agency signs or approves the permit, license, grant, or contract or otherwise physically begins the federal action that requires a conformity evaluation under this chapter.

"Total of direct and indirect emissions" means the sum of direct and indirect emissions increases and decreases caused by the federal action, that is, the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce the total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under 9VAC5-160-30 are not included in the "total of direct and indirect emissions," except as provided in 9VAC5-160-30 M. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. Segmentation of projects for conformity analyses when emissions are reasonably foreseeable is prohibited.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, human-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

Part II
General Provisions

9VAC5-160-30. Applicability.

A. The provisions of this regulation shall apply in all nonattainment and maintenance areas for criteria pollutants for which the area is designated nonattainment or has a maintenance plan. Conformity requirements for newly designated nonattainment areas are not applicable until one year after the effective date of the final nonattainment designation for each national ambient air quality standard and pollutant in accordance with § 176(c)(6) of the federal Clean Air Act.

B. The provisions of this chapter apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

C. The provisions of this chapter apply with respect to emissions of the following precursor pollutants:

1. For ozone:

a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and

b. Volatile organic compounds.

2. For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable implementation plan as significant contributors to the ~~particulate matter~~ PM_{10} levels.

3. For $PM_{2.5}$, (i) sulfur dioxide in all $PM_{2.5}$ nonattainment and maintenance areas, (ii) nitrogen oxides in all $PM_{2.5}$ nonattainment and maintenance areas unless both the department and EPA determine that it is not a significant precursor, and (iii) volatile organic compounds and ammonia only in $PM_{2.5}$ nonattainment or maintenance areas where either the department or EPA determines that they are significant precursors.

D. Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC § 5301 et seq.) shall meet the procedures and criteria of ~~the Regulation for Transportation Conformity (9VAC5-150-10 et seq.)~~ 9VAC5-151 (Regulation for Transportation Conformity), in lieu of the procedures set forth in this chapter.

E. For federal actions not covered by subsection D of this section, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subdivision 1 or 2 of this subsection.

1. For the purposes of this subsection, the following rates apply in nonattainment areas:

	Tons per year
Ozone (VOCs or NO_X):	
Serious nonattainment areas	50
Severe nonattainment areas	25
Extreme nonattainment areas	10
Other ozone nonattainment areas outside an ozone transport region	100
~~Marginal and moderate~~ Other ozone nonattainment areas inside an ozone transport region:	
VOC	50
NO_X	100
Carbon monoxide, all nonattainment areas	100
Sulfur dioxide or nitrogen dioxide, all nonattainment areas	100
PM_{10}:	
Moderate nonattainment areas	100
Serious nonattainment areas	70
$PM_{2.5}$:	
Direct emissions	100
Sulfur dioxide	100
Nitrogen oxides (unless determined not to be significant precursors)	100
Volatile organic compounds or ammonia (if determined to be significant precursors)	100
Lead, all nonattainment areas	25

2. For the purposes of this subsection, the following rates apply in maintenance areas:

	Tons per year
Ozone (NO_x), sulfur dioxide, or nitrogen dioxide, all maintenance areas	100
Ozone (VOCs):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide, all maintenance areas	100
PM_{10}, all maintenance ~~area~~ areas	100
$PM_{2.5}$:	
Direct emissions	100
Sulfur dioxide	100

Nitrogen oxides (unless determined not to be a significant precursor)	100
Volatile organic compounds or ammonia (if determined to be significant precursors)	100
Lead, all maintenance areas	25

F. The requirements of this section shall not apply to the following federal actions:

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection E of this section.

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

a. Judicial and legislative proceedings.

b. Continuing and recurring activities such as permit renewals where activities conducted shall be similar in scope and operation to activities currently being conducted.

c. Rulemaking and policy development and issuance.

d. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

e. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law-enforcement personnel.

f. Administrative actions such as personnel actions, organizational changes, debt management, internal agency audits, program budget proposals, and matters relating to administration and collection of taxes, duties, and fees.

g. The routine, recurring transportation of materiel and personnel.

h. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and for repair or overhaul or both.

i. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal shall be at an approved disposal site.

j. With respect to existing structures, properties, facilities, and lands where future activities conducted shall be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

k. The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted shall be similar in scope and operation to activities currently being conducted.

l. Planning, studies, and provision of technical assistance.

m. Routine operation of facilities, mobile assets, and equipment.

n. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

o. The designation of empowerment zones, enterprise communities, or viticultural areas.

p. Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any state, agency, or instrumentality of the United States.

q. Actions by the Board of Governors of the federal reserve system or any federal reserve bank to effect monetary or exchange rate policy.

r. Actions that implement a foreign affairs function of the United States.

s. Actions or portions thereof associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601 et seq., and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

t. Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity, and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity, for subsequent deeding to eligible applicants.

u. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

v. Air traffic control activities and adopting approach, departure, and en route procedures for aircraft operations above the mixing height specified in the applicable implementation plan. Where the applicable implementation plan does not specify a mixing height, the federal agency may use the 3,000 feet above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the federal action is de minimis.

3. Actions where the emissions are not reasonably foreseeable, such as the following:

a. Initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

b. Electric power marketing activities that involve the acquisition, sale, and transmission of electric energy.

4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a conforming land management plan, that has been found to conform to the applicable implementation plan. The land management plan shall have been found to conform within the past five years.

G. Notwithstanding the other requirements of this section, a conformity determination is not required for the following federal actions or portions thereof:

1. The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review program.

2. Actions in response to emergencies ~~or natural disasters such as hurricanes, earthquakes, etc., which~~ that are typically commenced on the order of hours or days after the emergency ~~or disaster~~ and, if applicable, [~~which~~ that] meet the requirements of subsection H of this section.

3. Research, investigations, studies, demonstrations, or training (other than those exempted under subdivision F 2 of this section), where no environmental detriment is incurred, or the particular action furthers air quality research, as determined by the department.

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions).

5. Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent the emissions either comply with the substantive requirements of the new source review program, or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

H. Federal actions which are part of a continuing response to an emergency or disaster under subdivision G 2 of this section and which are to be taken more than six months after the commencement of the response to the emergency or disaster under subdivision G 2 of this section are exempt from the requirements of this subsection only if:

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

2. For actions which are to be taken after those ~~sections~~ actions covered by subdivision H 1 of this section, the federal agency makes a new determination as provided in subdivision H 1 of this section, and:

a. Provides a draft copy of the written determinations required to affected EPA regional offices, the affected states and air pollution control agencies, and any federally recognized Indian tribal government in the nonattainment or maintenance area. Those organizations shall be allowed 15 days from the beginning of the extension period to comment on the draft determination; and

b. Within 30 days after making the determination, publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

3. If additional actions are necessary in response to an emergency or disaster under subdivision G 2 of this section beyond the specified time period in subdivision 2 of this subsection, a federal agency may make a new written determination as described in subdivision 2 of this subsection for as many six-month periods as needed, but in no case shall this exemption extend beyond three six-month periods except where an agency provides information to EPA and the department stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

I. Notwithstanding other requirements of this chapter, actions specified by individual federal agencies that have met the criteria set forth in ~~either~~ subdivision J 1, ~~or~~ J 2, or J 3 of

this section and the procedures set forth in subsection K of this section are presumed to conform, except as provided in subsection M of this section. Actions specified by individual federal agencies as presumed to conform shall not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in subdivisions E 1 or E 2 of this section.

J. The federal agency shall meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subdivision 1 ~~or~~, 2, or 3 of this subsection.

1. The federal agency shall clearly demonstrate, using methods consistent with this regulation, that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

a. Cause or contribute to any new violation of any standard in any area;

b. Interfere with the provisions in the applicable implementation plan for maintenance of any standard;

c. Increase the frequency or severity of any existing violation of any standard in any area;

d. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of:

(1) A demonstration of reasonable further progress;

(2) A demonstration of attainment; or

(3) A maintenance plan.

2. The federal agency shall provide documentation that the total of direct and indirect emissions from the future actions would be below the emission rates for a conformity determination that are established in subsection B of this section, based, for example, on similar actions taken over recent years.

3. The federal agency shall clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable implementation plan and the department provides written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the applicable implementation plan.

K. In addition to meeting the criteria for establishing exemptions set forth in subdivision J 1 ~~or~~, J 2, or J 3 of this section, the following procedures shall also be complied with to presume that activities shall conform:

1. The federal agency shall identify through publication in the Federal Register its list of proposed activities that are presumed to conform, and the ~~analysis, assumptions, emissions factors, and criteria used as the~~ basis for the presumptions. The notice shall clearly identify the type and size of the action that would be presumed to conform and provide criteria for determining if the type and size of action qualifies it for the presumption;

2. The federal agency shall notify the appropriate EPA regional office or offices, department, and local air quality agencies and, where applicable, the lead planning organization, and the metropolitan planning organization and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform. If the presumed to conform action has regional or national application (e.g., the action will cause emission increases in excess of the de minimis levels identified in subsection E of this section in more than one EPA region), the federal agency, as an alternative to sending it to EPA regional offices, may send the draft conformity determination to EPA, Office of Air Quality Planning and Standards;

3. The federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

4. The federal agency shall publish the final list of ~~the~~ such activities in the Federal Register.

L. ~~Notwithstanding the other requirements of this section, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in subsection E of this section, but represents 10% or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of 9VAC5-160-110 and 9VAC5-160-130 through 9VAC5-160-180 shall apply for the federal action.~~ Emissions from the following actions are presumed to conform:

1. Actions at installations with facility-wide emission budgets meeting the requirements in 9VAC5-160-181 provided that the department has included the emission budget in the EPA-approved applicable implementation plan and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget.

2. Prescribed fires conducted in accordance with a smoke management program that meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires (April 1998) or an equivalent replacement EPA policy.

3. Emissions for actions that the department identifies in the EPA-approved applicable implementation plan as presumed to conform.

M. ~~Where an action presumed to be de minimis under subdivision F 1 or F 2 of this section or otherwise presumed to conform under subsection I of this section is a regionally significant action or where an action otherwise presumed to conform under subsection I of this section does not in fact meet one of the criteria in subdivision J 1 of this section, that action shall not be considered de minimis or presumed to conform and the requirements of 9VAC5-160-110 and 9VAC5-160-130 through 9VAC5-160-180 shall apply for the federal action.~~ Even though an action would otherwise be presumed to conform under subsection I or L of this section, an action shall not be presumed to conform and the requirements of 9VAC5-160-110 through 9VAC5-160-180, 9VAC5-160-182 through 9VAC5-160-184, and 9VAC5-160-190 shall apply to the action if EPA or a third party shows that the action would:

1. Cause or contribute to any new violation of any standard in any area;

2. Interfere with provisions in the applicable implementation plan for maintenance of any standard;

3. Increase the frequency or severity of any existing violation of any standard in any area; or

4. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of (i) a demonstration of reasonable further progress, (ii) a demonstration of attainment, or (iii) a maintenance plan.

N. Any measures used to affect or determine applicability of this chapter, as determined under this section, shall result in projects that are in fact de minimis, shall result in the de minimis levels prior to the time the applicability determination is made, and shall be state or federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose shall be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of the measures and tracking of the emission reductions) and enforcement of the measures shall be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination shall obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making the determinations. The written commitment shall describe the mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this regulation is approved by EPA, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability shall apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

Part III
Criteria and Procedures for Making Conformity Determinations

9VAC5-160-110. General.

A. No federal agency shall engage in, support in any way, or provide financial assistance for, license, or permit, or approve any activity which does not conform to an applicable implementation plan.

B. A federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of this chapter before the action is taken.

C. ~~Subsection B of this section does not include federal actions where either:~~ Reserved.

~~1. A NEPA analysis was completed as evidenced by a final environmental assessment, environmental impact statement, or finding of no significant impact that was prepared prior to January 31, 1994, or~~

~~2. a. Prior to January 31, 1994, an environmental assessment was commenced or a contract was awarded to develop the specific environmental analysis,~~

~~b. Sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable implementation plan pursuant to the agency's affirmative obligation under § 176(c) of the federal Clean Air Act, and~~

~~c. A written determination of conformity under § 176(c) of the federal Clean Air Act has been made by the federal agency responsible for the federal action by March 15, 1994.~~

D. Notwithstanding any provision of this chapter, a determination that an action is in conformity with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, NEPA, or the federal Clean Air Act.

E. If an action would result in emissions originating in more than one nonattainment or maintenance area, the conformity must be evaluated for each area separately.

9VAC5-160-120. ~~Conformity analysis~~ Federal agency conformity responsibility.

Any ~~federal agency taking an action subject to this chapter~~ department, agency, or instrumentality of the federal government taking an action subject to this regulation shall make its own conformity determination consistent with the requirements of this part. In making its conformity determination, a federal agency shall follow the requirements in 9VAC5-160-130 through 9VAC5-160-180 and 9VAC5-

160-182 through 9VAC5-160-185 and shall consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency ~~(to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required)~~ or develop its own analysis in order to make its conformity determination.

9VAC5-160-130. Reporting requirements.

A. A federal agency making a conformity determination under ~~9VAC5-160-160~~ 9VAC5-160-120 through 9VAC5-160-180 and 9VAC5-160-182 through 9VAC5-160-184 shall provide to the appropriate EPA regional office or offices, department and local air quality agencies, any federally recognized Indian tribal government in the nonattainment or maintenance area and, where applicable, affected federal land managers, the lead planning organization, and the metropolitan planning organization, a 30-day notice [~~which~~ that] describes the proposed action and the federal agency's draft conformity determination on the action. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the de minimis levels identified in 9VAC5-160-30 E in three or more EPA regions), the federal agency, as an alternative to sending it to EPA regional offices, may provide the notice to EPA's Office of Air Quality Planning and Standards.

B. A federal agency shall notify the appropriate EPA regional office or offices, department and local air quality agencies, any federally recognized Indian tribal government in the nonattainment or maintenance area and, where applicable, affected federal land managers, the lead planning organization, and the metropolitan planning organization within 30 days after making a final conformity determination under 9VAC5-160-160.

C. The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by federal and department representatives who have received appropriate clearances to review the information.

9VAC5-160-140. Public participation.

A. Upon request by any person regarding a specific federal action, a federal agency shall make available, subject to the limitation in subsection E of this section, for review its draft conformity determination under 9VAC5-160-160 with supporting materials ~~which~~ that describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

B. A federal agency shall make public its draft conformity determination under 9VAC5-160-160 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement such as occurs in the NEPA process. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the de minimis levels identified in 9VAC5-160-30 E in three or more EPA regions), the federal agency, as an alternative to publishing separate notices, may publish a notice in the Federal Register.

C. A federal agency shall document its response to all the comments received on its draft conformity determination under 9VAC5-160-160 and make the comments and responses available, subject to the limitation in subsection E of this section, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

D. A federal agency shall make public its final conformity determination under 9VAC5-160-160 for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination. If the action would have multi-regional or national impacts, the federal agency, as an alternative, may publish the notice in the Federal Register.

E. The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, or executive orders concerning the release of such materials.

9VAC5-160-150. ~~Frequency of conformity determinations~~ Reevaluation of conformity.

A. Once a conformity determination is completed by a federal agency, that determination is not required to be reevaluated if the agency has maintained a continuous program to implement the action, the determination has not lapsed as specified in subsection B of this section, or any modification to the action does not result in an increase in emissions above the levels specified in 9VAC5-160-30 B. If a conformity determination is not required for the action at the time NEPA analysis is completed, the date of the finding of no significant impact for an environmental assessment, a record of decision for an environmental impact statement, or a categorical exclusion determination may be used as a substitute date for the conformity determination date.

B. The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under 9VAC5-160-130, unless the federal action has been completed or a continuous program ~~has been commenced~~ to implement ~~that~~ the federal action ~~within a reasonable time~~ has commenced.

~~B.~~ C. Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as ~~the~~ such activities are within the scope of the final conformity determination reported under 9VAC5-160-130.

~~C. If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in 9VAC5-160-30 E, a new conformity determination is required.~~ D. If the federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in 9VAC5-160-30 B and changes to the action would result in the total emissions from the action being above the limits in 9VAC5-160-30 B, then the federal agency shall make a conformity determination.

9VAC5-160-160. Criteria for determining conformity of general federal actions.

A. ~~Any~~ An action required under 9VAC5-160-30 to have a conformity determination for a specific pollutant, shall be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in 9VAC5-160-30 E, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of subsection C of this section, and meets any of the following requirements:

1. For any criteria pollutant or precursor, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable implementation plan's attainment or maintenance demonstration or reasonable further progress milestone or in a facility-wide emission budget included in an applicable implementation plan in accordance with 9VAC5-160-181;

2. For precursors of ozone ~~or~~, nitrogen dioxide, or particulate matter, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action) through a revision to the applicable implementation plan or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

3. For any directly emitted criteria pollutant, ~~except ozone and nitrogen dioxide,~~ the total of direct and indirect emissions from the action ~~meet~~ meets the requirements:

a. Specified in subsection B of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

b. Meet the requirements of subdivision 5 of this subsection, and, for local air quality modeling analysis, the requirement of subsection B of this section;

4. For carbon monoxide or ~~PM_{10}~~ particulate matter:

a. Where the department determines (in accordance with 9VAC5-160-120 and 9VAC5-160-130 and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection B of this section, based on local air quality modeling analysis; or

b. Where the department determines (in accordance with 9VAC5-160-120 and 9VAC5-160-130 and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection B of this section, based on areawide modeling, or meet the requirements of subdivision 5 of this subsection; or

5. For ozone or nitrogen dioxide, and for the purposes of subdivisions 3 b and 4 b of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

a. Where EPA has approved a revision to ~~an area's attainment or maintenance demonstration after 1990~~ the applicable implementation plan after the area was designated as nonattainment and the department makes a determination that as provided in subdivision 5 a (1) of this subsection or where the Commonwealth of Virginia makes a commitment as provided in subdivision 5 a (2) of this subsection:

(1) The total of direct and indirect emissions from the action or portion thereof is determined and documented by the department to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable implementation plan.

(2) The total of direct and indirect emissions from the action or portion thereof is determined and documented by the department to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budgets specified in the applicable implementation plan and the Governor or the Governor's designee for state

implementation plan actions makes a written commitment to EPA which includes the following:

(a) A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emissions reductions prior to the time emissions from the federal action would occur;

(b) Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan~~.~~;

(c) A demonstration that all existing applicable implementation plan requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(d) A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

(e) Written documentation including all air quality analyses supporting the conformity determination~~.~~;

(3) Where a federal agency made a conformity determination based on a commitment from the Commonwealth of Virginia under subdivision 5 a (2) of this subsection, and the department has submitted an implementation plan to EPA covering the time period during which the emissions will occur or is scheduled to submit such an implementation plan within 18 months of the conformity determination, the commitment is automatically deemed a call for a revision to the applicable implementation plan by EPA under § 110(k)(5) of the federal Clean Air Act, effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the Commonwealth of Virginia commits to revise the applicable implementation plan~~.~~;

(4) Where a federal agency made a conformity determination based on a commitment from the Commonwealth of Virginia under subdivision 5 a (2) of this subsection and the department has not submitted an implementation plan covering the time period when the emissions will occur or is not scheduled to submit such an implementation plan within 18 months of the conformity determination, the department will, within 18 months, submit to EPA a revision to the existing implementation plan committing to include the emissions in the future implementation plan revision.

b. The action or portion thereof, as determined by the metropolitan planning organization, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable implementation plan under 40 CFR Part 51, Subpart T, or 40 CFR Part 93, Subpart A~~;~~.

c. The action or portion thereof fully offsets its emissions within the same ~~attainment~~ nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violation in the past, in the area with the federal action) through a revision to the applicable implementation plan or an equally enforceable measure that effects emissions reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant~~;~~.

d. Where EPA has not approved a revision to the relevant implementation plan ~~attainment or maintenance demonstration since 1990~~ since the area was redesignated or classified, the total of direct and indirect emissions from the action for the future years (described in 9VAC5-160-170) do not increase emissions with respect to the baseline emissions~~;~~.

(1) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(a) ~~Calendar year 1990~~ The most current calendar year with a complete emissions inventory available before an area is designated unless EPA sets another year;

(b) ~~The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR Part 81~~ The emission budget in the applicable implementation plan; or

(c) The year of the baseline inventory in the PM_{10}-applicable implementation plan~~;~~.

(2) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in 9VAC5-160-170 D) using the historic activity levels (described in subdivision 5 d (1) of this subsection) and appropriate emission factors for the future years~~; or~~.

e. Where the action involves regional water or wastewater projects or both, the projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with 9VAC5-160-170 A.

B. The areawide or local air quality modeling analyses or both shall:

1. Meet the requirements of 9VAC5-160-170; and

2. Show that the action does not:

a. Cause or contribute to any new violation of any standard in any area; or

b. Increase the frequency or severity of any existing violation of any standard in any area.

C. Notwithstanding any other requirements of this section, an action subject to this section may not be determined to conform to the applicable implementation plan unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable implementation plan, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and the action is otherwise in accordance with all relevant requirements of the applicable implementation plan.

D. Any analyses required under this section shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in accordance with 9VAC5-160-180 before the determination of conformity is made.

9VAC5-160-170. Procedures for conformity determinations.

A. The analyses required under this section shall be based on the latest planning assumptions.

1. All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) shall be derived from the estimates of current and future population, employment, travel, and congestion most recently approved by the metropolitan planning organization or other agency authorized to make the estimates, where available. The conformity determination shall also be based on the latest assumptions about current and future background concentrations and other federal actions.

2. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion shall be approved by the metropolitan planning organization or other agency authorized to make the estimates for the urban area.

B. The analyses required under this subsection shall be based on the latest and most accurate emission estimation techniques available as described below, unless ~~the~~ such techniques are inappropriate. If ~~the~~ such techniques are inappropriate ~~and~~, the federal agency may obtain written approval ~~of~~ from the appropriate EPA Regional Administrator ~~is obtained~~ for ~~any~~ a modification or substitution~~, they may be modified or~~ of another technique ~~substituted~~ on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

1. For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of the applicable implementation plan shall be used for the conformity analysis as specified in subdivisions 1 a and 1 b of this subsection.

a. The EPA shall publish in the Federal Register a notice of availability of any new motor vehicle emissions model.

b. A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the Federal Register. Conformity analyses for which the analysis was begun during the grace period or no more than three ~~years~~ months before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA~~, if a final conformity determination is made within three years of the analysis~~.

2. For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" shall be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

C. The air quality modeling analyses required under this ~~subpart~~ section shall be based on the applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR Part 51~~, unless:~~.

~~1. The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis, or, where appropriate, on a generic basis for a specific federal agency program; and~~

~~2. Written approval of the EPA Regional Administrator is obtained for any modification or substitution.~~

D. The analyses required under this subsection~~, except 9VAC5-160-160 A 1,~~ shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:

1. The ~~federal Clean Air Act mandated~~ attainment year specified in the applicable implementation plan or, if ~~applicable, the farthest year for which emissions are projected in the maintenance plan;~~ the applicable implementation plan does not specify an attainment year, the latest attainment year possible under the federal Clean Air Act; or

2. The ~~year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and~~ last year for which emissions are projected in the maintenance plan;

3. The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

4. Any year for which the applicable implementation plan specifies an emissions budget.

9VAC5-160-180. Mitigation of air quality impacts.

A. Any measures that are intended to mitigate air quality impacts shall be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of the measures and tracking of the emission reductions) and enforcement of the measures shall be described, including an implementation schedule containing explicit timelines for implementation.

B. Prior to determining that a federal action is in conformity, the federal agency making the conformity determination shall obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity decisions. The written commitment shall describe the mitigation measures and the nature of the commitment, in a manner consistent with subsection A of this section.

C. Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of the commitments.

D. In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency shall be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination as provided in subsection A of this section.

E. When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination ~~in accordance with 9VAC5-160-150 and 9VAC5-160-160 and this section~~. Any proposed change in the mitigation measures is subject to the reporting requirements of 9VAC5-160-130 and the public participation requirements of 9VAC5-160-140.

F. Written comments to mitigation measures shall be obtained prior to a positive conformity determination, and ~~the~~ such commitments shall be fulfilled.

G. After EPA approves this regulation, any agreements, including mitigation measures, necessary for a conformity determination shall be both state and federally enforceable. Enforceability through the applicable implementation plan shall apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

9VAC5-160-181. Conformity evaluation for federal installations with facility-wide emission budgets.

A. The department may, in cooperation with federal agencies or third parties authorized by the agency that operate installations subject to federal oversight, develop and adopt a facility-wide emission budget to be used for demonstrating conformity under 9VAC5-160-160 A 1. The facility-wide budget shall meet the following criteria:

1. Be for a set time period;

2. Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance;

3. Include specific quantities allowed to be emitted on an annual or seasonal basis;

4. The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area;

5. Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the federal agency is taking an action that would otherwise require a conformity determination;

6. Be submitted to EPA as a revision to the applicable implementation plan; and

7. The revision to the applicable implementation plan shall be approved by EPA.

B. The facility-wide budget developed and adopted in accordance with subsection A of this section may be revised by following the requirements in subsection A of this section.

C. Total direct and indirect emissions from federal actions in conjunction with all other emissions subject to general conformity from the facility that do not exceed the facility budget adopted pursuant to subsection A of this section are presumed to conform to the applicable implementation plan and do not require a conformity analysis.

D. If the total direct and indirect emissions from the federal actions in conjunction with the other emissions subject to general conformity from the facility exceed the budget adopted pursuant to subsection A of this section, the action

shall be evaluated for conformity. A federal agency may use the compliance with the facility-wide emissions budget as part of the demonstration of conformity, i.e., the agency would have to mitigate or offset the emissions that exceed the emission budget.

E. If the applicable implementation plan for the area includes a category for construction emissions, the negotiated budget may exempt construction emissions from further conformity analysis.

9VAC5-160-182. Emissions beyond the time period covered by the applicable implementation plan.

If a federal action would result in total direct and indirect emissions above the applicable thresholds that would be emitted beyond the time period covered by the applicable implementation plan, the federal agency may (i) demonstrate conformity with the last emission budget in the applicable implementation plan or (ii) request the Commonwealth of Virginia to adopt an emissions budget for the action for inclusion in the applicable implementation plan. The Commonwealth of Virginia will submit a revision of the applicable implementation plan to EPA within 18 months either including the emissions in the existing implementation plan or establishing an enforceable commitment to include the emissions in future revisions to the applicable implementation plan based on the latest planning assumptions at the time of the revision to the applicable implementation plan. No such commitment by the Commonwealth of Virginia shall restrict the Commonwealth of Virginia's ability to require RACT, RACM, or any other control measures within the Commonwealth of Virginia's authority to ensure timely attainment of the national ambient air quality standards.

9VAC5-160-183. Timing of offsets and mitigation measures.

A. The emissions reductions from an offset or mitigation measure used to demonstrate conformity shall occur during the same calendar year as the emission increases from the action except as provided in subsection B of this section.

B. The department may approve emissions reductions in other years provided:

1. The reductions are greater than the emission increases by the following ratios:

Extreme nonattainment areas:	1.5:1
Severe nonattainment areas:	1.3:1
Serious nonattainment areas:	1.2:1
Moderate nonattainment areas:	1.15:1
All other areas:	1.1:1

2. The time period for completing the emissions reductions shall not exceed twice the period of the emissions.

3. The offset or mitigation measure with emissions reductions in another year shall not:

a. Cause or contribute to a new violation of any air quality standard;

b. Increase the frequency or severity of any existing violation of any air quality standard; or

c. Delay the timely attainment of any standard or any interim emissions reductions or other milestones in any area.

C. The approval by the department of an offset or mitigation measure with emissions reductions in another year does not relieve the Commonwealth of Virginia of any obligation to meet any implementation plan or federal Clean Air Act milestone or deadline. The approval of an alternate schedule for mitigation measures is at the discretion of the department, and it is not required to approve an alternate schedule.

9VAC5-160-184. Inter-precursor mitigation measures and offsets.

Federal agencies shall reduce the same type of pollutant as being increased by the federal action except the department may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by the Commonwealth of Virginia in 9VAC5-80 (Permits for Stationary Sources) as approved in the applicable implementation plan, are technically justified, and have a demonstrated environmental benefit.

9VAC5-160-185. Early emission reduction credit programs at federal facilities and installation subject to federal oversight.

A. Federal facilities and installations subject to federal oversight may, with the approval of the department, create an early emissions reductions credit program. The federal agency may create the emission reduction credits in accordance with the requirements in subsection B of this section and use them in accordance with subsection C of this section.

B. Creation of emission reduction credits shall be accomplished as follows:

1. Emissions reductions shall be quantifiable through the use of standard emission factors or measurement techniques. If nonstandard factors or techniques to quantify the emissions reductions are used, the federal agency shall receive approval from the department and from the EPA regional office. The emission reduction credits do not have to be quantified before the reduction strategy is implemented, but shall be quantified before the credits are used in the general conformity evaluation.

2. The emission reduction methods shall be consistent with the applicable implementation plan attainment and reasonable further progress demonstrations.

3. The emissions reductions shall not be required by or credited to other applicable implementation plan provisions.

4. Both the department and federal air quality agencies shall be able to take legal action to ensure continued implementation of the emission reduction strategy. In addition, private citizens shall also be able to initiate action to ensure compliance with the control requirement.

5. The emissions reductions shall be permanent or the timeframe for the reductions shall be specified.

6. The federal agency shall document the emissions reductions and provide a copy of the document to the department and the EPA regional office for review. The documentation shall include a detailed description of the emission reduction strategy and a discussion of how it meets the requirements of subdivisions 1 through 5 of this subsection.

C. The emission reduction credits created in accordance with subsection B of this section may be used, subject to the following limitations, to reduce the emissions increase from a federal action at the facility for the conformity evaluation.

1. If the technique used to create the emission reduction is implemented at the same facility as the federal action and could have occurred in conjunction with the federal action, then the credits may be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in 9VAC5-160-30 and as offsets or mitigation measures required by 9VAC5-160-160.

2. If the technique used to create the emission reduction is not implemented at the same facility as the federal action or could not have occurred in conjunction with the federal action, then the credits shall not be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in 9VAC5-160-30, but may be used to offset or mitigate the emissions as required by 9VAC5-160-160.

3. Emissions reductions credits shall be used in the same year in which they are generated.

4. Once the emission reduction credits are used, they shall not be used as credits for another conformity evaluation. However, unused credits from a strategy used for one conformity evaluation may be used for another conformity evaluation as long as the reduction credits are not double counted.

5. Federal agencies shall notify the department and the EPA regional office when the emission reduction credits are being used.

9VAC5-160-190. Savings provision.

The ~~federal conformity rules under 40 CFR Part 51 subpart W, in addition to any existing applicable Commonwealth of Virginia requirements, shall establish the conformity criteria and procedures necessary to meet the requirements of § 176(c) of the federal Clean Air Act until such time as this regulation is approved by EPA. Following EPA approval of this regulation, the approved or approved portion of this regulation shall govern conformity determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion, if any, of this regulation that is not approved by EPA~~ requirements of 40 CFR Part 93 to demonstrate conformity required under § 176(c) of the federal Clean Air Act apply to all federal actions in designated nonattainment and maintenance areas where EPA has not approved this regulation. When EPA approves this regulation in a revision to the Commonwealth of Virginia applicable implementation plan, a conformity evaluation is governed by the approved or approved portion of this regulation. The regulations contained in 40 CFR Part 93 apply only for the portions, if any, of the 40 CFR Part 93 requirements not contained in the provisions of this regulation approved by EPA. In addition, any previously applicable implementation plan requirements ~~relating to conformity~~ shall remain enforceable until ~~the Commonwealth revises its applicable implementation plan to specifically remove them and that revision is approved by~~ EPA approves the revision to the Commonwealth of Virginia's applicable implementation plan to specifically include the revised requirements or remove requirements.

9VAC5-160-200. ~~Review and confirmation of this chapter by board.~~ (Repealed.)

~~A. Prior to January 1, 2000, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this chapter; (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements; (iii) the federal approval status of this chapter; and (iv) an assessment of the need for continuation of this chapter.~~

~~B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this chapter, (ii) the repeal of this chapter, or (iii) the need to amend this chapter. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

DOCUMENTS INCORPORATED BY REFERENCE (9VAC5-160)

~~Compilation of Air Pollutant Emission Factors (AP-42), September 1985, with Supplement B, September 1988; Supplement C, September 1990; and Supplement D, September 1991.~~

Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources, AP-42, Fifth Edition, January 1995, stock number 055-000-00500-1; Supplement A, stock number 055-000-00551-6, February 1996; Supplement B, stock number 055-000-00565, November 1996; Supplement C, stock number 055-000-00587-7, November 1997; Supplement D, August 1998; Supplement E, September 1999; Supplement F, September 2000; U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC 27711 (http://www.epa.gov/ttn/chief/ap42/).

Interim Air Quality Policy on Wildland and Prescribed Fires, April 23, 1998, U.S. Environmental Protection Agency, Office of Air and Radiation, Research Triangle Park, NC 27711.

VA.R. Doc. No. R11-2518; Filed January 6, 2011, 3:27 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Air Pollution Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC5-530. Electric Generator Voluntary Demand Response General Permit (Rev. Dg.) (adding 9VAC5-530-10 through 9VAC5-530-290).**

Statutory Authority: §§ 10.1-1307.02 and 10.1-1308 of the Code of Virginia.

Public Hearing Information:

March 16, 2011 - 9:30 a.m. - Department of Environmental Quality, 629 East Main Street, Second Floor Conference Room A, Richmond, VA

Public Comment Deadline: April 4, 2011.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution to protect public health and welfare. Section 10.1-1307.02 B 4 of the Virginia Air Pollution Control Law establishes the requirement to develop a general permit for the construction, installation, and operation of distillate oil, natural gas, liquid propane gas, and biodiesel fired electric generating facilities that participate in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving, or like program) and that qualify as nonmajor facilities under the federal Clean Air Act Amendments of 1990.

Federal Requirements: Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to the Environmental Protection Agency (EPA) a plan that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following: (i) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights; (ii) establish a program for the enforcement of the emission limitations and schedules for compliance; and (ii) establish programs for the regulation and permitting of the modification and construction of any stationary source within the areas covered by the plan to assure the achievement of the ambient air quality standards.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, as summarized below.

Subpart F (Procedural Requirements) specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart I (Review of New Sources and Modifications) specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, and administrative procedures.

Section 51.160 of Subpart I specifies that the plan must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these, will result in either a violation of any part of a control strategy or interference with attainment or maintenance of a national standard and, if such violation or interference would occur, the means by which the construction or modification can be prevented. The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review and discuss the basis for determining which facilities will be subject to review. The procedures must provide that owners of facilities, buildings, structures or installations must submit information on the nature and amounts of emissions and on the location, construction and operation of the facility. The procedures must ensure that owners comply with applicable control strategies after permit approval. The procedures must discuss air quality data and modeling requirements on which applications must be based.

Section 51.161 of Subpart I specifies that the permitting agency must provide opportunity for public comment on information submitted by owners and on the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. Section 51.161 also specifies the minimum requirements for public notice and comment on this information.

Section 51.162 of Subpart I specifies that the responsible agency must be identified in the plan.

Section 51.163 of Subpart I specifies that the plan must include administrative procedures to be followed in determining whether the construction or modification of a facility, building, structure or installation will violate applicable control strategies or interfere with the attainment or maintenance of a national standard.

Subpart L (Legal Authority) specifies identification of legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions: (i) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards; (ii) enforce applicable laws, regulations, and standards, and seek injunctive relief; (iii) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and (iv) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

Section 51.231 of Subpart L requires the identification of legal authority as follows: (i) the provisions of law or regulation which the state determines provide the authorities required under 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

Purpose: The purpose of the regulation is to provide a streamlined process for permitting electric generating facilities that that participate in a voluntary demand response program such that the emissions from the units in no way endanger the public health. The proposed general permit contains terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new or modified emissions units that meet the requirements of an electric generating facility as defined in § 10.1-1307.02 B 4 of the Code of Virginia.

Substance: Definitions used in the regulation are identified and general provisions are established that cover the overall basis, applicability, and general requirements of the general permit; circumvention; suspension or revocation; compliance authority; and enforcement of a general permit.

Procedures for obtaining the general permit are described and provide requirements for granting an authorization to operate under the general permit, applications for coverage under the general permit, required information for initial applications, authorization to operate, and transfer of authorization to operate.

General permit terms and conditions for using fuel throughput and hours of operation for compliance demonstration are established including monitoring requirements, operating limits, emissions limits, testing requirements, recordkeeping, and reporting requirements.

Issues: The primary advantage to the public is a streamlined process for permitting the minor source emissions units that participate in a voluntary demand response program. This will ensure that adequate electricity is available to commercial facilities and the citizens of Virginia during critical times when electrical demands may be significant.

The benefit to the department will be a more efficient permitting process for the minor source emissions units that participate in a voluntary demand response program and a reduction in the number of permits that need to be modified or changed due to additions or changes at the facilities that are participating in a voluntary demand response program

(i.e., load curtailment, demand response, peak shaving, or like program).

Summary:

Chapters 752 and 855 of the 2009 Acts of Assembly mandate that the board develop a general permit for the construction, installation, and operation of distillate oil, natural gas, liquid propane gas, and biodiesel fired electric generating facilities that participate in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving, or like program) and that qualify as nonmajor facilities under the federal Clean Air Act.

The proposed general permit regulation includes emissions limits for both compression ignition and spark ignition electric generating units and limits for units located in attainment and nonattainment areas. Compliance determinations can be made by either monitoring fuel throughput or by monitoring hours of operation.

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

CHAPTER 530
ELECTRIC GENERATOR VOLUNTARY DEMAND RESPONSE GENERAL PERMIT

Part I
Definitions

9VAC5-530-10. General.

A. For the purpose of this chapter or any orders issued by the board the words or terms used shall have the meanings given them in 9VAC5-530-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meaning given them by 9VAC5-80-1110 (definitions, Permits for New and Modified Stationary Sources), 9VAC5-10-20 (general definitions, Regulations for the Control and Abatement of Air Pollution), 9VAC5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

9VAC5-530-20. Terms defined.

"Affected unit" means one or more electric generating units subject to the provisions of this chapter.

"Aggregate rated electrical power output" means (i) the sum or total rated electrical power output for all affected units involved in the application or (ii) in nonattainment areas, the sum or total rated electrical output for all electric generating units, permitted or exempt, located at the facility.

"Attainment area" means any area (other than an area identified as a nonattainment area) that meets the national primary or secondary ambient air quality standards for any pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.).

"Biodiesel fuel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable or animal fats, designated B100, and meeting the requirements of ASTM D6751-09.

"Biodiesel blends" means a blend of biodiesel and petroleum diesel fuel meeting either the requirements of ASTM D975-10b (blends up to 5.0%) or ASTM D7467-09 (blends between 6.0% and 20% biodiesel) and designated Bxx where xx represents the biodiesel content of the blend, e.g., B20 for a blend of 20% biodiesel and 80% petroleum diesel fuel.

"Compression ignition unit" or "CI unit" means a type of stationary internal combustion engine that is not a spark ignition engine.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Demand response actions are typically undertaken by the source owner in response to a request from a utility or electrical grid system operator or in response to market prices.

"Diesel fuel" means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150°C to 360°C and that complies with the specifications for S15 diesel fuel oil as defined by the American Society for Testing and Materials in ASTM D975-10b.

"Electric generating unit" means a stationary internal combustion engine that participates in a nonemergency voluntary demand response program (i.e., load curtailment, demand response, peak shaving or like program).

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a source including any of the following:

1. A failure of the electrical grid.

2. On-site disaster or equipment failure.

3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions.

4. An ISO-declared emergency where an ISO emergency is any of the following:

a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the

reliability of an electric system or the safety of persons or property.

b. Capacity deficiency or capacity excess conditions.

c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel.

d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state.

e. An abnormal event external to the ISO service territory that may require ISO action.

"Emergency generator or generation source" means a stationary internal combustion engine that operates only during an emergency, required maintenance or operability and emissions testing.

"General permit" means, for an electric generating unit or units, the terms and conditions in either Part IV (9VAC5-530-140 et seq.) or Part V (9VAC5-530-220) of this chapter that meet the requirements of Part II (9VAC5-530-30 et seq.) and Part III (9VAC5-530-90 et seq.) of this chapter and issued under the provisions of 9VAC5-80-1250.

"Identical affected units" means electric generating units that have the same make, manufacturer, model, year, size, and fuel specifications.

"Independent system operator" or "ISO" means a person who may receive or has received by transfer pursuant to § 56-576 of the Code of Virginia, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Integration operational period" means that period of time beginning with the first time the affected unit is started on-site and ending when the affected unit is fully integrated with the source's electrical system. In no case shall this period exceed 30 days.

"Kilowatt (kW) to brake horsepower (bhp)" means the conversion of 1 kW = 1.341 bhp.

"Load curtailment" means an action similar to demand response, with the specific removal or reduction of electrical loads for a limited period of time from a utility grid system in response to a request from the utility or electrical grid system operator.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act (42 USC § 7401 et seq.) and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II (Permit Procedures) of 9VAC5-80 (Permits for Stationary Sources).

"Manufacturer certified emissions" means the emission levels from a stationary compression ignition engine as identified according to the manufacturers' specifications applicable to that engine's family and model year.

"Model year" means either (i) the calendar year in which the engine was originally produced, or (ii) the annual new model production period of the engine manufacturer if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year. For an engine that is converted to a stationary engine after being placed into service as a nonroad or other nonstationary engine, model year means the calendar year or new model production period in which the engine was originally produced.

"Nonattainment area" means any area that does not meet the national ambient air quality standards for any pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.) and listed in 9VAC5-20-204.

"Operation" means the burning of fuel regardless of whether electricity is generated.

"Peak shaving" means measures aimed solely at shifting time of use of electricity from peak use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Peak shaving is typically undertaken at a source owner's discretion in order to reduce maximum electrical usage and, therefore, cost of electrical service to the source owner.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): the applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16;

2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60; or

3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Spark ignition unit" or "SI unit" means a natural gas or liquefied petroleum gas fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than two parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

"Startup" means the date on which each affected unit completes the integration period, unless an extension for start-up notification as stated in 9VAC5-530-210 A 4 or 9VAC5-530-290 A 4 is approved by the department. An extension request must be submitted seven days prior to the end of the 30-day integration operational period.

"Tier 4 engine or equivalent" means a compression ignition electric generating unit that meets Tier 4 standards of 40 CFR Part 1039 or, for engines greater than 10 liters per cylinder, 40 CFR Part 1042, whether by Tier 4 certification or by add-on controls to meet the applicable emission standards for the model year and size of the engine.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

Part II
General Provisions

9VAC5-530-30. Basis.

This general permit is being issued under the authority of § 10.1-1308 of the Code of Virginia and 9VAC5-80-1250.

9VAC5-530-40. Applicability and designation of affected emissions unit.

A. This chapter applies to each affected unit (i) for which construction, modification, or operation is commenced on or after [insert effective date of this chapter], (ii) that does not meet the permit exemption thresholds of 9VAC5-80-1105 C 1 or D 1 and (iii) that meets the requirements stated below:

1. For CI units located in either an attainment or nonattainment area with an aggregate rated electrical power output less than or equal to 58,886 kW (78,966 bhp).

2. For SI units located in an attainment area with an aggregate rated electrical power output less than or equal to 60,970kW (81,761 bhp).

3. For SI units located in a nonattainment area with an aggregate rated electrical power output less than or equal to 37,750 kW (50,623 bhp).

B. This chapter applies throughout the Commonwealth of Virginia.

C. The following affected units shall not be eligible for this general permit:

1. Any electric generating unit that is subject to the provisions of the major new source review program as defined in this chapter.

2. Any electric generating unit that is an emergency generator.

9VAC5-530-50. General.

A. Any owner requesting authority to operate an affected unit shall comply with the requirements of 9VAC5-80 (Permits for Stationary Sources) and register with the department as required under 9VAC5-20-160. Not all parts of the general permit will apply to every owner. The determination of which parts apply will be based on where the unit is located and method of compliance determination. Parts I, II, and III of this chapter apply to all owners. Part IV of this chapter applies to affected units using fuel throughput for compliance determination. Part V of this chapter applies to affected units using hours of operation for compliance determination.

B. The existence of a permit under this chapter shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances, and orders of the governmental entities having jurisdiction.

C. Upon request of the department, the owner shall reduce the level of operation or shut down an affected unit as necessary to avoid violating any primary ambient air quality standard and shall not return to normal operation until such time as the ambient air quality standard will not be violated.

D. This general permit to construct or modify each affected unit shall become invalid, unless an extension is granted by the department, if:

1. A program of continuous construction or modification is not commenced within 18 months from the date that this general permit is issued to the owner; or

2. A program of construction or modification is discontinued for a period of 18 months or more, or is not completed within a reasonable time, except for a department-approved period between phases of a phased construction project.

E. At all times, including periods of startup, shutdown, and malfunction, the owner shall, to the extent practicable, maintain and operate the affected unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

F. The owner shall develop a maintenance schedule and maintain records of all scheduled and nonscheduled maintenance.

G. The owner shall have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum.

H. The owner shall train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures prior to their first operation of such equipment and shall maintain records of the training provided including the names of trainees, the date of training, and the nature of the training.

I. Records of maintenance and training shall be maintained on-site for a period of five years and shall be made available to department personnel upon request. If the site is remotely operated, the maintenance and training records may be kept off-site but shall be made available to the department within three business days of a department request.

J. The owner shall keep a copy of this general permit on the premises of the affected unit to which it applies.

9VAC5-530-60. Circumvention, suspension, or revocation.

A. No owner shall cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants that would otherwise violate this chapter.

B. This general permit may be suspended or revoked if the owner:

1. Knowingly makes material misstatements in the general permit application or any amendments to it.

2. Fails to comply with the conditions of this general permit.

3. Fails to comply with any emission standards applicable to an affected unit.

4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard.

5. Fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, or applicable regulations of the board in effect at the time an application for this general permit is submitted.

9VAC5-530-70. Compliance.

A. Whenever it is necessary for the purpose of the regulations of the board, the board or an agent authorized by the board may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigations as authorized by § 10.1-1315 or 46.2-1187.1 of the Code of Virginia.

B. The time for inspection shall be deemed reasonable during regular business hours or whenever the source is in operation. Nothing contained herein shall make an inspection time unreasonable during an emergency.

C. Upon presentation of credentials and other documents as may be required by law, the owner shall allow the department to perform the following:

1. Enter upon the premises where the source is located or emissions-related activity is conducted or where records must be kept under the terms and conditions of this general permit.

2. Have access to and copy at reasonable times any records that must be kept under the terms and conditions of this general permit.

3. Inspect at reasonable times any facilities, equipment (including monitoring equipment), practices, or operations regulated or required under this general permit.

4. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with this general permit or applicable requirements.

9VAC5-530-80. Enforcement of a general permit.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Virginia Air Pollution Control Law, failure to comply with any term or condition of the general permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. An owner who (i) violates or fails, neglects, or refuses to obey any provision of this chapter or the Virginia Air Pollution Control Law, any applicable requirement, or any permit term or condition; (ii) knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit; or (iii) knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of §§ 10.1-1307, 10.1-1309, 10.1-1316, 10.1-1318, and 10.1-1320 of the Virginia Air Pollution Control Law.

B. Violation of this permit is subject to the enforcement provisions including, but not limited to, those contained in 9VAC5-170 (Regulation for General Administration) and §§ 10.1-1309, 10.1-1309.1, 10.1-1311, and 10.1-1316 of the Virginia Air Pollution Control Law.

C. If any condition, requirement, or portion of this general permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of this general permit.

D. The owner shall comply with all applicable conditions of this general permit. Any noncompliance with this general permit constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation of the authorization to operate under this general permit.

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

F. The authorization to operate under this general permit may be suspended or revoked for cause as specified in 9VAC5-530-80. The filing by an owner of a (i) request for reauthorization to operate under this general permit or (ii) notification of termination, planned changes, or anticipated noncompliance does not stay any condition of this general permit.

G. This general permit does not convey any property rights of any sort or any exclusive privilege.

H. Within 30 days of notification, the owner shall furnish to the department any information that the department may request in writing to determine whether cause exists for suspending or revoking the authorization to operate under this general permit or to determine compliance with this general permit. Upon request, the owner shall also furnish to the department copies of records required to be kept by this general permit and, for information claimed to be confidential, the owner shall furnish such records to the department along with a claim of confidentiality meeting the requirements of 9VAC5-170-60.

Part III
General Permit Administrative Procedures

9VAC5-530-90. Requirements for granting an authorization to operate under the general permit.

A. The department may grant an authorization to operate under the general permit for an affected unit that meets the applicability criteria in 9VAC5-530-40 and the operating limitations in 9VAC5-530-170 or 9VAC5-530-250.

B. The general permit will be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

9VAC5-530-100. Applications for coverage under the general permit.

A. The application for an affected unit shall meet the requirements of this chapter and include all information necessary to determine qualification for and to assure compliance with the general permit.

B. Any application form, report, compliance certification, or other document required to be submitted to the department under this chapter shall meet the requirements of 9VAC5-20-230.

C. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

9VAC5-530-110. Required information for initial applications.

A. The department will make application forms available to applicants. The information required by this section shall be determined and submitted according to procedures and methods acceptable to the department.

B. Each initial application for coverage under the general permit shall include, but not be limited to, the following:

1. Information specified in the appropriate air permit application form for an affected unit as determined by the department.

2. A document certification signed by a responsible official.

9VAC5-530-120. Granting an authorization to operate under the general permit.

A. The department may grant authorization to operate under the conditions and terms of the general permit to sources that meet the applicability criteria set forth in 9VAC5-530-40.

B. Granting an authorization to operate under the general permit to an affected unit covered by the general permit is not subject to the public participation procedures of 9VAC5-80-1170.

9VAC5-530-130. Transfer of authorizations to operate under the general permit.

A. No person shall transfer an authorization to operate under the general permit from one affected unit to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected unit, the new owner shall comply with any permit issued or authorization to operate under the general permit granted to the previous owner. The new owner shall notify the department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of an affected unit, the owner shall comply with any permit issued or authorization to operate under the general permit granted under the previous source name. The owner shall notify the department of the change in source name within 30 days of the name change.

Part IV
General Permit Terms and Conditions for an Affected Unit Using Fuel Throughput for Compliance Demonstration

9VAC5-530-140. General permit.

A. Any owner whose application is approved by the director shall receive the following general permit and shall comply with the requirements in it and be subject to all requirements of this chapter and the regulations of the board.

B. In compliance with the provisions of the Virginia Air Pollution Control Law and regulations adopted pursuant to it, owners of affected units are authorized to operate under the authority of this general permit, except those where board regulations or policies prohibit such operation.

C. The authorization to operate under this general permit shall be in accordance with the cover letter to this general permit, 9VAC5-530-150 (General terms and conditions), 9VAC5-530-160 (Monitoring requirements) 9VAC5-530-170 (Operating limits), 9VAC5-530-180 (Emissions limits), 9VAC5-530-190 (Testing requirements), 9VAC5-530-200 (Recordkeeping requirements), and 9VAC5-530-210 (Reporting requirements).

9VAC5-530-150. General terms and conditions.

A. The owner is authorized to operate an affected unit located within the boundaries of the Commonwealth of Virginia in accordance with the approved general permit application and conditions of this general permit except where board regulations or policies prohibit such activities.

B. The owner shall comply with the terms and conditions of this general permit prior to commencing any physical or operational change or activity that will result in making the source subject to the new source review program.

9VAC5-530-160. Monitoring requirements.

A. The owner shall install and use a fuel flow meter to monitor the fuel throughput for each affected unit, calculated monthly as the sum of each consecutive 12-month period.

B. Each fuel flow meter shall be installed, maintained, calibrated, and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations.

C. The fuel flow meter used to continuously measure the fuel throughput for each affected unit shall be observed by the owner with a frequency of not less than once per month. The owner shall keep a log of the observations from the fuel flow meter.

9VAC5-530-170. Operating limits.

A. The approved fuels for each CI affected unit are diesel fuel, biodiesel fuel, and biodiesel blends. These fuels shall meet the following specifications:

1. Diesel fuel that meets the ASTM D975-10b specification for S15 diesel fuel oil; maximum sulfur content per shipment, 0.0015%.

2. Biodiesel fuel that meets ASTM specification D6751-09; maximum sulfur content per shipment, 0.0015%.

B. The approved fuels for each SI affected unit are natural gas and liquid petroleum gas (LPG). These fuels shall meet the following specifications:

1. Natural gas with a minimum heat content of 1,000 Btu/scf HHV as determined by ASTM D1826-94 (Reapproved 2010), ASTM D4809-09a, or an equivalent method approved by the department.

2. LPG, including butane and propane, that meets ASTM specification D1835-05, or an equivalent method approved by the department.

C. The combined CI affected unit or units located in either an attainment or nonattainment area, shall consume no more than 502,766 gallons of diesel fuel or 554,230 gallons of biodiesel fuel per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. For affected units using any combination of the two fuels, the quantities of diesel oil and biodiesel, calculated monthly as the sum of each consecutive 12-month period, shall not exceed values that will allow the following equation to hold true:

$A \times (140{,}000 \text{ Btu/gal}) + B \times (127{,}000 \text{ Btu/gal}) \leq 70{,}387 \times 10^6 \text{ Btu/yr}$

where:

A = Number of gallons of diesel fuel burned during any consecutive 12-month period.

B = Number of gallons of biodiesel burned during any consecutive 12-month period.

D. The combined SI affected unit or units located in an attainment area shall consume no more than 775,300 gallons of LPG or 72.88×10^6 cubic feet of natural gas per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. For affected units using any combination of the two fuels, the quantities of natural gas and LPG, calculated monthly as the sum of each consecutive 12-month period,

shall not exceed values that will allow the following equation to hold true:

A x (1,000 Btu/ft^3) + B x (94,000 Btu/gal) ≤ 72,878 x 10^6 Btu/yr

where:

A = Number of cubic feet of natural gas burned during any consecutive 12-month period.

B = Number of gallons of LPG burned during any consecutive 12-month period.

E. The combined SI affected unit or units located in a nonattainment area shall consume no more than 480,032 gallons of LPG or 45.12 x 10^6 cubic feet of natural gas per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. For affected units using any combination of the two fuels, the quantities of natural gas and LPG, calculated monthly as the sum of each consecutive 12-month period, shall not exceed values that will allow the following equation to hold true:

A x (1,000 Btu/ft^3) + B x (94,000 Btu/gal) ≤ 45,123 x 10^6 Btu/yr

where:

A = Number of cubic feet of natural gas burned during any consecutive 12-month period.

B = Number of gallons of LPG burned during any consecutive 12-month period.

F. For affected units using diesel fuel or biodiesel fuel, the owner shall obtain a certification from the fuel supplier with each shipment of diesel fuel or biodiesel fuel. Each fuel supplier certification shall include the following:

1. The name of the fuel supplier;

2. The date on which the diesel fuel or biodiesel was received;

3. The quantity of diesel fuel or biodiesel delivered in the shipment;

4. A statement that the diesel fuel complies with the American Society for Testing and Materials specifications (ASTM D975-10b);

5. A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751-09) for S15 diesel fuel oil; and

6. The sulfur content of the diesel fuel or biodiesel fuel.

9VAC5-530-180. Emissions limits.

A. Manufacturer certified emissions of each CI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table IV-1.

Table IV-1
Emissions Limits for CI Units Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011	0.10 (0.075)	0.10 (0.075)	0.10 (0.075)	3.5 (2.6)	0.40 (0.30)	0.67 (0.50)
2011-2014	0.10 (0.075)	0.10 (0.075)	0.10 (0.075)	3.5 (2.6)	0.40 (0.30)	0.67 (0.50)
2015+	0.03 (0.022)	0.03 (0.022)	0.03 (0.022)	3.5 (2.6)	0.19 (0.14)	0.67 (0.50)

B. Emissions from the operation of each CI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table IV-2.

Table IV-2
Emission Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011	0.13 (0.097)	0.13 (0.097)	0.13 (0.097)	4.4 (3.3)	0.50 (0.37)	0.84 (0.63)
2011-2014	0.13 (0.097)	0.13 (0.097)	0.13 (0.097)	4.4 (3.3)	0.50 (0.37)	0.84 (0.63)
2015+	0.04 (0.030)	0.04 (0.030)	0.04 (0.030)	4.4 (3.3)	0.24 (0.18)	0.84 (0.63)

C. Manufacturer tested emissions limits for each SI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table IV-3.

Table IV-3
Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011+	0.015 (0.011)	0.015 (0.011)	0.015 (0.011)	2.68 (2.0)	0.94 (0.7)	1.34 (1.0)
2011+	0.015 (0.011)	0.015 (0.011)	0.015 (0.011)	2.68 (2.0)	0.94 (0.7)	1.34 (1.0)

D. Emissions from the operation of each SI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table IV-4.

Table IV-4
Emission Limits During Testing for SI Units Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011+	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)

2011+	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)

E. Combined source-wide emissions from the operation of affected units shall not exceed the limits specified in Table IV-5.

Table IV-5
Combined Source-Wide Emissions Limits for Affected Units

Pollutant	Nonattainment Areas Emissions (tons/year)	Attainment Areas Emissions (tons/year)
PM	2.8	2.8
PM_{10}	2.8	2.8
$PM_{2.5}$	2.8	2.8
NO_X	24.4	39.4
CO	99.4	99.4
VOC	17.1	27.6

F. Visible emissions from each affected unit shall not exceed 5.0% opacity as determined by Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

9VAC5-530-190. Testing requirements.

A. Each affected unit shall be constructed and installed so as to allow for emissions testing upon reasonable notice at any time using appropriate methods. Sampling ports shall be provided when requested at the appropriate locations and safe sampling platforms and access shall be provided.

B. No affected unit shall be used for the purposes of preventative maintenance purposes between the hours of 7 a.m. to 5 p.m. any day during the ozone season of May 1 through September 30.

C. Initial performance tests shall be conducted for NO_x, CO, PM_{10}, and $PM_{2.5}$ from the affected unit using EPA-approved reference methods to determine compliance with the emission limits contained in 9VAC5-530-180.

1. The tests shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit or units will be operated, but in no event later than 180 days after startup of the permitted source.

2. Tests shall be conducted in accordance with EPA methods or an alternative method approved by department.

3. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to testing.

4. One copy of the test results shall be submitted to the department regional office within 45 days after test completion and shall conform to the test report format in subsection D of this section.

5. Testing for multiple identical affected units located at the source shall be conducted as follows:

a. 50% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

6. The owner shall conduct additional performance testing every three years for NO_x, CO, PM_{10}, and $PM_{2.5}$ to demonstrate compliance with the testing emission limits contained in 9VAC5-530-180. The details of the tests shall be arranged with the regional office. Additional performance testing for multiple identical affected units located at the source shall be conducted as follows:

a. 20% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

D. The test report format for performance testing shall include the following:

1. A report cover containing:

a. The plant name;

b. The plant location;

c. Units tested (including unit reference number if assigned);

d. Test dates;

e. The name of the individual conducting the test;

f. The address of the individual conducting the test; and

g. The report date.

2. A certification, including the date certified, that has been signed by:

a. A test team leader or a certified observer;

b. The test reviewer; and

c. A responsible company official.

3. A copy of approved test protocol.

4. A summary including:

a. The reason for testing;

b. Test dates;

c. Identification of the unit tested including the maximum rated capacity for each unit;

d. For each emission unit, a table showing:

(1) The operating rate;

(2) Test methods;

(3) The pollutants tested; and

(4) Test results for each run, including the run average;

e. Process and control equipment data for each run and the average as required by the test protocol;

f. A statement that the test was conducted in accordance with the test protocol, or identification and discussion of deviations, including the likely impact on results; and

g. Any other important information as determined by the regional office.

5. A description of source operation including:

a. A description of the process;

b. A description of control devices, if necessary;

c. A process and control equipment flow diagram; and

d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack, and stack diameter or dimensions.

6. Test results, including:

a. Detailed test results for each run;

b. Sample calculations; and

c. A description of collected samples, including audits, when applicable.

7. An appendix, including:

a. Raw production data;

b. Raw field data;

c. Laboratory reports;

d. Chain of custody records for laboratory samples;

e. Calibration procedures and results;

f. Project participants and contact information;

g. Observers' names, including their industry and agency affiliation;

h. Related correspondence; and

i. Standard procedures.

E. Initial Visible Emission Evaluations (VEE) in accordance with Reference Method 9 shall be conducted on each affected unit.

1. The evaluation shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit or units will be operated, but in no event later than 180 days after startup of the permitted source.

2. Should conditions prevent concurrent opacity observations, the regional office shall be notified in writing within seven days and visible emissions testing shall be rescheduled within 30 days.

3. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests.

4. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six-minute average.

5. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to initial testing.

6. One copy of the test results shall be submitted to the department regional office within 45 days after test completion and shall conform to the test report format in 9VAC5-530-190 F.

7. Initial VEE testing for multiple identical affected units located at the source shall be conducted as follows:

a. 50% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

8. The owner shall conduct additional VEE testing every three years to demonstrate compliance with the opacity limit contained in 9VAC5-530-180 F. The details of the tests shall be arranged with the regional office. Additional VEE testing for multiple identical affected units located at the source shall be conducted as follows:

a. 20% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

F. The test report format for visible emissions evaluations shall include the following.

1. A report cover containing:

a. The plant name;

b. The plant location;

c. Units tested at the source identified by the department that have been issued reference numbers;

d. Test dates;

e. The name of the individual conducting the test;

f. The address of individual conducting the test; and

g. The report date.

2. A certification, including the date certified, that has been signed by:

a. A test team leader or a certified observer; and

b. A responsible company official.

3. Copy of the approved test protocol.

4. A summary including:

a. The reason for testing;

b. Test dates;

c. Identification of the unit tested, including the maximum rated capacity for each unit;

d. Summarized process and control equipment data for each run and the average as required by the test protocol;

e. A statement certifying that the test was conducted in accordance with the test protocol or, if not conducted according to protocol, identification and discussion of deviations, including the likely impact on results; and

f. Any other important information.

5. A description of source operation including:

a. A description of the process;

b. A description of control devices, if necessary;

c. A process and control equipment flow diagram; and

d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack, and stack diameter or dimensions.

6. The detailed test results for each run.

7. An appendix including:

a. Names of project participants and their titles;

b. Observers' names, including their industry and agency affiliation;

c. Related correspondence; and

d. Standard procedures.

9VAC5-530-200. Recordkeeping requirements.

A. The owner shall maintain records of emission data and operating parameters as necessary and, if requested, provide them to the department within three business days to demonstrate compliance with this general permit.

B. The owner shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown, or failure of the affected unit or its associated air pollution control equipment that results in excess emissions for more than one hour. Records shall include the following: (i) date, (ii) time, (iii) duration, (iv) description (emission unit, pollutant affected, cause), (v) corrective action, (vi) preventive measures taken, and (vii) name of person generating the record.

C. The content and format of such records shall be arranged with the regional office. These records shall include, but are not limited to:

1. Total combined annual throughput of fuel consumed for the affected unit or units, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Total annual heat input values to show compliance with subsections C, D, and E of 9VAC5-530-170.

3. All fuel supplier certifications.

4. Engine information including make, model, serial number, model year, maximum engine power, and engine displacement for each affected unit.

5. Written manufacturer specifications or written standard operating procedures prepared by the owner for each affected unit. The written standard operating procedures prepared by the owner cannot be less stringent than the written manufacturer specifications.

6. Results of all stack tests, VEE, and performance evaluations.

7. Operation and control device monitoring records for the fuel flow meter.

8. Scheduled and unscheduled maintenance, testing, and operator training.

D. These records shall be available for inspection by the department and shall be current for the most recent five years.

9VAC5-530-210. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1.The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

1. Such notification shall be made as soon as practicable but no later than four daytime business hours after the malfunction is discovered.

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

Part V
General Permit Terms and Conditions for Electric Generating Units Using Hours of Operation for Compliance Demonstration

9VAC5-530-220. General permit.

A. Any owner whose application is approved by the director shall receive the following general permit and shall comply with the requirements in it and be subject to all requirements of this chapter and the regulations of the board.

B. In compliance with the provisions of the Virginia Air Pollution Control Law and regulations adopted pursuant to it, owners of affected units are authorized to operate under the authority of this general permit except those where board regulations or policies prohibit such operation.

C. The authorization to operate under this general permit shall be in accordance with the cover letter to this general permit, 9VAC5-530-2300 (General terms and conditions), 9VAC5-530-240 (Monitoring requirements) 9VAC5-530-250 (Operating limits), 9VAC5-530-260 (Emissions limits), 9VAC5-530-270 (Testing requirements), 9VAC5-530-280 (Recordkeeping requirements), and 9VAC5-530-290 (Reporting requirements).

9VAC5-530-230. General terms and conditions.

A. The owner is authorized to operate an affected unit located within the boundaries of the Commonwealth of Virginia in accordance with the approved general permit application and conditions of this general permit except where board regulations or policies prohibit such activities.

B. The owner shall comply with the terms and conditions of this general permit prior to commencing any physical or operational change or activity that will result in making the source subject to the new source review program.

9VAC5-530-240. Monitoring requirements.

A. The owner shall install and use a nonresettable hour metering device to monitor the monthly and yearly operating hours for each affected unit, calculated monthly as the sum of each consecutive 12-month period. Each nonresettable hour meter shall be installed, maintained, calibrated, and operated in accordance with approved procedures that shall include, as a minimum, the manufacturer's written requirements or recommendations.

B. The hour meter used to continuously measure the hours of operation for each affected unit shall be observed by the owner with a frequency of not less than once per month. The owner shall keep a log of the observations from the hour meter.

9VAC5-530-250. Operating limits.

A. The approved fuels for each CI affected unit are diesel fuel, biodiesel fuel, and biodiesel blends. These fuels shall meet the following specifications:

1. Diesel fuel that meets the ASTM D975-10b specification for S15 diesel fuel oil; maximum sulfur content per shipment, 0.0015%.

2. Biodiesel fuel that meets ASTM specification D6751-09; maximum sulfur content per shipment, 0.0015%.

B. The approved fuels for each SI affected unit are natural gas and liquid petroleum gas (LPG). These fuels shall meet the following specifications.

1. Natural gas with a minimum heat content of 1,000 Btu/scf HHV as determined by ASTM D1826-94 (Reapproved 2010), D4809-09a, or an equivalent method approved by the department.

2. LPG, including butane and propane, that meets ASTM specification D1835-05 or an equivalent method approved by the department.

C. Each affected unit shall not operate more than 350 hours per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Total emissions for any consecutive 12-month period, calculated as the sum of all emissions from operations under this condition, shall not exceed the limits stated in 9VAC5-530-260 E.

D. For affected units using diesel fuel or biodiesel fuel the owner shall obtain a certification from the fuel supplier with each shipment of diesel fuel or biodiesel fuel. Each fuel supplier certification shall include the following:

1. The name of the fuel supplier;

2. The date on which the diesel fuel or biodiesel was received;

3. The quantity of diesel fuel or biodiesel delivered in the shipment;

4. A statement that the diesel fuel complies with the American Society for Testing and Materials specifications (ASTM D975-10b) for S15 diesel fuel oil;

5. A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751-09); and

6. The sulfur content of the diesel fuel or biodiesel fuel.

9VAC5-530-260. Emissions limits.

A. Manufacturer certified emissions of each CI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table V-1.

Table V-1
Emissions Limits for CI Units Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011	0.10 (0.075)	0.10 (0.075)	0.10 (0.075)	3.5 (2.6)	0.40 (0.30)	0.67 (0.50)
2011-2014	0.10 (0.075)	0.10 (0.075)	0.10 (0.075)	3.5 (2.6)	0.40 (0.30)	0.67 (0.50)
2015+	0.03 (0.022)	0.03 (0.022)	0.03 (0.022)	3.5 (2.6)	0.19 (0.14)	0.67 (0.50)

B. Emissions from the operation of each CI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table V-2.

Table V-2
Emission Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011	0.13 (0.097)	0.13 (0.097)	0.13 (0.097)	4.4 (3.3)	0.50 (0.37)	0.84 (0.63)

2011-2014	0.13 (0.097)	0.13 (0.097)	0.13 (0.097)	4.4 (3.3)	0.50 (0.37)	0.84 (0.63)
2015+	0.04 (0.030)	0.04 (0.030)	0.04 (0.030)	4.4 (3.3)	0.24 (0.18)	0.84 (0.63)

C. Manufacturer certified emissions of each SI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table V-3.

Table V-3
Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011+	0.015 (0.011)	0.015 (0.011)	0.015 (0.011)	2.68 (2.0)	0.94 (0.7)	1.34 (1.0)
2011+	0.015 (0.011)	0.015 (0.011)	0.015 (0.011)	2.68 (2.0)	0.94 (0.7)	1.34 (1.0)

D. Emissions from the operation of each SI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table V-4.

Table V-4
Emission Limits During Testing for SI Units Located in Either an Attainment or Nonattainment Area

Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
Pre 2011+	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)
2011+	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)

E. Combined emissions from the operation of affected units shall not exceed the limits specified in Table V-5.

Table V-5
Combined Source-Wide Emissions Limits for Affected Units

Pollutant	Nonattainment Areas Emissions (tons/year)	Attainment Areas Emissions (tons/year)
PM	2.8	2.8
PM_{10}	2.8	2.8
$PM_{2.5}$	2.8	2.8
NO_X	24.4	39.4
CO	99.4	99.4
VOC	17.1	27.6

F. Visible emissions from each affected unit shall not exceed 5.0% opacity as determined by Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

9VAC5-530-270. Testing requirements.

A. Each affected unit shall be constructed and installed so as to allow for emissions testing upon reasonable notice at any time using appropriate methods. Sampling ports shall be provided when requested at the appropriate locations and safe sampling platforms and access shall be provided.

B. No affected unit shall be used for the purposes of preventative maintenance purposes between the hours of 7 a.m. to 5 p.m. during the ozone season of May 1 through September 30.

C. Initial performance tests shall be conducted for NO_x, CO, PM_{10}, and $PM_{2.5}$ from the affected unit using EPA-approved reference methods to determine compliance with the emission limits contained in 9VAC5-530-260.

1. The tests shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit will be operated but in no event later than 180 days after startup of the permitted affected unit.

2. Tests shall be conducted in accordance with EPA methods or an alternative method approved by the department.

3. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to testing.

4. One copy of the test results shall be submitted to the department regional office within 45 days after test completion and shall conform to the test report format in 9VAC5-530-270 D.

5. Testing for multiple identical affected units located at the source shall be conducted as follows:

a. 50% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

6. The owner shall conduct additional performance testing every three years for NO_x, CO, PM_{10}, and $PM_{2.5}$ to demonstrate compliance with the testing emission limits contained in 9VAC5-530-260. The details of the tests shall be arranged with the regional office. Additional performance testing for multiple identical affected units located at the source shall be conducted as follows:

a. 20% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

D. The test report format for performance testing shall include the following:

1. A report cover containing:

a. The plant name;

b. The plant location;

c. Units tested (including unit reference number if assigned);

d. Test dates;

e. The name of the individual conducting the test;

f. The address of the individual conducting the test; and

g. The report date.

2. A certification, including the date certified, that has been signed by:

a. A test team leader or a certified observer;

b. The test reviewer; and

c. A responsible company official.

3. A copy of approved test protocol.

4. A summary including:

a. The reason for testing;

b. Test dates;

c. Identification of the unit tested including the maximum rated capacity for each unit;

d. For each emission unit, a table showing:

(1) The operating rate;

(2) Test methods;

(3) The pollutants tested; and

(4) Test results for each run, including the run average;

e. Process and control equipment data for each run and the average, as required by the test protocol;

f. A statement that the test was conducted in accordance with the test protocol, or identification and discussion of deviations, including the likely impact on results; and

g. Any other important information as determined by the regional office.

5. A description of source operation including:

a. A description of the process;

b. A description of control devices, if necessary;

c. A process and control equipment flow diagram; and

d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack and stack diameter or dimensions.

6. Test results, including:

a. Detailed test results for each run;

b. Sample calculations; and

c. A description of collected samples, including audits, when applicable.

7. An appendix, including:

a. Raw production data;

b. Raw field data;

c. Laboratory reports;

d. Chain of custody records for laboratory samples;

e. Calibration procedures and results;

f. Project participants and contact information;

g. Observers' names including their industry and agency affiliation;

h. Related correspondence; and

i. Standard procedures.

E. Visible Emission Evaluations (VEE) in accordance with Reference Method 9 shall be conducted on each affected unit.

1. The evaluation shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit will be operated, but in no event later than 180 days after startup of the permitted affected unit.

2. Should conditions prevent concurrent opacity observations, the regional office shall be notified in writing within seven days and visible emissions testing shall be rescheduled within 30 days.

3. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests.

4. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six-minute average.

5. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to testing.

6. One copy of the test results shall be submitted to the regional office within 45 days after test completion and shall conform to the test report format in 9VAC5-530-270 F.

7. Initial VEE testing for multiple identical affected units located at the source shall be conducted as follows:

a. 50% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

8. The owner shall conduct additional VEE testing every three years to demonstrate compliance with the opacity limit contained in 9VAC5-530-260 F. The details of the tests shall be arranged with the regional office. Additional VEE testing for multiple identical affected units located at the source shall be conducted as follows:

a. 20% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

F. The test report format for visible emissions evaluations shall include the following.

1. A report cover containing:

a. The plant name;

b. The plant location;

c. Units tested at the source identified by the department that have been issued reference numbers;

d. Test dates;

e. The name of the individual conducting the test;

f. The address of individual conducting the test; and

g. The report date.

2. A certification, including the date certified, that has been signed by:

a. A test team leader or a certified observer; and

b. A responsible company official.

3. Copy of approved test protocol.

4. A summary including:

a. The reason for testing;

b. Test dates;

c. Identification of the unit tested, including the maximum rated capacity for each unit;

d. Summarized process and control equipment data for each run and the average as required by the test protocol;

e. A statement certifying that the test was conducted in accordance with the test protocol or, if not conducted according to protocol, identification and discussion of deviations, including the likely impact on results; and

f. Any other important information.

5. A description of source operation including:

a. A description of the process;

b. A description of control devices, if necessary;

c. A process and control equipment flow diagram; and

d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack and stack diameter or dimensions.

6. The detailed test results for each run.

7. An appendix including:

a. The names of project participants and their titles;

b. The observers' names, including their industry and agency affiliation;

c. Related correspondence; and

d. Standard procedures.

9VAC5-530-280. Recordkeeping requirements.

A. The owner shall maintain records of emission data and operating parameters as necessary and, if requested, provide them to the department within three business days to demonstrate compliance with this general permit.

B. The owner shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown, or failure of the affected unit or its associated air pollution control equipment that results in excess emissions for more than one hour. Records shall include the date, time, duration, description (emission unit, pollutant affected, cause), corrective action, preventive measures taken, and name of person generating the record.

C. The content and format of such records shall be arranged with the regional office. These records shall include, but are not limited to:

1. Total combined annual hours of operation for the affected unit or units, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. All fuel supplier certifications.

3. Engine information including make, model, serial number, model year, maximum engine power, and engine displacement for each affected unit.

4. Written manufacturer specifications or written standard operating procedures prepared by the owner for each affected unit. The written standard operating procedures prepared by the owner cannot be less stringent than the written manufacturer specifications.

5. Results of all stack tests, VEE, and performance evaluations.

6. Operation and control device monitoring records for the nonresettable hour meter.

7. Scheduled and unscheduled maintenance, testing, and operator training.

D. These records shall be available for inspection by the department and shall be current for the most recent five years.

9VAC5-530-290. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

1. Such notification shall be made as soon as practicable, but no later than four daytime business hours after the malfunction is discovered.

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC5-530)

Air Permit Application Form, Electric Generator Voluntary Demand Response General Permit, Form 530 (Draft).

DOCUMENTS INCORPORATED BY REFERENCE (9VAC5-530)

Standards of the American Society for Testing and Materials (ASTM) listed below are copyrighted materials and may be obtained from ASTM International, P.O. Box C-700, West Conshohocken, PA 19428-2959:

D975-10b, Standard Specification for Diesel Fuel Oils, 2009.

D1826-94 (Reapproved 2010), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, 2010.

D1835-05, Standard Specification for Liquefied Petroleum (LP) Gases, 2005.

D4809-09a, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), 2009.

D6751-09, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, 2009.

D7467-10, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), 2010.

VA.R. Doc. No. R10-2295; Filed January 10, 2011, 3:07 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Air Pollution Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC5-540. Emergency Generator General Permit (Rev. Eg) (adding 9VAC5-540-10 through 9VAC5-540-220).**

Statutory Authority: §§ 10.1-1307.02 and 10.1-1308 of the Code of Virginia.

Public Hearing Information:

March 16, 2011 - 9:30 a.m. - Department of Environmental Quality, 629 East Main Street, Second Floor Conference Room A, Richmond, VA

Public Comment Deadline: April 4, 2011.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare. Section 10.1-1307.02 B of the Virginia Air Pollution Control Law establishes the requirement to develop a general permit for the construction or modification and operation of emergency generation sources during independent service operator (ISO) declared emergencies.

Federal Requirements: Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to the Environmental Protection Agency (EPA) a plan that provides

for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

1. Establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

2. Establish a program for the enforcement of the emission limitations and schedules for compliance; and

3. Establish programs for the regulation and permitting of the modification and construction of any stationary source within the areas covered by the plan to assure the achievement of the ambient air quality standards.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions as summarized below.

Subpart F (Procedural Requirements) specifies definitions of key terms, stipulations, and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart I (Review of New Sources and Modifications) specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, and administrative procedures.

Section 51.160 of Subpart I specifies that the plan must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in either a violation of any part of a control strategy or interference with attainment or maintenance of a national standard and, if such violation or interference would occur, the means by which the construction or modification can be prevented. The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review and discuss the basis for determining which facilities will be subject to review. The procedures must provide that owners of facilities, buildings, structures or installations must submit information on the nature and amounts of emissions and on the location, construction and operation of the facility. The procedures must ensure that owners comply with applicable control strategies after permit approval. The procedures must discuss air quality data and modeling requirements on which applications must be based.

Section 51.161 of Subpart I specifies that the permitting agency must provide opportunity for public comment on information submitted by owners and on the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. Section 51.161 also specifies the minimum requirements for public notice and comment on this information.

Section 51.162 of Subpart I specifies that the responsible agency must be identified in the plan.

Section 51.163 of Subpart I specifies that the plan must include administrative procedures to be followed in determining whether the construction or modification of a facility, building, structure or installation will violate applicable control strategies or interfere with the attainment or maintenance of a national standard.

Subpart L (Legal Authority) specifies identification of legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

2. Enforce applicable laws, regulations, and standards, and seek injunctive relief;

3. Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

4. Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

1. The provisions of law or regulation which the state determines provide the authorities required under 51.231

must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

2. The plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

Purpose: The purpose of the regulation is to provide a streamlined process for permitting the construction or modification and operation of emergency generation sources during ISO-declared emergencies such that the emissions from the units in no way endanger the public health. The proposed general permit contains terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new or modified emissions units that meet the requirements of emergency generation sources as required in § 10.1-1307.02 B of the Code of Virginia. Such sources are stationary internal combustion engines that operate according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

Substance:

1. Definitions used in the regulation are identified.

2. General provisions are established that cover the overall basis, applicability, and general requirements of the general permit, circumvention, suspension or revocation, compliance authority, and enforcement of a general permit.

3. General permit administrative procedures are established for granting an authorization to operate under the general permit, applications for coverage under the general permit, required information for initial applications, authorization to operate, and transfer of authorization to construct and operate.

4. General permit terms and conditions are established. They include monitoring requirements, operating schedule, emissions limits for both compression ignition and spark ignition engines and for both attainment and nonattainment areas, testing requirements, recordkeeping and reporting requirements, and compliance and enforcement provisions.

Issues:

1. Public: The primary advantage to the public is a streamlined process for permitting the operation of emergency generation sources during ISO-declared emergencies. This will ensure that adequate electricity is available to commercial facilities and the citizens of Virginia during critical times when electrical demands may be significant. More stringent emission limits are established for units operating in nonattainment areas to ensure that the air quality impacts are mitigated.

2. Department: The benefit to the department will be a more efficient permitting process for emergency generation sources and a reduction in the number of permits that need to be modified or changed due to additions or changes at the facilities that are operating emergency generation sources during ISO-declared emergencies.

Summary:

Section 10.1-1307.02 B of the Code of Virginia mandates that the board develop a general permit for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during independent service operator (ISO) declared emergencies. It includes the definition of "emergency generation source" as a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency. It includes emissions limits for both compression ignition (CI) and spark ignition (SI) emergency generation sources and provides more stringent emission limits for those sources operating in nonattainment areas (i.e., Northern Virginia) than for sources operating in attainment areas.

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

CHAPTER 540
EMERGENCY GENERATOR GENERAL PERMIT

Part I
Definitions

9VAC5-540-10. General.

A. For the purpose of applying this chapter in the context of regulations of the board and related uses, the words or terms shall have the meanings given them in 9VAC5-540-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meaning given them by 9VAC5-80-1110 (definitions, Permits for New and Modified Stationary Sources), 9VAC5-10-20 (general definitions, Regulations for the Control and Abatement of Air Pollution), 9VAC5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

9VAC5-540-20. Terms defined.

"Affected unit" means one or more emergency generation units subject to the provisions of this chapter.

"Aggregate rated electrical power output" means (i) the sum or total rated electrical power output for all affected units involved in the application or (ii) in nonattainment areas, the sum or total rated electrical output for all affected units, permitted or exempt, located at the facility.

"Attainment area" means any area (other than an area identified as a nonattainment area) that meets the national ambient air quality standards for any pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.).

"Biodiesel fuel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable or animal fats, designated B100, and meeting the requirements of ASTM D6751-09.

"Biodiesel blends" means a blend of biodiesel and petroleum diesel fuel meeting either the requirements of ASTM D975-10b (blends up to 5.0%) or ASTM D7467 (blends between 6.0% and 20% biodiesel) and designated Bxx where xx represents the biodiesel content of the blend, e.g., B20 for a blend of 20% biodiesel and 80% petroleum diesel fuel.

"Compression ignition unit" or "CI unit" means a type of stationary internal combustion engine that is not a spark ignition engine.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Demand response actions are typically undertaken by the source owner in response to a request from a utility or electrical grid system operator or in response to market prices.

"Diesel fuel" means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150°C to 360°C and that complies with the specifications for S15 diesel fuel oil, as defined by the American Society for Testing and Materials in ASTM D975-10b.

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner of a source including any of the following:

1. A failure of the electrical grid.

2. On-site disaster or equipment failure.

3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions.

4. An ISO-declared emergency, where an ISO emergency is any of the following:

a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property.

b. Capacity deficiency or capacity excess conditions.

c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel.

d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state.

e. An abnormal event external to the ISO service territory that may require ISO action.

"Emergency generation unit or source" means a stationary internal combustion engine that operates only during an emergency, required maintenance, or operability and emissions testing.

"General permit" means, for an emergency generation unit, the terms and conditions in Part IV (9VAC5-540-140 et seq.) of this chapter that meet the requirements of Part II (9VAC5-540-30 et seq.) and Part III (9VAC5-540-90 et seq.) of this chapter and issued under the provisions of 9VAC5-80-1250.

"Identical affected unit" means electric generating units that have the same make, manufacturer, model, year, size, and fuel specifications.

"Integration operational period" means that period of time beginning with the first time the affected unit is started on-site and ending when the affected unit is fully integrated with the source's electrical system. In no case shall this period exceed 30 days.

"ISO-declared emergency" means a condition that exists when the independent system operator, as defined in § 56-576 of the Code of Virginia, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the board.

"Kilowatt (kW) to brake horsepower (bhp)" means the conversion of 1 kW = 1.341 bhp.

"Load curtailment" means an action similar to demand response, with the specific removal or reduction of electrical loads for a limited period of time from a utility grid system in response to a request from the utility or electrical grid system operator.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act (42 USC §§ 7401 et seq.) and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II (Permit Procedures) of 9VAC5-80 (Permits for Stationary Sources.

"Manufacturer certified emissions" means the emission levels from a stationary compression ignition engine as

identified according to the manufacturers' specifications applicable to that engine's family and model year.

"Model year" means either (i) the calendar year in which the engine was originally produced or (ii) the annual new model production period of the engine manufacturer if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year. For an engine that is converted to a stationary engine after being placed into service as a nonroad or other nonstationary engine, model year means the calendar year or new model production period in which the engine was originally produced.

"Nonattainment area" means any area that does not meet the national ambient air quality standards for any pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.) and listed in 9VAC5-20-204.

"Operation" means the burning of fuel regardless of whether electricity is generated.

"Peak shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Peak shaving is typically undertaken at a source owner's discretion in order to reduce maximum electrical usage and, therefore, cost of electrical service to the source owner.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): the applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16;

2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60; or

3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Spark ignition unit" or "SI unit" means a natural gas or liquefied petroleum gas fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

"Startup" means the date on which each affected unit completes the integration operational period, unless an extension for start-up notification as stated in subdivision 4 of 9VAC5-540-210 is approved by the department. An extension request must be submitted seven days prior to the end of the 30-day integration operational period.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

Part II
General Provisions

9VAC5-540-30. Basis.

This general permit is being issued under the authority of § 10.1-1308 of the Code of Virginia and 9VAC5-80-1250.

9VAC5-540-40. Applicability.

A. This chapter applies to each affected unit (i) for which construction, modification, or operation is commenced on or after [insert effective date of this chapter]; (ii) that does not meet the permit exemption thresholds of 9VAC5-80-1105 B 2 b, 9VAC5-80-1105 C 1, or 9VAC5-1105 D 1; and (iii) that meets the requirements stated below:

1. For CI units, located in an attainment area with an aggregate rated electrical power output identified in Table I below:

Table I
Aggregate Rated Electrical Power Output For CI Units in an Attainment Area

Affected Unit Size kW (bhp)	With a Displacement of: (liters/cylinder)	With a Model Year of:
x ≤ 6,906 (9,261)	Less than 10	2010
x ≤ 8,472 (11,361)	Less than 10	2011+
x ≤ 8,146 (10,924)	10.0 ≤ x < 15.0	2010+

2. For CI units, located in a nonattainment area with an aggregate rated electrical power output identified in Table II:

Table II
Aggregate Rated Electrical Power Output For CI Units in a Nonattainment Area

Affected Unit Size kW (bhp)	With a Displacement of: (liters/cylinder)	With a Model Year of:

x ≤ 3,850 (5,163)	Less than 10	2010
x ≤ 4,722 (6,332)	Less than 10	2011+
x ≤ 4,540 (6,088)	10.0 ≤ x < 15.0	2010+

3. For SI units located in an attainment area with an aggregate rated electrical power output less than or equal to 23,535 kW (31,560 bhp).

4. For SI units located in a nonattainment area with an aggregate rated electrical power output less than or equal to 13,115 kW (17,587 bhp).

B. This chapter applies throughout the Commonwealth of Virginia.

C. The following affected unit or units shall not be eligible for this general permit:

1. Any affected unit that is subject to the provisions of the major new source review program as defined in this chapter.

2. Any affected unit that operates during nonemergency conditions for purposes other than required maintenance and operability testing (including but not limited to peak shaving, demand response, or as part of any other interruptible power supply arrangement with a power provider, other market participant, or system operator).

9VAC5-540-50. General.

A. Any owner requesting authority to operate an affected unit shall comply with the requirements of 9VAC5-80 (Permits for Stationary Sources) and register with the department as required under 9VAC5-20-160.

B. The existence of a permit under this chapter shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances, and orders of the governmental entities having jurisdiction.

C. Upon request of the department, the owner shall reduce the level of operation or shut down an affected unit as necessary to avoid violating any primary ambient air quality standard and shall not return to normal operation until such time as the ambient air quality standard will not be violated.

D. This general permit to construct or modify each affected unit shall become invalid, unless an extension is granted by the department, if:

1. A program of continuous construction or modification is not commenced within 18 months from the date that this general permit is issued to the owner; or

2. A program of construction or modification is discontinued for a period of 18 months or more or is not completed within a reasonable time, except for a department-approved period between phases of a phased construction project.

E. At all times, including periods of startup, shutdown, and malfunction, the owner shall, to the extent practicable, maintain and operate the affected unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

F. The owner shall develop a maintenance schedule and maintain records of all scheduled and nonscheduled maintenance.

G. The owner shall have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum.

H. The owner shall train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures prior to their first operation of such equipment. The owner shall maintain records of the training provided including the names of trainees, the date of training, and the nature of the training.

I. Records of maintenance and training shall be maintained on-site for a period of five years and shall be made available to department personnel upon request. If the site is remotely operated, the maintenance and training records may be kept off-site but shall be made available to the department within three business days of a department request.

J. The owner shall keep a copy of this general permit on the premises of the affected unit to which it applies

9VAC5-540-60. Circumvention, suspension, or revocation.

A. No owner shall cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants that would otherwise violate this chapter.

B. This general permit may be suspended or revoked if the owner:

1. Knowingly makes material misstatements in the general permit application or any amendments to it.

2. Fails to comply with the conditions of this general permit.

3. Fails to comply with any emission standards applicable to an affected unit.

4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard.

5. Fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, or applicable regulations of the board

in effect at the time an application for this general permit is submitted.

9VAC5-540-70. Compliance.

A. Whenever it is necessary for the purpose of the regulations of the board, the board or an agent authorized by the board may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigations as authorized by § 10.1-1315 or 46.2-1187.1 of the Code of Virginia.

B. The time for inspection shall be deemed reasonable during regular business hours or whenever the source is in operation. Nothing contained herein shall make an inspection time unreasonable during an emergency.

C. Upon presentation of credentials and other documents as may be required by law, the owner shall allow the department to perform the following:

1. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of this general permit.

2. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of this general permit.

3. Inspect at reasonable times any facilities, equipment (including monitoring equipment), practices, or operations regulated or required under this general permit.

4. Sample or monitor at reasonable times substances or parameters for the purpose of ensuring compliance with this general permit or applicable requirements.

9VAC5-540-80. Enforcement of a general permit.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Virginia Air Pollution Control Law, failure to comply with any term or condition of the general permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. An owner who (i) violates or fails, neglects, or refuses to obey any provision of this chapter or the Virginia Air Pollution Control Law, any applicable requirement, or any permit term or condition; (ii) knowingly makes any false statement, representation, or certification in any form, in any notice or report required by a general permit; or (iii) knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of §§ 10.1-1307, 10.1-1309, 10.1-1316, 10.1-1318, and 10.1-1320 of the Virginia Air Pollution Control Law.

B. Violation of this general permit is subject to the enforcement provisions including, but not limited to, those contained in 9VAC5-170 (Regulation for General Administration) and §§ 10.1-1309, 10.1-1309.1, 10.1-1311, and 10.1-1316 of the Virginia Air Pollution Control Law.

C. If any condition, requirement, or portion of this general permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of this general permit.

D. The owner shall comply with all conditions of this general permit. Any noncompliance with this general permit constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation of the authorization to operate under this general permit.

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

F. The authorization to operate under this general permit may be suspended or revoked for cause as specified in 9VAC5-530-80. The filing by an owner of a (i) request for reauthorization to operate under this general permit or (ii) notification of termination, planned changes, or anticipated noncompliance does not stay any condition of this general permit.

G. This general permit does not convey any property rights of any sort or any exclusive privilege.

H. Within 30 days of notification, the owner shall furnish to the department any information that the department may request in writing to determine whether cause exists for suspending or revoking the authorization to operate under this general permit or to determine compliance with this general permit. Upon request, the owner shall also furnish to the department copies of records required to be kept by this general permit and, for information claimed to be confidential, the owner shall furnish such records to the department along with a claim of confidentiality meeting the requirements of 9VAC5-170-60.

Part III
General Permit Administrative Procedures

9VAC5-540-90. Requirements for granting an authorization to operate under the general permit.

A. The department may grant an authorization to operate under the general permit for an affected unit that meets the applicability criteria in 9VAC5-540-40 and the operating limitations in 9VAC5-540-170.

B. The general permit will be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

9VAC5-540-100. Applications for coverage under the general permit.

A. The application for an affected unit shall meet the requirements of this chapter and include all information necessary to determine qualification for and to ensure compliance with the general permit.

B. Any application form, report, compliance certification, or other document required to be submitted to the department under this chapter shall meet the requirements of 9VAC5-20-230.

C. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application, upon becoming aware of such failure or incorrect submittal, shall promptly submit such supplementary facts or corrected information.

9VAC5-540-110. Required information for initial applications.

A. The department will make application forms available to applicants. The information required by this section shall be determined and submitted according to procedures and methods acceptable to the department.

B. Each initial application for coverage under the general permit shall include, but not be limited to, the following:

1. Information specified in the appropriate air permit application form for an affected unit as determined by the regional office.

2. A document certification signed by a responsible official.

9VAC5-540-120. Granting an authorization to operate under the general permit.

A. The department may grant authorization to operate under the conditions and terms of the general permit to sources that meet the applicability criteria set forth in 9VAC5-540-40.

B. Granting an authorization to operate under the general permit to an affected unit covered by the general permit is not subject to the public participation procedures of 9VAC5-80-1170.

9VAC5-540-130. Transfer of authorizations to operate under the general permit.

A. No person shall transfer an authorization to operate under the general permit from one affected unit to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected unit, the new owner shall comply with any permit issued or authorization to operate under the general permit granted to the previous owner. The new owner shall notify the department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of an affected unit, the owner shall comply with any permit issued or authorization to operate under the general permit granted under the previous source name. The owner shall notify the department of the change in source name within 30 days of the name change.

Part IV
General Permit Terms and Conditions

9VAC5-540-140. General permit.

A. Any owner whose application is approved by the director shall receive the following general permit and shall comply with the requirements in it and be subject to all requirements of this chapter and the regulations of the board.

B. In compliance with the provisions of the Virginia Air Pollution Control Law and regulations adopted pursuant to it, owners of affected units are authorized to operate under the authority of this general permit, except those where board regulations or policies prohibit such operation.

C. The authorization to operate under this general permit shall be in accordance with the cover letter to this permit, 9VAC5-540-150 (General terms and conditions), 9VAC5-540-160 (Monitoring requirements) 9VAC5-540-170 (Operating limits), 9VAC5-540-180 (Emissions limits), 9VAC5-540-190 (Testing requirements), 9VAC5-540-200 (Recordkeeping requirements), 9VAC5-540-210 (Reporting requirements), and 9VAC5-540-220 (Enforcement).

9VAC5-540-150. General terms and conditions.

A. The owner is authorized to operate an affected unit located within the boundaries of the Commonwealth of Virginia in accordance with the approved permit application and conditions of this general permit except where board regulations or policies prohibit such activities.

B. The owner shall comply with the terms and conditions of this general permit prior to commencing any physical or operational change or activity that will result in making the source subject to the new source review program.

9VAC5-540-160. Monitoring requirements.

A. The owner shall install and use a nonresettable hour metering device to monitor the operating hours for each affected unit, calculated monthly as the sum of each consecutive 12-month period.

B. Each monitoring device shall be installed, maintained, calibrated, and operated in accordance with approved procedures, which shall include, as a minimum, the manufacturer's written requirements or recommendations.

C. The hour meter used to continuously measure the hours of operation for each affected unit shall be observed by the owner with a frequency of not less than once per month. The owner shall keep a log of the observations from the hour meter.

9VAC5-540-170. Operating limits.

A. Each affected unit located in an attainment area shall not operate more than 450 hours per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Total emissions for any consecutive 12-month period, calculated as the sum of all emissions from operations under this condition, shall not exceed the limits stated in of 9VAC5-540-180 F.

B. Each affected unit located in a nonattainment area shall not operate more than 500 hours per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Total emissions for any consecutive 12-month period, calculated as the sum of all emissions from operations under this condition, shall not exceed the limits stated in 9VAC5-540-180 F.

C. The approved fuels for each CI affected unit are diesel fuel, biodiesel fuel, and biodiesel blends. These fuels shall meet the following specifications:

1. Diesel fuel that meets the ASTM D975-10b specification for S15 fuel oil; maximum sulfur content per shipment, 0.0015%.

2. Biodiesel fuel which meets ASTM specification D6751-09; maximum sulfur content per shipment, 0.0015%.

D. The approved fuels for each SI affected unit are natural gas and liquid petroleum gas (LPG). These fuels shall meet the following specifications.

1. Natural gas with a minimum heat content of 1,000 Btu/scf HHV as determined by ASTM D1826-94 (Reapproved 2010), ASTM D4809-09a, or an equivalent method approved by the department.

2. LPG, including butane and propane, that meets ASTM D1835-05, or an equivalent method approved by the department.

E. For affected units using diesel fuel or biodiesel fuel, the owner shall obtain a certification from the fuel supplier with each shipment of diesel fuel or biodiesel fuel. Each fuel supplier certification shall include the following:

1. The name of the fuel supplier.

2. The date on which the diesel fuel or biodiesel was received.

3. The quantity of diesel fuel or biodiesel delivered in the shipment.

4. A statement that the diesel fuel complies with the American Society for Testing and Materials specifications (ASTM D975-10b) for S15 fuel oil.

5. A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751-09), and

6. The sulfur content of the diesel fuel or biodiesel fuel.

9VAC5-540-180. Emissions limits.

A. Manufacturer certified emissions of each CI affected unit located in an attainment area shall not exceed the limits specified in Table III.

Table III
Emissions Limits for CI Units Located in Attainment Areas

Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits g/kW-hr (g/bhp-hr) PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
x < 8 kW (x < 11 bhp)	Less than 10	2010+	0.4 (0.30)	0.4 (0.30)	0.4 (0.30)	8.0 (6.0)	7.5* (5.6*)	
8 kW ≤ x < 19 kW (11 bhp ≤ x < 25 bhp)	Less than 10	2010+	0.4 (0.30)	0.4 (0.30)	0.4 (0.30)	6.6 (4.9)	7.5* (5.6*)	

19 kW ≤ x < 37 kW (25 bhp ≤ x < 50 bhp)	Less than 10	2010+	0.3 (0.22)	0.3 (0.22)	0.3 (0.22)	5.5 (4.1)	7.5* (5.6*)	
37 kW ≤ x < 75 kW (50 bhp ≤ x < 100 bhp)	Less than 10	2010+	0.4 (0.30)	0.4 (0.30)	0.4 (0.30)	5.0 (3.7)	4.7* (3.5*)	
75 kW ≤ x < 130 kW (100 bhp ≤ x < 174 bhp)	Less than 10	2010+	0.3 (0.22)	0.3 (0.22)	0.3 (0.22)	5.0 (3.7)	4.0* (3.0*)	
130 kW ≤ x < 560 kW (174 bhp ≤ x < 751 bhp)	Less than 10	2010+	0.2 (0.15)	0.2 (0.15)	0.2 (0.15)	3.5 (2.6)	4.0* (3.0*)	
560 kW ≤ x < 2,237 kW (751 bhp ≤ x < 3,000 bhp)	Less than 10	2010+	0.2 (0.15)	0.2 (0.15)	0.2 (0.15)	3.5 (2.6)	6.4* (4.8*)	
x ≥ 2,237 kW (x ≥ 3,000 bhp)	Less than 10	2010	0.54 (0.40)	0.54 (0.40)	0.54 (0.40)	11.4 (8.5)	1.3 (1.0)	9.2 (6.9)
		2011+	0.2 (0.15)	0.2 (0.15)	0.2 (0.15)	3.5 (2.6)	6.4* (4.8*)	
x ≥ 2,237 kW (x ≥ 3,000 bhp)	10.0 ≤ x < 15.0	2010+	0.27 (0.20)	0.27 (0.20)	0.27 (0.20)	5.0 (3.7)	7.8* (5.8*)	

*Combined limit for VOC and NO_x

B. Emissions of each CI affected unit located in an attainment area during testing shall not exceed the limits specified in Table IV.

Table IV
Emissions Limits for CI Units Located in Attainment Areas

Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits (g/kW-hr (g/bhp-hr) PM	PM10	$PM_{2.5}$	CO	VOC	NO_x
x < 8 kW	Less than 10	2010+	0.5	0.5	0.5	10.0	9.4*	
(x < 11 bhp)			(0.4)	(0.4)	(0.4)	(7.5)	(7.0*)	
8 kW ≤ x < 19 kW	Less than 10	2010+	0.5	0.5	0.5	8.3	9.4*	
(11 bhp ≤ x < 25 bhp)			(0.4)	(0.4)	(0.4)	(6.2)	(7.0*)	
19 kW ≤ x < 37 kW	Less than 10	2010+	0.38	0.38	0.38	6.9	9.4*	
(25 bhp ≤ x < 50 bhp)			(0.28)	(0.28)	(0.28)	(5.1)	(7.0*)	
37 kW ≤ x < 75 kW	Less than 10	2010+	0.5	0.5	0.5	6.3	5.9*	
(50 bhp ≤ x < 100 bhp)			(0.4)	(0.4)	(0.4)	(4.7)	(4.4*)	
75 kW ≤ x < 130 kW	Less than 10	2010+	0.38	0.38	0.38	6.3	5.0*	
(100 bhp ≤ x < 174 bhp)			(0.28)	(0.28)	(0.28)	(4.7)	(3.7*)	
130 kW ≤ x < 560 kW	Less than 10	2010+	0.25	0.25	0.25	4.4	5.0*	
(174 bhp ≤ x < 751 bhp)			(0.19)	(0.19)	(0.19)	(3.3)	(3.7*)	
560 kW ≤ x < 2,237 kW	Less than 10	2010+	0.25	0.25	0.25	4.4	8.0*	
(751 bhp ≤ x < 3,000 bhp)			(0.19)	(0.19)	(0.19)	(3.3)	(6.0*)	
x ≥ 2,237 kW	Less than 10	2010	0.68	0.68	0.68	14.3	1.6	11.5
(x ≥ 3,000 bhp)			(0.51)	(0.51)	(0.51)	(10.7)	(1.2)	(8.6)

		2011+	0.25 (0.19)	0.25 (0.19)	0.25 (0.19)	4.4 (3.3)	8.0* (6.0*)
x ≥ 2,237 kW (x ≥ 3,000 bhp)	10.0 ≤ x < 15.0	2010+	0.34 (0.25)	0.34 (0.25)	0.34 (0.25)	6.3 (4.7)	9.8* (7.3*)

*Combined limit for VOC and NO_x

C. Manufacturer certified emissions of each CI affected unit located in a nonattainment attainment area shall not exceed the limits specified in Table V.

Table V
Emissions Limits for CI Units Located in Nonattainment Areas

Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits g/kW-hr (g/bhp-hr) PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
x < 8 kW (x < 11 bhp)	Less than 10	2010+	0.4 (0.30)	0.4 (0.30)	0.4 (0.30)	8.0 (6.0)	6.4* (4.8*)	
8 kW ≤ x < 19 kW (11 bhp ≤ x < 25 bhp)	Less than 10	2010+	0.4 (0.30)	0.4 (0.30)	0.4 (0.30)	6.6 (4.9)	6.4* (4.8*)	
19 kW ≤ x < 37 kW (25 bhp ≤ x < 50 bhp)	Less than 10	2010+	0.3 (0.22)	0.3 (0.22)	0.3 (0.22)	5.5 (4.1)	6.4* (4.8*)	
37 kW ≤ x < 75 kW (50 bhp ≤ x < 100 bhp)	Less than 10	2010+	0.4 (0.30)	0.4 (0.30)	0.4 (0.30)	5.0 (3.7)	4.7* (3.5*)	
75 kW ≤ x < 130 kW (100 bhp ≤ x < 174 bhp)	Less than 10	2010+	0.3 (0.22)	0.3 (0.22)	0.3 (0.22)	5.0 (3.7)	4.0* (3.0*)	
130 kW ≤ x < 560 kW (174 bhp ≤ x < 751 bhp)	Less than 10	2010+	0.2 (0.15)	0.2 (0.15)	0.2 (0.15)	3.5 (2.6)	4.0* (3.0*)	

560 kW ≤ x ≤ 2,237 kW	Less than 10	2010+	0.2	0.2	0.2	3.5	6.4*	
(751 bhp ≤ x ≤ 3,000 bhp)	-	-	(0.15)	(0.15)	(0.15)	(2.6)	(4.8*)	
x ≥ 2,237 kW	Less than 10	2010	0.54	0.54	0.54	11.4	1.3	6.4
(x ≥ 3,000 bhp)			(0.40)	(0.40)	(0.40)	(8.5)	(1.0)	(4.8)
		2011+	0.2	0.2	0.2	3.5	6.4*	
			(0.15)	(0.15)	(0.15)	(2.6)	(4.8*)	
x ≥ 2,237 kW	10.0 ≤ x < 15.0	2010+	0.27	0.27	0.27	5.0	6.4*	
(x ≥ 3,000 bhp)			(0.20)	(0.20)	(0.20)	(3.7)	(4.8*)	

*Combined limit for VOC and NO_x

D. Emissions from the operation of each CI affected unit located in a nonattainment area during testing shall not exceed the limits specified in Table VI.

Table VI
Emissions Limits During Testing for CI Units Located in Nonattainment Areas

Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
			PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
x < 8 kW	Less than 10	2010+	0.5	0.5	0.5	10.0	8.0*	
(x < 11 bhp)			(0.4)	(0.4)	(0.4)	(7.5)	(6.0*)	
8 kW ≤ x < 19 kW	Less than 10	2010+	0.5	0.5	0.5	8.3	8.0*	
(11 bhp ≤ x < 25 bhp)			(0.4)	(0.4)	(0.4)	(6.2)	(6.0*)	
19 kW ≤ x < 37 kW	Less than 10	2010+	0.38	0.38	0.38	6.9	8.0*	
(25 bhp ≤ x < 50 bhp)			(0.28)	(0.28)	(0.28)	(5.1)	(6.0*)	
37 kW ≤ x < 75 kW	Less than 10	2010+	0.5	0.5	0.5	6.3	5.9*	
(50 bhp ≤ x < 100 bhp)			(0.4)	(0.4)	(0.4)	(4.7)	(4.4*)	

75 kW ≤ x < 130 kW (100 bhp ≤ x < 174 bhp)	Less than 10	2010+	0.38 (0.28)	0.38 (0.28)	0.38 (0.28)	6.3 (4.7)	5.0* (3.7*)
130 kW ≤ x < 560 kW (174 bhp ≤ x < 751 bhp)	Less than 10	2010+	0.25 (0.19)	0.25 (0.19)	0.25 (0.19)	4.4 (3.3)	5.0* (3.7*)
560 kW ≤ x < 2,237 kW (751 bhp ≤ x < 3,000 bhp)	Less than 10	2010+	0.25 (0.19)	0.25 (0.19)	0.25 (0.19)	4.4 (3.3)	8.0* (6.0*)
x ≥ 2,237 kW (x ≥ 3,000 bhp)	Less than 10	2010	0.68 (0.51)	0.68 (0.51)	0.68 (0.51)	14.3 (10.7)	1.6 (1.2) 8.0 (6.0)
		2011+	0.25 (0.19)	0.25 (0.19)	0.25 (0.19)	4.4 (3.3)	8.0* (6.0*)
x ≥ 2,237 kW (x ≥ 3,000 bhp)	10.0 ≤ x < 15.0	2010+	0.34 (0.25)	0.34 (0.25)	0.34 (0.25)	6.3 (4.7)	8.0* (6.0*)

*Combined limit for VOC and NO_x

E. Emissions from the operation of each SI affected unit shall not exceed the limits specified in Table VII.

Table VII
Emissions Limits for SI Units

Model Year	Emissions Limits g/kW-hr (g/bhp-hr)					
	PM	PM_{10}	$PM_{2.5}$	CO	VOC	NO_x
2010+	0.015 (0.011)	0.015 (0.011)	0.015 (0.011)	5.3 (4.0)	1.3 (1.0)	2.7 (2.0)
				Instead of meeting the limits stated above, the owner may meet the alternative standards below: (ppm at 15% O_2)		

	540	86	160

F. Combined source-wide emissions from the operation of affected units shall not exceed the limits specified in Table VIII.

Table VIII
Combined Source-Wide Emissions Limits for Affected Units

Pollutant	Nonattainment Area Emissions (tons/year)	Attainment Area Emissions (tons/year)
PM	1.4	2.3
PM_{10}	1.4	2.3
$PM_{2.5}$	1.4	2.3
NO_X	24.4	39.4
SO_2	0.5	0.5
CO	48.0	77.4
VOC	11.8	19.0

G. Visible emissions from each affected unit located in an attainment area shall not exceed 10% opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 20% opacity as determined by Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

H. Visible emissions from each affected unit located in a nonattainment area shall not exceed 5.0% opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 10% opacity as determined by the Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

9VAC5-540-190. Testing requirements.

Each affected unit shall be constructed, or modified and installed so as to allow for emissions testing upon reasonable notice at any time, using appropriate methods.

1. Sampling ports shall be provided when requested at the appropriate locations.

2. Safe sampling platforms and access shall be provided.

9VAC5-540-200. Recordkeeping requirements.

A. The owner shall maintain on-site records of emission data and operating parameters as necessary to demonstrate compliance with this general permit.

B. The owner shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown, or failure of the source or its associated air pollution control equipment that results in excess emissions for more than one hour. Records shall include the following: (i) date, (ii) time, (iii) duration, (iv) description (affected unit, pollutant affected, cause), (v) corrective action, (vi) preventive measures taken, and (vii) name of person generating the record.

C. The content and format of such records shall be arranged with the regional office. These records shall include, but are not limited to:

1. Total annual hours of operation for each affected unit, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Records when each affected unit is used for an ISO-declared emergency including, but not limited to, the date, cause of the emergency, the ISO-declared emergency notification, and the hours of operation.

3. Records when each affected unit is used for an emergency that is not an ISO-declared emergency including, but not limited to, the date, cause of the emergency, and the hours of operation.

4. All fuel supplier certifications.

5. Engine information including make, model, serial number, model year, maximum engine power, and engine displacement for each affected unit.

6. Written manufacturer specifications or written standard operating procedures prepared by the owner for each affected unit. The written standard operating procedures prepared by the owner cannot be less stringent than the written manufacturer specifications.

7. Scheduled and unscheduled maintenance, testing, and operator training.

D. These records shall be available for inspection by the department and shall be current for the most recent five years.

9VAC5-540-210. Reporting requirements.

The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction or modification of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated start-up date of each affected unit postmarked not more than 60 days nor less than 30 days prior to such date.

4. The actual start-up date of each affected unit within 15 days after such date.

9VAC5-540-220. Enforcement.

A Violation of this general permit is subject to the enforcement provisions including, but not limited to, those contained in 9VAC5-170 (Regulation for General Administration) and §§ 10.1-1309, 10.1-1309.1, 10.1-1311 and 10.1-1316 of the Virginia Air Pollution Control Law.

B. If any condition, requirement or portion of this general permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of this permit.

C. The owner shall comply with all conditions of this general permit. Any noncompliance with this permit constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation of the authorization to operate under this permit.

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

E. The authorization to operate under this permit may be suspended or revoked for cause as specified in 9VAC5-540-80. The filing by an owner of a (i) request for reauthorization to operate under this general permit or (ii) notification of termination, planned changes, or anticipated noncompliance does not stay any condition of this general permit.

F. This general permit does not convey any property rights of any sort, or any exclusive privilege.

G. Within 30 days of notification, the owner shall furnish to the department any information that the department may request in writing to determine whether cause exists for suspending or revoking the authorization to operate under this general permit or to determine compliance with this general permit. Upon request, the owner shall also furnish to the department copies of records required to be kept by this permit and, for information claimed to be confidential, the owner shall furnish such records to the department along with a claim of confidentiality meeting the requirements of 9VAC5-170-60.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC5-540)

Air Permit Application Form, Emergency Generator General Permit, Form 540 (Draft).

DOCUMENTS INCORPORATED BY REFERENCE (9VAC5-540)

Standards of the American Society for Testing and Materials (ASTM) listed below are copyrighted materials and may be obtained from ASTM International, P.O. Box C-700, West Conshohocken, PA 19428-2959:

D975-10b, Standard Specification for Diesel Fuel Oils, ASTM, 2009.

D1826-94 (Reapproved 2010), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, ASTM, 2010.

D1835-05, Standard Specification for Liquefied Petroleum (LP) Gases, ASTM, 2005.

D4809-09a, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), 2009, ASTM.

D6751-09, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, 2009, ASTM.

D7467-10, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), ASTM, 2010.

VA.R. Doc. No. R10-2296; Filed January 10, 2011, 3:06 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

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

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18, 9VAC20-60-260, 9VAC20-60-261, 9VAC20-60-270).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 through 272.

Effective Date: March 2, 2011.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email william.norris@deq.virginia.gov.

Summary:

Hazardous Waste Management Regulations, 9VAC20-60, include requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The federal regulatory text as it existed on June 30, 2010, was specified as that incorporated. Immediate Final Rule 2008 - 2010 addresses 9VAC20-60-18, 9VAC20-60-260, 9VAC20-60-261, and 9VAC20-60-270. 9VAC20-60-18 was revised by striking the previous prescribed date and adopting the new date of July 1, 2010, thus making it the new date of reference of all incorporated federal regulatory text. 9VAC20-60-260, 9VAC20-60-261, and 9VAC20-60-270 have been amended to revise a Federal Register reference. 9VAC20-60-261 also has been amended to update the Department of Environmental Quality's mailing address and to provide for the adoption of more stringent conditions applicable to comparable fuels that were promulgated concurrently with the "emission comparable fuel" exclusion on December 19, 2008.

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, ~~2009~~ 2010, with the effective date as published in the Federal Register notice or ~~March 3, 2010~~ March 2, 2011, whichever is later.

9VAC20-60-260. Adoption of 40 CFR Part 260 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 260 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 260 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 260.10, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

2. In 40 CFR 260.10, the term "EPA" shall mean the United States Environmental Protection Agency.

3. In 40 CFR 260.10 the term "new tank system" and "existing tank system," the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:

a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;

b. Leak detection requirements for all underground tank systems for which construction commenced after July 14, 1986; and

c. Permitting standards for underground tanks that cannot be entered for inspection.

For non-HSWA regulations, the reference date shall be January 1, 1998.

4. In 40 CFR 260.10, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."

6. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed

herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. Throughout 40 CFR 260.11(a), the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."

8. In Part XIV (9VAC20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain provisions analogous to 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

9. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21, 40 CFR 260.22 and 40 CFR 260.23 are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

10. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

11. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 260 as promulgated by U.S. EPA on October 30, 2008, ~~(73 FR 64717)~~ (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted herein.

9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the Department of Environmental Quality, ~~Post Office Box 10009, Richmond, Virginia 23240-0009~~ P.O. Box 1105, Richmond, Virginia 23218.

2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.

5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9VAC20-80).

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

8. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on October 30, 2008, ~~(73 FR 64717)~~ (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted herein.

~~9. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on December 19, 2008, (73 FR 77953) (RCRA Comparable Fuel Exclusion) are not adopted herein.~~

9VAC20-60-270. Adoption of 40 CFR Part 270 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 270 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 270 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

2. In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia, and no permits shall be issued for underground injection facilities.

5. Validity of the federal HWM permits. This section replaces 40 CFR 270.51, which is not included in the incorporation of 40 CFR Part 270 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

(1) The facility remains in compliance with all of the conditions specified in the federal permit;

(2) The operator submits a complete copy of the federal permit to the department no later than the effective date of the federal permit; and

(3) The owner and operator of the facility submit a request to continue the federal permit addressed to the department.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to HSWA requirements which constitute the federal portion of the combined Virginia--United States Environmental Protection Agency RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.

6. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the department receives an application form and any supplemental information, which are completed to the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. In cases where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the department.

7. Interim status.

a. The director may deny interim status to any owner or operator if, at the time the Part A application is submitted, the facility is in violation of any regulation of the board so as to pose a substantial present or potential hazard to human health or environment.

b. Unless subject of an exception specified in 40 CFR 270.73, interim status terminates when final disposition of a permit application is made or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

(1) Failure to submit a completed Part B application on time;

(2) Failure to furnish any information required by this chapter;

(3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;

(4) Violation of this chapter; and

(5) A determination that the facility poses a significant threat to public health or the environment.

c. The director may terminate the interim status upon receiving a voluntary request for such an action from the owner and the operator of the facility.

(1) To be considered for voluntary termination such request shall:

(a) Be received by the department prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and

(b) Be accompanied by a waiver of procedures contained in this section.

(2) Termination under this part will not be granted to the owner and operator of the facility:

(a) Which is not in compliance with the standards contained in 9VAC20-60-265; or

(b) When termination proceedings have been instituted under this section.

d. The effective date of the termination of the interim status will be determined by the director to allow for proper closure of the facility in accordance with Subpart G of 40 CFR Part 264 and Subpart G of 40 CFR Part 265, as applicable.

8. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.

9. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:

a. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.

b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.

10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).

11. Notices given under 40 CFR 270.30(l)(1) shall be written.

12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):

a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and

b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.

13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.

14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable.

When the permittee is not in compliance with the conditions of the expiring or expired permit, the director may choose to do any or all of the following:

a. Initiate enforcement action based on the permit that has been continued;

b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

c. Issue a new permit with appropriate conditions; or

d. Take other actions authorized by this chapter.

16. Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or

agreement, and a large quantity generator are also assessed annual fees.

17. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 270 as promulgated by U.S. EPA on October 30, 2008, ~~(73 FR 64717)~~ (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted herein.

VA.R. Doc. No. R11-2577; Filed January 10, 2011, 3:07 p.m.

Final Regulation

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

Title of Regulation: **9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9VAC20-110-110).**

Statutory Authority: §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC §§ 1809-1810; 49 CFR Parts 107, 170-180, 383, and 390-397.

Effective Date: March 2, 2011.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email william.norris@deq.virginia.gov.

Summary:

Each year the U.S. Department of Transportation makes several changes to the federal rules regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up to date with the federal changes. The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia regulations. For the ease of use by the regulated community, this date is always October 1; however, the text is amended to change the year, thus incorporating federal changes from October 1 of the previously incorporated year through September 30 of the newly specified year. This amendment covers four years, October 1, 2006, through September 30, 2010, and there 30 changes.

Part III
Compliance With Federal Regulations

9VAC20-110-110. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated as of October 1, ~~2006~~ 2010, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. 49 CFR Part 107, Subpart B.

2. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.

3. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.

4. Specifications for Packagings in 49 CFR Part 178.

5. Specifications for Tank Cars in 49 CFR Part 179.

6. Continuing Qualifications and Maintenance of Packagings in 49 CFR Part 180.

7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R11-2587; Filed January 10, 2011, 3:08 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 b of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

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

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

Effective Date: March 2, 2011.

Agency Contact: Alan Pollock, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4002, FAX (804) 698-4116, or email alan.pollock@deq.virginia.gov.

Background:

The Waste Load Allocation for the Frederick-Winchester Service Authority: Opequon Wastewater Treatment Facility (Opequon WRF - VA0065552) found in 9VAC25-720-50 C is being amended based on the advice of legal counsel as settlement of Case No. CL090004007-00, Frederick-Winchester Service Authority (FWSA) v. State Water Control Board and Department of Environmental Quality (DEQ). Settlement of the case establishes allocations for the Opequon Wastewater Treatment Facility based on 3.0 mg/l nitrogen and 0.30 mg/l phosphorus at a design flow of 12.6 MGD, which would result in an allocation of 115,122 lbs/year nitrogen, with an additional 6,792 lbs/year nitrogen for the landfill leachate consolidation, for a total of 121,851 lbs/year nitrogen, and a total of 11,512 lbs/year phosphorus.

In 2005, the State Water Control Board adopted amendments to the Water Quality Management Planning Regulations, 9VAC25-720, to establish waste load allocations (WLA) for discharges of total nitrogen (TN) and total phosphorus (TP) by some 125 significant discharges including the Opequon Water Reclamation Facility (Opequon WRF) based on the design capacity of each plant. In the 2005 rulemaking, the Frederick-Winchester Service Authority (FWSA), which operates the Opequon WRF, requested TN and TP WLAs for the Opequon WRF based on a design flow of 12.6 million gallons per day (MGD) and the board adopted final WLAs based on a design flow of 8.4 MGD.

Following the submittal of a rulemaking petition by FWSA in 2006, the board initiated and conducted a rulemaking from 2007 through 2009 to consider revising the TN and TP WLAs under the regulation for the Opequon WRF. This rulemaking culminated in a board public meeting begun on December 4, 2008, and completed on April 27, 2009, at which the board denied FWSA's request. Following this board action, the FWSA filed a Notice of Appeal with the board and DEQ in May 2009 and a Petition for Appeal with the Circuit Court of the City of Winchester in June 2009 seeking increased WLAs for the Opequon WRF based on the 12.6 MGD design flow, amounting to an increase of 51,091 pounds per year (lbs/yr) of TN and 3,831 lbs/yr of TP.

Following the filing of Motions of Summary Judgment and supporting briefs by both FWSA and the board before the court, the court encouraged the parties to consider settlement, because it presented complex regulatory issues and the court believed that it would be in the parties' respective best interests and the public interest for the parties to attempt to resolve the case by negotiation. The FWSA and the board, with the board acting on the advice of DEQ and legal counsel, reached a compromise that requires stringent treatment by the Opequon WRF while also allowing FWSA the full use of the facility's recently completed expansion to 12.6 MGD design flow.

The board, at its meeting on September 27-28, 2010, based on the advice of legal counsel, approved a settlement of the case that would establish allocations for the Opequon WRF based on 3.0 mg/l nitrogen and 0.30 mg/l phosphorus at a design flow of 12.6 MGD. The board also authorized DEQ to public notice the approved settlement and to receive comments. DEQ received comments from the Chesapeake Bay Foundation (CBF) related to the approved settlement. Copies of the comments made by CBF have been distributed previously to the board, the FWSA, and the court.

Upon consideration of the pleadings, the arguments of counsel, the comments of the Chesapeake Bay Foundation, and the purposes of the State Water Control Law, the court found that the proposed settlement, approved by the board, is fair, adequate, and reasonable and that it is not illegal, a product of collusion, or against the public interest. The court also found that the proposed decree is a reasoned compromise that considered the legitimate interests of FWSA and the public it serves, and implements the duty of the board to protect the quality of state waters.

In a Consent Decree dated October 19, 2010, the court decreed that:

"Notwithstanding the 2005 and 2009 Rulemakings and the typical concentration basis for 4 milligrams per liter (mg/l) for TN WLAs in the Opequon WRF's river basin, the TN and TP WLAs allocations for the Opequon WRF shall be increased to credit the WRF for its current 12.6 MGD design capacity while applying more stringent, state-of-the-art treatment, as follows:

a. The TN WLA based on the Opequon WRF's design capacity shall be increased from 102,311 lbs/yr to 115,122 lbs/yr (derived based on 3 mg/l of TN and 12.6 MGD).

b. The TP WLA based on the Opequon WRF's design capacity shall be increased from 7,675 lbs/yr to 11,512 lbs/yr (derived based on 0.3 mg/l of TP and 12.6 MGD).

c. Such increases result in the stated final WLAs for the Opequon WRF, which shall be in addition to any allocations or increases acquired or which may be acquired by the Opequon WRF in accordance with applicable laws and regulations pertaining to nutrient credit exchanges or offsets. As of the date of this decree, the Opequon WFR has acquired additional allocation for TN in the amount of 6,729 lbs/yr by means of a landfill leachate consolidation and treatment project. Thus upon entry of this decree, the Opequon WRF's TN WLA shall be 121,851 lbs/yr.

d. The Board shall forthwith amend the Regulation pursuant to CODE 2.2-4006.A.4.b to conform to the WLAs required by subparagraphs a through c of this decree."

Summary:

The amendments to 9VAC25-720-50 C revise the waste load allocation for the Opequon WRF to 121,851 lbs/year nitrogen (115,122 lbs/year plus the already allocated 6,729 lbs/year for the landfill leachate consolidation) and 11,512 lbs/year phosphorus.

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

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR
3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR
7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/ Shenandoah	B45R	Sediment	78,141.00	LB/YR
8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR
10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR

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

22.	Goose Creek	Benthic TMDLs for the Goose Creek Watershed	Loudoun, Fauquier	A08R	Sediment	1,587	T/YR
23.	Little River	Benthic TMDLs for the Goose Creek Watershed	Loudoun	A08R	Sediment	105	T/YR
24.	Christians Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B14R	Sediment	145	T/YR
25.	Moffett Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B13R	Sediment	0	T/YR
26.	Upper Middle River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B10R	Sediment	1.355	T/YR
27.	Mossy Creek	Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments	Rockingham	B19R	Sediment	0.04	T/YR
28.	Smith Creek	Total Maximum Daily Load (TMDL) Development for Smith Creek	Rockingham, Shenandoah	B47R	Sediment	353,867	LB/YR
29.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick	B09R	Sediment	478	T/YR

30.	Lower Opequon Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick, Clarke	B09R	Sediment	1,039	T/YR
31.	Mill Creek	Mill Creek Sediment TMDL for a Benthic Impairment, Shenandoah County, Virginia	Shenandoah	B48R	Sediment	0.9	T/YR
32.	South Run	Benthic TMDL Development for South Run, Virginia	Fauquier	A19R	Phosphorus	0.038	T/YR
33.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Sediment	40	T/YR
34.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Lead	0	KG/YR
35.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	PAHs	0	KG/YR
36.	Bull Run	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Loudoun, Fairfax, and Prince William counties, and the Cities of Manassas and Manassas Park	A23R-01	Sediment	5,986.8	T/TR
37.	Popes Head Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Fairfax County and Fairfax City	A23R-02	Sediment	1,594.2	T/YR
38.	Accotink Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15R	PCBs	0.0992	G/YR
39.	Aquia Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A28E	PCBs	6.34	G/YR

40.	Belmont Bay/ Occoquan Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	0.409	G/YR
41.	Chopawamsic Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26E	PCBs	1.35	G/YR
42.	Coan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Northumberland	A34E	PCBs	0	G/YR
43.	Dogue Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	20.2	G/YR
44.	Fourmile Run	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Arlington	A12E	PCBs	11	G/YR
45.	Gunston Cove	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15E	PCBs	0.517	G/YR
46.	Hooff Run & Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A13E	PCBs	36.8	G/YR
47.	Little Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	10.1	G/YR

48.	Monroe Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A31E	PCBs	.0177	G/YR
49.	Neabsco Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	6.63	G/YR
50.	Occoquan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	2.86	G/YR
51.	Pohick Creek/Pohick Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A16E	PCBs	13.5	G/YR
52.	Potomac Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A29E	PCBs	0.556	G/YR
53.	Potomac River, Fairview Beach	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A29E	PCBs	0.0183	G/YR
54.	Powells Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.0675	G/YR
55.	Quantico Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.742	G/YR

56.	Upper Machodoc Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A30E	PCBs	0.0883	G/YR
57.	Difficult Creek	Benthic TMDL Development for Difficult Run, Virginia	Fairfax	A11R	Sediment	3,663.2	T/YR
58.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR
59.	Lower Opequon	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B02R	VA0023281	Monterey STP	001	West Strait Creek	3.85	$CBOD_5$	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD_5, JUN-NOV	207	KG/D
		AKA Winchester - Frederick Regional				$CBOD_5$, DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD_5	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	$CBOD_5$, JAN-MAY	700	KG/D
	7.23.04	AKA Harrisonburg - Rockingham Reg. Sewer Auth.				$CBOD_5$, JUN-DEC	800	KG/D
						TKN, JUN-DEC	420	KG/D
						TKN, JAN-MAY	850	KG/D
VAV-B32R	VA0002160	INVISTA - Waynesboro Formerly Dupont - Waynesboro	001	South River	25.3	BOD_5	272	KG/D
VAV-B32R	VA0025151	Waynesboro STP	001	South River	23.54	$CBOD_5$	227	KG/D
						$CBOD_5$, JUN-OCT	113.6	KG/D
VAV-B32R	VA0028037	Skyline Swannanoa STP	001	South River UT	2.96	BOD_5	8.5	KG/D

VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD_5	75.7	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD_5 AMMONIA, AS N	1570 645.9	KG/D KG/D
VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD_5, JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	$CBOD_5$	24.0	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	$CBOD_5$	42.6	KG/D

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

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
B37R	Coors Brewing Company	VA0073245	54,820	4,112
B14R	Fishersville Regional STP	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray STP	VA0062642	19,492	1,462
B35R	Massanutten PSA STP	VA0024732	18,273	1,371
B37R	Merck - Stonewall WWTP (Outfall 101) (10)	VA0002178	14,619	1,096
B12R	Middle River Regional STP	VA0064793	82,839	6,213
B23R	North River WWTF (2)	VA0060640	253,391	19,004
B22R	VA Poultry Growers -Hinton	VA0002313	27,410	1,371
B38R	Pilgrims Pride - Alma	VA0001961	18,273	914
B31R	Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro STP	VA0025151	48,729	3,655
B23R	Weyers Cave STP	VA0022349	6,091	457
B58R	Berryville STP	VA0020532	8,528	640
B55R	Front Royal STP	VA0062812	48,729	3,655
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP (3)	VA0026441	8,528	640
B45R	New Market STP	VA0022853	6,091	457

B45R	North Fork (SIL) WWTF	VA0090263	23,390	1,754
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B50R	North Fork Regional WWTP (1)	VA0090328	9,137	685
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF (4)	VA0022802	18,273	1,371
A09R	Broad Run WRF (5)	VA0091383	134,005	3,350
A08R	Leesburg WPCF	MD0066184	121,822	9,137
A06R	Round Hill Town WWTF	VA0026212	9,137	685
A25R	DSC - Section 1 WWTF (6)	VA0024724	42,029	2,522
A25R	DSC - Section 8 WWTF (7)	VA0024678	42,029	2,522
A25E	H L Mooney WWTF	VA0025101	219,280	13,157
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF (8)	VA0020460	8,680	868
B08R	Opequon WRF (11)	VA0065552	~~102,336~~ 121,851	~~7,675~~ 11,512
B08R	Parkins Mills STP (9)	VA0075191	60,911	4,568
A13E	Alexandria SA WWTF	VA0025160	493,381	29,603
A12E	Arlington County Water PCF	VA0025143	365,467	21,928
A16R	Noman M Cole Jr PCF	VA0025364	612,158	36,729
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	Quantico WWTF	VA0028363	20,101	1,206
A28R	Aquia WWTF	VA0060968	73,093	4,386
A31E	Colonial Beach STP	VA0026409	18,273	1,827
A30E	Dahlgren WWTF	VA0026514	9,137	914
A29E	Fairview Beach	MD0056464	1,827	183
A30E	US NSWC-Dahlgren WWTF	VA0021067	6,578	658
A31R	Purkins Corner STP	VA0070106	1,096	110
	TOTALS:		5,156,169	246,635

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

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

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

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

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

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

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

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

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

(10) Merck-Stonewall – (a) on January 1, 2011, the following waste load allocations (WLAs) are effective and supersede the existing WLAs: total nitrogen of 43,835 lbs/yr and total phosphorus of 4,384 lbs/yr; (b) waste load allocations will be reviewed and possibly reduced based on "full-scale" results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (c) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (d) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (c).

(11) Opequon WRF: (a) the TN WLA is derived based on 3 mg/l of TN and 12.6 MGD; (b) the TN WLA includes an additional allocation for TN in the amount of 6,729 lbs/yr by means of a landfill leachate consolidation and treatment project; and (c) the TP WLA is derived based on 0.3 mg/l of TP and 12.6 MGD.

VA.R. Doc. No. R11-2660; Filed January 10, 2011, 3:08 p.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-80. Regulations for Administration of the Virginia Hearing Impairment Identification and Monitoring System (amending 12VAC5-80-10, 12VAC5-80-80, 12VAC5-80-90, 12VAC5-80-95; adding 12VAC5-80-75, 12VAC5-80-85, 12VAC5-80-130, 12VAC5-80-140; repealing 12VAC5-80-20, 12VAC5-80-30, 12VAC5-80-40).**

Statutory Authority: §§ 32.1-12 and 32.1-64.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 1, 2011.

Agency Contact: Susan Tlusty, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, or email susan.tlusty@vdh.virginia.gov.

Basis: The State Board of Health is authorized to make, adopt, promulgate, and enforce regulations by § 32.1-12 of the Code of Virginia.

Section 32.1-64.1 of the Code of Virginia requires the State Health Commissioner to establish and maintain the Virginia Hearing Impairment Identification and Monitoring System.

Purpose: Early identification of hearing loss through screening, identifying, and tracking of infants at risk for acquiring hearing loss is essential to the health, well-being, and eventual language development of infants and children in the Commonwealth, as is providing appropriate early intervention through treatment, therapy, training, and education. In the absence of hearing screening, hearing loss is not usually identified until two to three years of age and language development has already been impacted adversely. The average deaf or hard-of-hearing adult reads at a fourth grade level. Infants can be assessed and diagnosed with hearing loss by several months of age and fitted with hearing devices as early as one month of age. Research suggests that most preschool-age children with hearing loss will have language development within the normal range if diagnosis and intervention begins by six to 12 months of age. Early identification reduces costs associated with special education as well.

The proposed amendments reflect changes in the nationally accepted standards for newborn hearing screening and related state regulations, and recommendations from the Attorney General's Government and Regulatory Reform Task Force. These changes will help improve the newborn hearing screening program in the Commonwealth.

Substance: For consistency with the most recent recommendations from the Joint Committee on Infant Hearing, substantive changes are proposed for hearing screening methodology in 12VAC5-80. The type of screening methodology to be administered has been defined according to level and length of hospital newborn service provision. In addition, details on how to handle transfer and other circumstances are outlined. More details have been added regarding the specifics required for reporting.

Another substantive change relates to identification of infants at risk for hearing impairment. These criteria have been moved out of definitions and into 12VAC5-75. The section outlines the review timeline and process for identifying and maintaining the list of risk indicators. The section specifies the broad categories of risk indicators (for example, syndromes known to be associated with hearing loss); however, the details of the particular category will now be maintained and published as a guidance document. The guidance document will now detail the list of known syndromes associated with hearing loss that are tracked by the program. This approach is necessary to allow flexibility to change with rapidly changing advances in links between genetic disorders and hearing loss as well as new findings regarding the ototoxicity of certain medications.

Other substantive changes include the addition of several sections related to different types of service providers who are part of the system. 12VAC5-85 addresses birthing centers that currently do not fall under other regulations. The Virginia Department of Health has received grant funding to work with these providers and help develop reporting ability. These facilities typically do not conduct hearing screening but refer infants for hearing screening. The department seeks to capture information regarding infants born in these type of facilities to identify those at risk for hearing impairment and to enter those infants in the tracking system. With the number of birthing centers in the state expected to increase, the importance of capturing those infants increases.

12VAC5-100 addresses primary health care providers and simply states that they have a responsibility to receive results and communications from the Virginia Early Hearing Detection and Intervention Program. It may be possible in the future that this provider group will have the ability to electronically access hearing screening results.

12VAC5-110 relates to the Virginia Department of Health statutory responsibility as a partner in the Part C system. The Virginia Early Hearing Detection and Intervention Program is a component of the multi-agency early identification and intervention system in the Commonwealth. As part of this system, certain statutes, regulations, and a formal interagency agreement provide additional guidance for program operations and relationships between service providers.

Definitions have been added to 12VAC5-80-10 to reflect current screening methodologies and affected parties. Other definitions have been modified to be consistent with other similar regulations or to correct citations.

Responsibilities of the Virginia Department of Health in 12VAC5-80-90 have been further refined and provide more direction regarding the reporting system. References related to false-positive and false-negative rates have been deleted.

In addition, amendments are proposed to make these regulations consistent with other relevant state regulations updated within the past several years (12VAC5-71 Regulations Governing Virginia Newborn Screening Services and 12VAC5-191 State Plan for the Children with Special Health Care Needs Program). Recommendations from the Attorney Generals Government and Regulatory Reform Task Force have also been adopted in the proposed text.

Issues: The primary advantages to the public are to families with infants born in Virginia hospitals. By amending the regulations and program practices to be current with the most recent national standard of care recommendations, infants will continue to be screened for hearing loss using the most appropriate technology and assessed for other factors which may put them at risk for hearing loss. Early identification of hearing loss is beneficial to children and their families. Without newborn hearing screening, hearing loss is not typically identified until two to three years of age and serious delays in language and other areas of cognitive development are likely to have occurred. Infants who are diagnosed and enter early intervention between six and 12 months of age can achieve normal language development. In addition, families

who have infants identified with hearing loss can be linked with family-to-family support programs, such as Guide by Your Side where families who have had children with hearing loss serve as mentors to those with a newly diagnosed child, and medical support programs such as the Hearing Aid Loan Bank.

The disadvantage to the public for families with infants born in Virginia hospitals would be if an infant or child required further audiological evaluation and the family did not have insurance coverage or could not find a provider willing to accept public insurance (FAMIS plans). Another disadvantage may be stress involved for families of infants who may be identified at risk for hearing loss. These infants may undergo further testing but not be found to have hearing loss at any point during childhood.

The primary advantage for providers of hearing screening (birthing hospitals) is clarified guidance from the state regarding their mandate and to have guidance consistent with most recent national standards of care. Changes in the reporting requirements and changes being made to the current electronic reporting system will provide basic demographic information to hospital users and reduce duplicative data entry.

The primary disadvantage will be for hospitals with neonatal intensive care services that will need to acquire ABR technology to meet the new standard.

The primary advantages to the agency and the Commonwealth are to have a well-defined and managed program that successfully identifies infants with hearing loss as early as possible to meet the mandate in the Code of Virginia. Early identification is key to reducing negative impact on language and cognitive development. Infants who are identified with hearing loss and receive early identification and amplification by six months of age will be one to two years ahead of their later identified peers in first grade in the areas of language, cognitive, and social skills. Children with undetected hearing loss in one ear are more likely to be held back in school than those without hearing loss. It is estimated that $400,000 in special education costs are saved by high school graduation for a child identified early with hearing loss who receives appropriate educational, medical, and audiological services.

There are no disadvantages to the agency and Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) is proposing to update the Virginia Hearing Impairment Identification and Monitoring System regulations to conform to changes in national standards and incorporate amendments suggested by a 2007 periodic review. In particular, the Board proposes to require infants who receive neonatal intensive care services for longer than five days to be tested with ABR screening technology and to add a new section to address birthing centers.

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

Estimated Economic Impact. By amending the regulations and program practices to be current with the most recent national standard of care recommendations, infants will continue to be screened for hearing loss using the most appropriate technology and assessed for other factors which may put them at risk for hearing loss. Early identification of hearing loss is beneficial to children and their families. Without newborn hearing screening, hearing loss is not typically identified until two to three years of age and serious delays in language and other areas of cognitive development are likely to have occurred. Infants who are diagnosed and enter early intervention between 6 and 12 months of age can achieve normal language development. In addition, families who have infants identified with hearing loss can be linked with family-to-family support programs, such as Guide by Your Side where families who have had children with hearing loss serve as mentors to those with a newly diagnosed child, and medical support programs such as the Hearing Aid Loan Bank.

Early identification is vital to reducing negative impact on language and cognitive development. Infants who are identified with hearing loss and receive early identification and amplification by six months of age will be one to two years ahead of their later identified peers in first grade in the areas of language, cognitive, and social skills.[1] Children with undetected hearing loss in one ear are more likely to be held back in school than those without hearing loss.[2] White and Maxon (1995)[3] estimated that $400,000 in special education costs are saved by high school graduation for a child identified early with hearing loss who receives appropriate educational, medical and audiological services.

According to the Department of Health, two of the 64 birthing hospitals which have specialty neonatal intensive care services would have to purchase ABR equipment to test those infants with stays of greater than five days. It is estimated that new ABR equipment may cost between $15,000 to $25,000. The other hospitals with these types of neonatal intensive care services already have the capability or are using this equipment. In net, the benefits are expected to exceed the costs.

Birthing centers have not previously reported formally to the department although the Code of Virginia has a provision for birthing centers. Risk assessments and referrals for hearing screening are currently being done in practice. Reporting findings to the department may require staff effort of one to three hours per month. Birthing centers typically have 25 or fewer births per month.

Birthing hospitals currently perform testing on all infants. Reporting time will be decreased with provision by the department of certain existing demographic data from births and elimination of monthly report totals, however with the new modified risk indicator list and primary information or confirmation on infants assumed to pass, reporting time and effort may have a net increase by 2 to 30 hours monthly depending on the number of births at the facility.

Businesses and Entities Affected. The proposed amendments affect the 64 birthing hospitals and the two birthing centers in Virginia, as well as the 107 persons providing audiological services for infants and children in the Commonwealth.

Localities Particularly Affected. The proposed amendments do not disproportionately affect specific localities.

Projected Impact on Employment. The proposed amendments will not likely significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect private property.

Small Businesses: Costs and Other Effects. The proposed amendments do not significantly affect small businesses.

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

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

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

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[1] Yoshinaga-Itano, C., Sedey, A., Apuzzo, M., Carey, A., Day, D., & Coulter, D. (July 1996). The effect of early identification on the development of deaf and hard-of-hearing infants and toddlers. Paper presented at the Joint Committee on Infant Hearing Meeting, Austin, TX.

[2] Bess, F. H., & Tharpe, A. M. (1986). Case history data on unilaterally hearing-impaired children. Ear and Hearing, 7(1), 14-19.

[3] White, K. R., & Maxon, A. B. (1995). Universal screening for infant hearing impairment: Simple, beneficial, and presently justified. International Journal of Pediatric Otorhinolaryngology, 32, 201-211.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Health concurs with the economic impact assessment regarding the proposed chapter entitled Virginia Hearing Impairment Identification and Monitoring System, 12VAC5-80.

Summary:

The proposed amendments conform the regulation to changes in national standards and incorporate amendments suggested by a 2007 periodic review. Substantive changes include (i) moving risk factor criteria to identify infants at risk for hearing loss from the definitions section to a new section and placing detailed criteria for each category of risk under a guidance document; (ii) requiring infants who receive neonatal intensive care services for longer than five days to be tested with ABR screening technology; (iii) adding a new section to address birthing centers; and (iv) further defining reporting requirements that include provisions for confirming negative results.

12VAC5-80-10. Definitions.

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

"ABR" means an objective, electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

"At risk" means considered to be in a status with a significant probability of having or developing hearing loss as a result of the presence of one or more factors identified or manifested at birth.

"Audiological evaluation" means those physiologic and behavioral procedures required to evaluate and diagnose hearing status.

"Audiologist" means a person licensed to engage in the practice of audiology as defined in § 54.1-2600 of the Code of Virginia.

"Birthing center" means a facility outside of a hospital that provides maternity services.

"Board" means the State Board of Health.

"CDC" means the Centers for Disease Control and Prevention.

"Child" means any person from birth to ~~age~~ 18 years of age.

"Commissioner" means the State Health Commissioner, his duly designated officer, or agent.

"Department" means the Virginia Department of Health.

~~"Diagnostic audiological evaluation" means those physiologic and behavioral procedures required to evaluate and diagnose hearing status.~~

"Discharge" means release from the hospital after birth to the care of the parent or guardian.

"EHDI" means early hearing detection and intervention.

"Family-to-family support" means the provision of information and peer support among families having experience with family members having hearing loss.

"Guardian" means a parent-appointed, court-appointed, or clerk-appointed guardian of the person.

"Hearing screening" means an objective physiological measure to be completed in order to determine the likelihood of hearing loss.

"Hospital" means any facility as defined in § 32.1-123 of the Code of Virginia.

"Infant" means a child under the age of one year.

~~"Missed" means that an infant did not have a required hearing screening prior to discharge.~~

"Neonatal intensive care services" means those services provided by a hospital's newborn services that are designated as ~~both~~ either specialty level ~~and~~ or subspecialty level as defined in ~~subdivision D 2 of 12VAC5-410-440~~ 12VAC5-410-443 B 3 and B 4 of the Rules and Regulations for the Licensure of Hospitals.

"Newborn" means an infant who is 28 days old or less.

"Newborn services" means care for infants in one or more of the service levels designated in 12VAC5-410-443 B of the Rules and Regulations for the Licensure of Hospitals.

"OAE" means an objective, physiologic response from the cochlea. This term may include transient evoked otoacoustic emissions and distortion product otoacoustic emissions.

"Parent" means ~~(i)~~ a biological or adoptive parent ~~who has legal custody of a child, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a child regularly resides; (iii) a person judicially appointed as a legal guardian of a child; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law~~ or a stepparent.

"Part C" means the state early intervention program that provides medically necessary speech and language therapy, occupational therapy, physical therapy, and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Behavioral Health and Developmental Services as eligible for services under Part C of the Individuals with Disabilities Education Act of 2004 (20 USC §§ 1431-1444).

"Primary ~~medical~~ health care provider" means the person to whom the infant will go for ~~routine medical~~ primary health care following hospital discharge.

"Resident" means an individual who resides within the geographical boundaries of the Commonwealth.

"Risk ~~factor~~ indicator" means a factor known to place an infant at increased risk for being born with or developing a hearing loss~~, including, but not limited to, any one of the following:~~

~~1. Family history of hereditary, childhood sensorineural hearing loss;~~

~~2. In utero infection (e.g., cytomegalovirus, rubella, herpes, toxoplasmosis, syphilis);~~

~~3. Craniofacial anomalies including those with morphological abnormalities of the pinna and ear canal;~~

~~4. Birthweight less than 1500 grams;~~

~~5. Hyperbilirubinemia at a serum level requiring exchange transfusion;~~

~~6. Bacterial meningitis;~~

~~7. Apgar scores of 0 to four at one minute or 0 to six at five minutes;~~

~~8. Ototoxic medications, including but not limited to the aminoglycosides, used in multiple courses or in combination with loop diuretics;~~

~~9. Mechanical ventilation lasting five days or longer;~~

~~10. Stigmata or other findings associated with a syndrome known to include a sensorineural hearing loss, a conductive hearing loss, or both;~~

~~11. Neurofibromatosis Type II; and~~

~~12. Persistent pulmonary hypertension of the newborn (PPHN).~~

"Virginia Hearing Impairment Identification and Monitoring System" means a coordinated and comprehensive group of services including education; screening; follow up; diagnosis; appropriate early intervention including treatment, therapy, training, and education; and program evaluation managed by the department's Virginia Early Hearing Detection and

Intervention Program for safeguarding the health of children born in Virginia.

12VAC5-80-20. ~~Authority for regulations.~~ (Repealed.)

~~Sections 32.1-64.1 and 32.1-64.2 of the Code of Virginia direct the commissioner to establish and maintain a system for the purpose of identifying and monitoring infants with hearing loss and directs the Board of Health to promulgate the regulations necessary for implementation of the system.~~

12VAC5-80-30. ~~Purpose of chapter.~~ (Repealed.)

~~This chapter is designed to provide consistent guidelines for implementation of this system in order to assure that infants with hearing loss are identified at the earliest possible age and that they receive appropriate, early intervention.~~

12VAC5-80-40. ~~Administration and application of chapter.~~ (Repealed.)

~~A. This chapter is promulgated to implement the system and amended as necessary by the State Board of Health. The State Health Commissioner or his designee is charged with its administration, and the Virginia Department of Health shall provide the staff necessary for its implementation.~~

~~B. This chapter has general application throughout the Commonwealth.~~

12VAC5-80-75. Risk indicators associated with hearing loss.

A. The Virginia EHDI program shall maintain a list of specific risk indicators consistent with, but not necessarily identical to, the most recent recommendations from the Joint Committee on Infant Hearing to identify infants at risk of hearing loss.

B. The Virginia EHDI Program Advisory Group shall provide guidance with the development and maintenance of the list of specific risk indicators.

C. The list of specific risk indicators shall be maintained a guidance document, which shall be reviewed at a minimum biennially. The list of specific risk indicators may be changed or amended more frequently as needed to reflect changes in standards of care or updates to Joint Committee on Infant Hearing recommendations.

D. The guidance document shall contain specific assessment and reporting criteria for the following general categories of risk indicators associated with hearing loss:

1. Family history of permanent childhood hearing loss;

2. Caregiver concerns;

3. In utero and post natal infections;

4. Neonatal intensive care services;

5. Head trauma and craniofacial anomalies;

6. Syndromes, neurodegenerative disorders, and sensory motor neuropathies;

7. Stigmata or other physical findings associated with certain syndromes;

8. Ototoxic medications, treatments, and chemotherapies; and

9. Other indicators as needed.

E. All infants born in Virginia hospitals shall be assessed prior to hospital discharge after birth for risk indicators associated with hearing loss as outlined in this chapter and the corresponding guidance document.

12VAC5-80-80. Responsibilities of the chief medical officer of hospitals.

~~Hospitals with newborn nurseries and hospitals with neonatal intensive care services~~ The chief medical officer of a hospital providing newborn services or his designee shall:

~~1. Prior to discharge after birth, but no later than three months of age, screen the hearing, in both ears, of all infants using objective physiologic measures. The methodology used for hearing screening shall have a false-positive rate and false-negative rate no greater than those recommended by the American Academy of Pediatrics in "Newborn and Infant Hearing Loss: Detection and Intervention" (Pediatrics Vol. 103, No. 2, February 1999). If the error rates exceed these recommendations, the hospital shall examine and modify its hearing screening methodology to reduce its error rates below these maximum rates;~~

1. Cause all infants to be given a hearing screening test prior to discharge after birth as appropriate for the level of newborn services provided as defined in 12VAC5-410-443 B of the Rules and Regulations for the Licensure of Hospitals;

a. Infants in general or intermediate newborn services shall have both ears screened for hearing using either ABR or OAE testing prior to discharge after birth, but no later than one month of age.

b. Infants in neonatal intensive care services who receive this level of newborn service care for more than five days shall have both ears screened using ABR testing prior to discharge after birth or transfer to a lower level of newborn services. Infants should receive newborn hearing screening as early as development or medical stability will permit such screening. The hearing screening performed for infants requiring neonatal intensive care services for more than five days using ABR testing shall be reported as the initial hearing screen regardless of whether the infant is transferred to another lower level of newborn services within the same facility or to another facility.

c. Infants in neonatal intensive care services who receive this level of newborn service care for five days or less shall have both ears screened for hearing using either ABR or OAE testing prior to discharge after birth, but no later than one month of age.

2. Identify all infants who fail hearing screening in one or both ears;

a. Infants who fail hearing screening in one or both ears using ABR testing shall not be rescreened using OAE testing. These infants shall be referred for an audiological evaluation.

b. Infants who fail hearing screening in one or both ears using OAE testing may be rescreened using ABR testing. If the infant fails subsequent ABR testing in one or both ears, the infant shall be referred for an audiological evaluation.

3. Identify all infants not receiving an appropriate hearing screening test;

a. For infants who did not receive a hearing screening test due to transfer to another facility, written notification shall be made upon transfer to the healthcare provider in charge of the infant's care that testing was not completed. The hospital discharging the infant after birth is responsible for conducting an appropriate hearing screening test, except for infants who have been transferred to a lower level of newborn service care from another facility providing neonatal intensive care services to that infant for more than five days.

~~2. If an infant is missed~~ b. For infants who did not receive a hearing screening test prior to discharge after birth, inform the parent prior to discharge of the need for hearing screening and provide a mechanism by which screening can occur at no additional cost to the family~~;~~.

c. For infants who did not receive screening due to refusal by the parent or guardian because the screening conflicts with religious convictions, documentation shall be made in the medical record.

4. Cause all infants to be assessed for risk indicators associated with hearing loss prior to discharge after birth as defined in 12VAC5-80-75. For infants who are found to have one or more risk indicators associated with hearing loss, inform the parent of the need for a diagnostic audiological assessment by 24 months of age.

~~3. Prior to discharge, give~~ 5. Provide written information to the parent or guardian of each infant that includes purposes and benefits of newborn hearing screening, risk indicators of hearing loss, procedures used for hearing screening, results of the hearing screening, ~~the~~ recommendations for further testing, ~~and~~ where ~~the~~ further testing can be obtained, and contact information for the Virginia EHDI program;

~~4. Give written information to~~ 6. Notify the infant's primary ~~medical~~ health care provider, within two weeks of discharge after birth, the status of the hearing screening including if the infant was not tested, ~~that includes~~ procedures used for hearing screening, ~~the limitations of screening procedures~~ identified risk indicators associated with hearing loss as defined in 12VAC5-80-75, the results of the hearing screening, and the recommendations for further testing in writing or through an electronically secure method that meets all applicable state and federal privacy laws;

~~5. Within one week of discharge, complete the Virginia Department of Health report~~ 7. Provide the department with information, as required by the board pursuant to § 32.1-64.1 F of the Code of Virginia and in a manner devised by the department, which may be electronic, ~~on each infant who does not pass the hearing screening and send it to the Virginia Department of Health;~~ on the hearing screening and risk indicator status of infants born at their hospital. This information shall be provided within two weeks of discharge after birth unless otherwise stated and includes, but may not be limited to:

a. Demographic information on infants including name, date of birth, race, ethnicity, and gender;

b. Primary contact information including address, telephone, and relationship type;

c. Primary healthcare provider name, address and telephone;

d. Risk indicators identified as defined in 12VAC5-80-75;

e. Special circumstances regarding infants as needed by the department to provide follow-up;

f. Screening methodology used, date screened, and both right and left ear results;

g. Screening status for pass with risk indicator, fail, unable to test, refusal, and inconclusive results;

h. Status of infants not screened prior to discharge that includes, but may not be limited to, infants who were transferred to other facilities and parents who refused screening;

i. Hearing rescreening information including date, type of screening methodology used, results in both left and right ears, and further recommendations within two weeks after the hospital rescreening date; and

j. Confirmatory data on the status of all infants born in the hospital facility. The department shall receive confirmation that infants not reported as passed with risk, failed, transferred, refused testing, not tested prior to discharge, expired, or other final disposition have had a negative assessment for risk indicators and that

physiological hearing screening was conducted with passing results in both ears within 30 days after birth;

~~6. On a monthly basis, send to the Virginia Department of Health a report of the total number of discharges, the total number of infants who passed the newborn hearing screening, the total number who failed, and the total number not tested due to parents' exercise of their rights under § 32.1-64.1 H of the Code of Virginia; and~~

~~7.~~ 8. Report to the ~~Virginia Department of Health~~ department, on a yearly basis, hospital specific information including the test procedures used by the newborn hearing screening program, the name of the program director, the name of the advising audiologist, equipment calibration records, screening protocols, and referral procedures~~.~~;

9. Develop written policies and procedures to implement hearing screening in their facility in accordance with 12VAC5-80 including separate protocols for specialty and subspecialty newborn services; and

10. Assure that training of staff on newborn hearing screening test procedures, follow up, and reporting requirements is implemented in a way that an adequately trained and knowledgeable workforce is maintained to conduct hearing screening program requirements.

12VAC5-80-85. Responsibilities of other birthing places or centers.

The chief medical officer of other birthing places or centers or his designee or the attending practitioner shall:

1. Cause all infants to be assessed for risk indicators associated with hearing loss as defined in 12VAC5-80-75;

2. Provide written information to the parent or guardian of each infant that includes purposes and benefits of newborn hearing screening, risk indicators for hearing loss, procedures used for hearing screening, providers where hearing screening can be obtained, and contact information for the Virginia EHDI program;

3. Notify the infant's primary healthcare provider, within two weeks after birth, of the status of the hearing screening including if the infant was not tested, identified risk indicators associated with hearing loss as defined in 12VAC5-80-75, and the recommendations for testing in writing or through an electronically secure method that meets all applicable state and federal privacy laws; and

4. Provide the department with information, as required by the board pursuant to § 32.1-64.1 F of the Code of Virginia and in a manner devised by the department on the hearing screening and risk indicator status of infants born at their birthing center. This information shall be provided within two weeks after birth unless otherwise stated and includes, but may not be limited to:

a. Demographic information on infants including name, date of birth, race, ethnicity, and gender;

b. Primary contact information including address, telephone, and relationship type;

c. Primary healthcare provider name, address and telephone;

d. Risk indicators identified as defined in 12VAC5-80-75;

e. Special circumstances regarding infants as needed by the department to provide follow-up;

f. Screening methodology used, date screened, and both right and left ear results if applicable;

g. Screening status for pass with risk indicator, failures, unable to test, refusals, and inconclusive results if applicable;

h. Status of infants not screened that includes, but may not be limited to, infants who were transferred to other facilities and parents who refused screening;

i. Hearing rescreening information including date, type of screening methodology used, results in both left and right ears, and further recommendations within two weeks after the rescreening date if applicable; and

j. Confirmatory data on the status of all infants born in the birthing place or center. The department shall receive confirmation that infants not reported with a screening status have had a negative assessment for risk indicators and have been referred for a hearing screening.

12VAC5-80-90. ~~Responsibilities of the Virginia Department of Health~~ Scope and content of Virginia Early Hearing Detection and Intervention Program.

~~The Virginia Department of Health shall:~~

A. The mission of the Virginia EHDI program is to identify hearing loss at the earliest possible age and to assure that appropriate early intervention services are received to reduce the risk of developmental delays.

B. The scope of the Virginia EHDI program shall include the following:

1. Provide hospitals and birthing centers with a secure reporting system, which may be electronic, that meets all applicable federal and state privacy statutes. This electronic system may include existing demographic data captured by other department population-based systems and the commissioner may authorize hospitals required to report to view existing data to facilitate accurate reporting and increase the department's ability to conduct successful follow up and identify infants at risk for hearing loss pursuant to § 32.1-127.1:04 of the Code of Virginia;

~~1.~~ 2. Collect, maintain and evaluate hospital newborn hearing screening data in a database including, but not limited to, initial screening, risk indicators, rescreening, and diagnostic audiological evaluations, in a secure data management information system;

~~2.~~ 3. Provide follow-up for ~~all~~ infants ~~reported~~ whose results indicate screening failure, identified risk indicators, inconclusive or missing results, or other circumstances requiring follow up. Follow-up includes, but is not limited to:

a. Communicating with the parent ~~by mail~~ or guardian for those infants who failed the hearing screening, ~~those who had one or more risk factors identified and were not screened prior to discharge,~~ those who were not screened, and those who are at risk for progressive hearing loss in order to advise of the need for audiological services as well as to provide information on locating an approved center that provides diagnostic audiological services or a licensed audiologist;

b. Communicating with audiologists, hospitals, birthing centers, primary health care providers, and others as needed to ascertain follow up status and ~~Receiving~~ receive results of ~~both the~~ audiological evaluations and ~~the~~ intervention referrals, ~~and adding the information to the database; and~~ including Part C services;

c. Communicating with the parent ~~by mail~~ or guardian for any child found to have a hearing loss in order to provide information about hearing loss and appropriate resources~~;~~ including family-to-family support and referral to the Part C program; and

d. Communicating to the Part C program regarding any child found to have hearing loss in order to facilitate early intervention services;

~~3. Supply the reporting format and written information to hospitals;~~

4. Provide training and technical assistance ~~on this program~~ to hospitals and birthing centers; ~~and~~

5. Develop and disseminate protocols for hospitals, audiologists, and primary healthcare providers;

6. Develop and disseminate parent education materials;

7. Maintain an approved list of audiological providers meeting program criteria;

~~5. Conduct a review and evaluation of the~~ 8. Evaluate Virginia Hearing Impairment Identification and Monitoring System components, including but not limited to ~~the false-positive rate, false-negative rate~~ screening, referral ~~rate~~, and follow-up ~~rate~~ rates, referral mechanisms and ~~effectiveness of~~ tracking~~, and communicating~~ indicators;

9. Communicate critical performance data to hospitals and birthing centers, on a ~~yearly~~ quarterly basis~~.~~; and

10. Collect and report data required annually for Title V national performance measures, CDC national EHDI goals, and other funding sources as needed that measure how well the system functions.

C. Title V national performance measures and the CDC national EHDI goals, as required by the Government Performance and Results Act (GPRA; Public Law 103-62), shall be used to establish newborn hearing screening goals. The following goals shall change as needed to be consistent with federally required performance measures:

1. All infants who are born in Virginia hospitals shall be screened for hearing loss prior to hospital discharge. Residents of Virginia who do not pass screening, do not receive screening, or who have an identified risk indicator shall receive appropriate evaluation, diagnostic, follow up, and early intervention services. Infants who are not residents of Virginia and who do not pass screening, do not receive screening, or who have an identified risk indicator will be referred to their state of residence for appropriate evaluation, diagnostic, follow up, and early intervention services;

2. All infants born in Virginia shall receive a hearing screening prior to one month of age;

3. Infants who are referred shall receive a diagnostic audiological evaluation before three months of age; and

4. All infants identified with a hearing loss shall receive appropriate early intervention services before six months of age.

12VAC5-80-95. Responsibilities of persons providing audiological services after discharge.

Persons who provide audiological services and who determine that a child has failed to pass a hearing screening, was not successfully tested, or has a hearing loss shall:

1. Provide the screening or evaluation results, either in writing or in an electronically secure manner, to the parent or guardian and to the child's primary ~~medical~~ health care provider;

2. Send a ~~Virginia Department of Health~~ report including screening methodology, test results, diagnosis, and recommendations to the ~~Virginia Department of Health~~ department, in a manner devised by the department, which may be electronic, within two weeks of the visit;

3. ~~Advise~~ Provide information to the parent about and offer referral for the child to local early intervention or education programs, including the Part C program; and

4. Give resource information to the parent of any child who is found to have a hearing loss, including but not limited to

the degrees and effects of hearing loss, communication options, amplification options, the importance of medical follow up, and agencies and organizations, including the Part C program, that provide services to children with hearing loss and their families.

12VAC5-80-130. Responsibilities of primary health care providers.

Persons who provide primary healthcare services to infants shall:

1. Receive hearing screening, risk indicator findings, and evaluation results from hospitals, audiological providers, and the Virginia EHDI program.

2. Receive information from the Virginia EHDI program regarding available resources to assist practitioners and families whose child is at risk or diagnosed with hearing loss.

12VAC5-80-140. Relationship to the Part C system.

A. The department is a participating agency in the state Part C system as defined in § 2.2-5300 of the Code of Virginia. The Virginia Hearing Impairment Identification and Monitoring System is a component of this statewide system to identify infants and children who may be eligible for Part C early intervention services. The Virginia EHDI program shall develop policies and operating procedures that are consistent with the Individuals with Disabilities Education Act of 2004 (20 USC §§ 1431-1444); 34 CFR Part 303; § 2.2-5303 of the Code of Virginia; and the most recent state interagency agreement.

B. The state interagency agreement shall contain policies and procedures related to identification of resources, coordination of services, resolution of interagency disputes, and data exchange activities necessary for the department and the Virginia EHDI program to fulfill responsibilities and implementation activities required as part of the state early intervention system.

FORMS (12VAC5-80) (Repealed.)

~~Report of Follow-Up (eff. 7/99).~~

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-80) (Repealed.)

~~Newborn and Infant Hearing Loss: Detection and Intervention, Pediatrics Vol. 103, No. 2, February 1999, American Academy of Pediatrics.~~

VA.R. Doc. No. R08-1334; Filed January 6, 2011, 10:41 a.m.

Proposed Regulation

Title of Regulation: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-10, 12VAC5-90-370).**

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 1, 2011.

Agency Contact: Diane Woolard, PhD, Director, Disease Surveillance, Department of Health, 109 Governor Sreet, Richmond, VA 23219, telephone (804) 864-8124, or email diane.woolard@vdh.virginia.gov.

Basis: Section 32.1-35.1 of the Code of Virginia requires acute care hospitals to report infection information to the Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN) and for the State Board of Health to define infections to be reported and the patient populations to be included.

Purpose: The proposed regulatory action identifies additional measures related to healthcare-associated infections that acute care hospitals must report to the CDC and the Virginia Department of Health (VDH). The amendment to the Regulations for Disease Reporting and Control is proposed in response to increased interest in measuring and improving patient safety in hospitals and reducing the occurrence of healthcare-associated infections.

Substance: The proposed amendment to 12VAC5-90-370 moves the definitions to 12VAC5-90-10 and adds reporting requirements for hospitals. The specific proposed additional reporting requirements are:

1. Central line-associated bloodstream infections in one adult inpatient medical ward and one adult inpatient surgical ward. Wards selected should be those with the longest length of stay during the previous calendar year, excluding cardiology, obstetrics, psychiatry, hospice, and step-down units. Data shall include the number of central-line days in each population at risk.

2. Clostridium difficile infection, laboratory-identified events on inpatient units facility-wide, with the exceptions recommended by CDC protocol. Data shall include patient days.

3. Acute care hospitals shall report to the VDH quarterly, within one month of the close of the calendar year quarter, aggregate counts of the Surgical Care Improvement Project (SCIP) Core Measures pertaining to the following surgical procedures: hip arthroplasty, knee arthroplasty, and coronary artery bypass graft. Data shall be collected in accordance with the Specification Manual for National Hospital Inpatient Quality Measures and shall include

counts of the patient population and the applicable SCIP measures for each of the three surgical procedures. SCIP measures track compliance with procedures that have been shown to reduce the risk of infection following surgeries.

Issues: As evidenced by a national movement, the public is very interested in increased reporting of healthcare-associated infections and other measures of the quality of medical care. The advantage to the citizens is that more information would be available about hospital quality. The disadvantage to the regulated community (hospitals) is the increased workload that would be created.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health proposes to require hospitals to report three additional measures associated with healthcare associated infections.

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. Section 32.1-35.1 of the Code of Virginia mandates that the acute care hospitals report nosocomial (healthcare-associated) infections to the Centers for Disease Control and Preventions National Healthcare Safety Network and release their infection data to the State Board of Health which in turn may release the data to the public. The legislative mandate requires the Board to determine the types of infections to be reported and the patient populations to be included. As a result, the Board started requiring, in 2008, acute care hospitals to report central line-associated blood stream infections in adult intensive care units.

With this action, the Board proposes to require hospitals to report quarterly three additional measures associated with healthcare associated infections. These measures are central line-associated blood stream infections in two wards outside of intensive care units, Clostridium difficile infections that meet the Centers for Disease Control and Prevention definition of a laboratory-identified event, and surgical care improvement process measures pertaining to hip arthroplasty, knee arthroplasty, and coronary artery bypass graft surgeries.

According to the Centers for Disease Control and Prevention, National Healthcare Safety Network (NHSN) evolved from the National Nosocomial Infection System, which was developed in the early 1970s to track healthcare-associated infections and has been a voluntary reporting system. The proposed regulations will require Virginia acute care hospitals to report additional measures to the already existing NHSN system and allow the Virginia Department of Health (VDH) to retrieve reported information.

According to VDH, of the approximately 90 hospitals that will start reporting the additional three measures, about 75% was already collecting data on central line-associated blood stream infections outside of intensive care units and about 93% was already collecting data on Clostridium difficile infections in some manner. All are required to collect data on surgical care improvement process measures pertaining to hip arthroplasty, knee arthroplasty, and coronary artery bypass graft surgeries and report it to the Centers for Medicare and Medicaid Services.

Also, according to a survey conducted by the Centers for Disease Control and Prevention 98% of the Virginia hospitals surveyed reported to use the NHSN definition for the central line-associated blood stream infections outside of intensive care units and 71% of the Virginia hospitals surveyed reported to use the NHSN definition for Clostridium difficile infections. Moreover, 19% of the Virginia hospitals surveyed reported they enter central line-associated blood stream infections outside of intensive care data into NHSN system and 10% of the Virginia hospitals surveyed reported they enter Clostridium difficile infections data into NHSN system.

In short, while reporting of additional three measures are expected to add to the hospitals compliance costs, these costs are somewhat mitigated because some hospitals already collect some data using the same definitions as proposed and report these measures to the NHSN system. According to a survey conducted by VDH, for reporting of central line-associated blood stream infections outside of intensive care units, 25% of the hospitals surveyed did not anticipate any additional hours, 31% anticipated 1-5 additional hours, 19% anticipated 6-10 additional hours, 15% anticipated 11-20 additional hours, 10% anticipated more than 20 additional hours would be needed. Similarly, for reporting of Clostridium difficile infections, 9% of the hospitals surveyed did not anticipate any additional hours, 28% anticipated 1-5 additional hours, 40% anticipated 6-10 additional hours, 14% anticipated 11-20 additional hours, 9% anticipated more than 20 additional hours would be needed.

In addition, reporting of three additional measures is expected to demand more administrative resources from VDH. VDH believes that the current staffing level made possible by the temporary federal stimulus funding would be able to absorb the increased workload in terms of the retrieval of data reported to NHSN and dissemination of the same data to public if requested. While the verification of data could be costly, VDH does not plan to conduct data validation of the accuracy of the data reported.

On the other hand, the proposed regulations are expected to help reduce the number of healthcare related infections at the hospitals. The proposed regulations also benefit the public by enabling them to make informed healthcare choices by providing information that can be used as a proxy for hospital quality.

However, in the absence of data validation, it is unclear how the proposed reporting requirements could be effectively enforced. Also, due to litigation concerns, hospitals already have strong incentives to minimize the number of infections occurring at their facilities. Given already existing strong incentives to minimize infections, it is unclear whether reporting would be an effective way to reduce infections at the margin. Furthermore, because the proposed requirements do not channel additional resources to existing infection control programs the benefits are expected to be small. In fact, the introduction of the additional measures that must be reported may actually divert staff resources from infection control activities to reporting activities at the hospitals.

Businesses and Entities Affected. The proposed regulations will require 90 acute care hospitals to report healthcare-associated infection data to the Board.

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

Projected Impact on Employment. The proposed regulations are expected to increase the labor demand by hospitals and by VDH in order to report and retrieve healthcare-associated infection data.

Effects on the Use and Value of Private Property. The proposed regulations are expected to create non-negligible compliance costs on hospitals which would have a negative impact on the asset value of hospitals. Also, infection data will be available to the public. Depending on whether the infection data is favorable or not, some hospitals may see a decrease or increase in the demand for the healthcare services they are offering.

Small Businesses: Costs and Other Effects. According to VDH, of the 90 hospitals, 47 have fewer than 200 beds and could be considered as small businesses. The costs and other effects discussed above are the same for the small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known less costly alternative method for reporting of the proposed three additional healthcare infection measures.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Health concurs with the Economic Impact Analysis conducted by the Department of Planning and Budget relative to the proposed changes to the Regulations for Disease Reporting and Control in the action entitled Expanded Requirements for Reporting Healthcare-Associated Infections.

Summary:

The proposed amendments will require hospitals to report three additional measures for healthcare-associated infections: (i) central line-associated bloodstream infections outside of intensive care units; (ii) Clostridium difficile infections that meet the Centers for Disease Control and Prevention's definition of a laboratory-identified event; and (iii) surgical care improvement process measures pertaining to hip arthroplasty, knee arthroplasty, and coronary artery bypass graft surgeries.

Part I
Definitions

12VAC5-90-10. Definitions.

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

"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.

"Adult" means a person 18 years of age or more.

"Affected area" means any part or the whole of the Commonwealth that has been identified as where individuals who are known to have been exposed to or infected with, or who are reasonably suspected to have been exposed to or infected with, a communicable disease of public health threat reside or may be located.

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Central line-associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with a central line device, and meeting the current Centers for Disease Control and Prevention's (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection in the NHSN Patient Safety Component Manual, Key Terms (June 2010).

"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.

"Child care center" means a child day center, child day center system, child day program, family day home, family day system, or registered family day home as defined by § 63.2-100 of the Code of Virginia, or a similar place providing day care of children by such other name as may be applied.

"Clinic" means any facility, freestanding or associated with a hospital, that provides preventive, diagnostic, therapeutic, rehabilitative, or palliative care or services to outpatients.

"Clostridium difficile infection, laboratory-identified event" means laboratory testing on unformed stool that yields a positive result for Clostridium difficile toxin A or B or a toxin-producing Clostridium difficile organism detected in the stool sample by culture or other laboratory means, with duplicate reports on a patient ruled out according to CDC definitions in the NHSN Patient Safety Component Manual, MDRO and CDAD Module (June 2010).

"Commissioner" means the State Health Commissioner or his duly designated officer or agent, unless stated in a provision of these regulations that it applies to the State Health Commissioner in his sole discretion.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Communicable disease of public health significance" means an illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes but is not limited to infections caused by human immunodeficiency viruses, bloodborne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance.

"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with these regulations, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or the tubercle bacilli, unless used as a bioterrorism weapon.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this regulation.

"Condition" means any adverse health event, such as a disease, an infection, a syndrome, or as indicated by a procedure (including but not limited to the results of a physical exam, laboratory test, or imaging interpretation) suggesting that an exposure of public health importance has occurred.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact tracing" means the process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy hazardous substances or organisms from a person, surface, or item to the point that such substances or organisms are no longer capable of causing adverse health effects and the surface or item is rendered safe for handling, use, or disposal.

"Department" means the State Department of Health.

"Designee" or "designated officer or agent" means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board.

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Essential needs" means basic human needs for sustenance including but not limited to food, water, and health care, e.g., medications, therapies, testing, and durable medical equipment.

"Exceptional circumstances" means the presence, as determined by the commissioner in his sole discretion, of one or more factors that may affect the ability of the department to effectively control a communicable disease of public health threat. Factors to be considered include but are not limited to: (i) characteristics or suspected characteristics of the disease-causing organism or suspected disease-causing organism such as virulence, routes of transmission, minimum infectious dose, rapidity of disease spread, the potential for extensive disease spread, and the existence and availability of demonstrated effective treatment; (ii) known or suspected risk factors for infection; (iii) the potential magnitude of the effect of the disease on the health and welfare of the public; and (iv) the extent of voluntary compliance with public health recommendations. The determination of exceptional circumstances by the commissioner may take into account the experience or results of investigation in Virginia, another state, or another country.

"Foodborne outbreak" means two or more cases of a similar illness acquired through the consumption of food contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to heavy metal intoxication, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning, hepatitis A, and Escherichia coli O157:H7 infection.

"Healthcare-associated infection" means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic); (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to a healthcare setting; and (iii) if applicable, meets the criteria for a specific infection site as defined by CDC in the NHSN Patient Safety Component Manual, Key Terms (June 2010).

"Healthcare-associated outbreak" means any group of illnesses of common etiology occurring in patients of a healthcare setting acquired by exposure of those patients to the disease agent while in such a facility.

"Hepatitis C, acute" means the following clinical characteristics are met: (i) discrete onset of symptoms indicative of viral hepatitis and (ii) jaundice or elevated serum aminotransferase levels and the following laboratory criteria are met: (a) serum alanine aminotransferase levels (ALT) greater than 400 IU/L; (b) IgM anti-HAV negative (if done); (c) IgM anti-HBc negative (if done); and (d) hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test.

"Hepatitis C, chronic" means that the laboratory criteria specified in clauses (b), (c) and (d) listed above for an acute case are met but clinical signs or symptoms of acute viral hepatitis are not present and serum alanine aminotransferase (ALT) levels do not exceed 400 IU/L. This category will include cases that may be acutely infected but not symptomatic.

"Immunization" means a procedure that increases the protective response of an individual's immune system to specified pathogens.

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow specimen examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Individual" means a person or companion animal. When the context requires it, "person or persons" shall be deemed to include any individual.

"Infection" means the entry and multiplication or persistence of a disease-causing organism (prion, virus, bacteria, fungus, parasite, or ectoparasite) in the body of an individual. An infection may be inapparent (i.e., without recognizable signs or symptoms but identifiable by laboratory means) or manifest (clinically apparent).

"Invasive" means the organism is affecting a normally sterile site, including but not limited to blood or cerebrospinal fluid.

"Investigation" means an inquiry into the incidence, prevalence, extent, source, mode of transmission, causation of, and other information pertinent to a disease occurrence.

"Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with, or are reasonably suspected to be infected with, a communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to uninfected and unexposed individuals.

"Isolation, complete" means the full-time confinement or restriction of movement of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease in order to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals.

"Isolation, modified" means a selective, partial limitation of freedom of movement or actions of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease. Modified isolation is designed to meet particular situations and includes but is not limited to the exclusion of children from school, the prohibition or restriction from engaging in a particular occupation or using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Isolation, protective" means the physical separation of a susceptible individual or individuals not infected with, or not reasonably suspected to be infected with, a communicable disease from an environment where transmission is occurring, or is reasonably suspected to be occurring, in order to prevent the individual or individuals from acquiring the communicable disease.

"Laboratory" as used herein means a clinical laboratory that examines materials derived from the human body for the purpose of providing information on the diagnosis, prevention, or treatment of disease.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.

"Lead-elevated blood levels" means a confirmed blood level greater than or equal to 10 micrograms of lead per deciliter (µg/dL) of whole blood in a child or children 15 years of age and younger, a venous blood lead level greater than or equal to 25 µg/dL in a person older than 15 years of age, or such lower blood lead level as may be recommended for individual intervention by the department or the Centers for Disease Control and Prevention.

"Least restrictive" means the minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from disease transmission.

"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who possesses a midwife permit issued by the State Health Commissioner.

"National Healthcare Safety Network" (NHSN) means a surveillance system created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

~~"Nosocomial outbreak" means any group of illnesses of common etiology occurring in patients of a medical care facility acquired by exposure of those patients to the disease agent while confined in such a facility.~~

"Nucleic acid detection" means laboratory testing of a clinical specimen to determine the presence of deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) specific for an infectious agent using any method, including hybridization, sequencing, or amplification such as polymerase chain reaction.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.

"Occupational outbreak" means a cluster of illness or disease that is indicative of a work-related exposure. Such conditions include but are not limited to silicosis, asbestosis, byssinosis, pneumoconiosis, and tuberculosis.

"Outbreak" means the occurrence of more cases of a disease than expected.

"Period of communicability" means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

"Physician" means any person licensed to practice medicine or osteopathy by the Virginia Board of Medicine.

"Quarantine" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area or who are known to have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat and who do not yet show signs or symptoms of infection with the communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to unexposed and uninfected individuals.

"Quarantine, complete" means the full-time confinement or restriction of movement of an individual or individuals who do not have signs or symptoms of infection but may have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat in order to prevent the transmission of the communicable disease of public health threat to uninfected individuals.

"Quarantine, modified" means a selective, partial limitation of freedom of movement or actions of an individual or

individuals who do not have signs or symptoms of the infection but have been exposed to, or are reasonably suspected to have been exposed to, a communicable disease of public health threat. Modified quarantine may be designed to meet particular situations and includes but is not limited to limiting movement to the home, work, and/or one or more other locations, the prohibition or restriction from using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Reportable disease" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

"SARS" means severe acute respiratory syndrome (SARS)-associated coronavirus (SARS-CoV) disease.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth; (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; (iii) any private or parochial nursery school or preschool, or any private or parochial child care center licensed by the Commonwealth; and (iv) any preschool handicap classes or Head Start classes.

"Serology" means the testing of blood, serum, or other body fluids for the presence of antibodies or other markers of an infection or disease process.

"Surgical Care Improvement Project (SCIP)" means a national quality initiative supported by The Joint Commission, the Centers for Medicare and Medicaid Services, and other partners in healthcare that is designed to improve surgical care in hospitals.

"Surveillance" means the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.

"Susceptible individual" means a person or animal who is vulnerable to or potentially able to contract a disease or condition. Factors that affect an individual's susceptibility include but are not limited to physical characteristics, genetics, previous or chronic exposures, chronic conditions or infections, immunization history, or use of medications.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

"Tubercle bacilli" means disease-causing organisms belonging to the Mycobacterium tuberculosis complex and includes Mycobacterium tuberculosis, Mycobacterium bovis, and Mycobacterium africanum or other members as may be established by the commissioner.

"Tuberculin skin test (TST)" means a test for demonstrating infection with tubercle bacilli, performed according to the Mantoux method, in which 0.1 ml of 5 TU strength tuberculin purified protein derivative (PPD) is injected intradermally on the volar surface of the arm. Any reaction is observed 48-72 hours after placement and palpable induration is measured across the diameter transverse to the long axis of the arm. The measurement of the indurated area is recorded in millimeters and the significance of the measured induration is based on existing national and department guidelines.

"Tuberculosis" means a disease caused by tubercle bacilli.

"Tuberculosis, active disease" (also "active tuberculosis disease" and "active TB disease"), as defined by § 32.1-49.1 of the Code of Virginia, means a disease caused by an airborne microorganism and characterized by the presence of either (i) a specimen of sputum or other bodily fluid or tissue that has been found to contain tubercle bacilli as evidenced by culture or nucleic acid amplification, including preliminary identification by rapid methodologies; (ii) a specimen of sputum or other bodily fluid or tissue that is suspected to contain tubercle bacilli as evidenced by smear, and where sufficient clinical and radiographic evidence of active tuberculosis disease is present as determined by a physician licensed to practice medicine in Virginia; or (iii) sufficient clinical and radiographic evidence of active tuberculosis disease as determined by the commissioner is present, but a specimen of sputum or other bodily fluid or tissue containing, or suspected of containing, tubercle bacilli is unobtainable.

"Tuberculosis infection in children age less than 4 years" means a significant reaction resulting from a tuberculin skin test (TST) or other approved test for latent infection without clinical or radiographic evidence of active tuberculosis disease, in children from birth up to their fourth birthday.

"Vaccinia, disease or adverse event" means vaccinia infection or serious or unexpected events in persons who received the smallpox vaccine or their contacts, including but not limited to bacterial infections, eczema vaccinatum, erythema multiforme, generalized vaccinia, progressive vaccinia, inadvertent inoculation, post-vaccinial encephalopathy or encephalomyelitis, ocular vaccinia, and fetal vaccinia.

"Waterborne outbreak" means two or more cases of a similar illness acquired through the ingestion of or other exposure to water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis. A single case of laboratory-confirmed primary amebic meningoencephalitis or of waterborne chemical poisoning is considered an outbreak.

Part XIII

~~Report~~ Reporting of Healthcare-Associated Infections

12VAC5-90-370. Reporting of healthcare-associated infections.

~~A. Definitions. The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.~~

~~"Adult" means a person 18 years of age or more.~~

~~"Central line associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with a central line device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection.~~

~~"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.~~

~~"Healthcare associated infection" (or nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.~~

~~"National Healthcare Safety Network" (NHSN) means a surveillance system created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.~~

~~B.~~ A. Reportable infections ~~and method and timing of reporting. 1.~~ Acute care hospitals shall ~~collect~~ enter data on the following healthcare-associated ~~infection~~ infections in the specified patient population~~:~~ into CDC's National Healthcare Safety Network according to CDC protocols in the NHSN Patient Safety Component Manual Modules: Identifying HAIs (November 2009), Device-associated Module CLABSI Events (June 2010), MDRO and CDAD Module (June 2010), and CDC Locations and Descriptions (July 2010). Acute care hospitals shall ensure that accurate and complete data are entered at least quarterly within one month of the close of the calendar year quarter and shall authorize the department to have access to hospital-specific data contained in the NHSN database.

~~central~~ 1. Central line-associated bloodstream infections in adult intensive care units, including the number of central-line days in each population at risk~~, expressed per 1,000 catheter days~~.

2. Central line-associated bloodstream infections outside intensive care, including in one adult inpatient medical ward and one adult inpatient surgical ward. Wards selected should be those with the longest length of stay during the previous calendar year, excluding cardiology, obstetrics, psychiatry, hospice, and step-down units. Data shall include the number of central-line days in each population at risk.

3. Clostridium difficile infection, laboratory-identified events on inpatient units, with the exceptions recommended by CDC protocol in the NHSN Patient Safety Component Manual, MDRO and CDAD Module (June 2010). Data shall be collected year-round at the overall facility-wide level. Data shall include patient days.

~~2. All acute care hospitals with adult intensive care units shall (i) participate in CDC's National Healthcare Safety Network by July 1, 2008, (ii) submit data on the above named infection to the NHSN according to CDC protocols and ensure that all data from July 1, 2008, to December 31, 2008, are entered into the NHSN by January 31, 2009, and (iii) enter data quarterly thereafter according to a schedule established by the department.~~

~~3. All acute care hospitals reporting the information noted above shall authorize the department to have access to hospital-specific data contained in the NHSN database.~~

B. Reportable process measures. Acute care hospitals shall report to the department quarterly, within one month of the close of the calendar year quarter, aggregate counts of the Surgical Care Improvement Project (SCIP) Core Measures pertaining to the following surgical procedures: hip arthroplasty, knee arthroplasty, and coronary artery bypass graft. Data shall be collected in accordance with the Specification Manual for National Hospital Inpatient Quality Measures (Version 3.3) and shall include counts of the patient population and the applicable SCIP measures for each of the above designated surgical procedures. Reports shall be

submitted to the department's Division of Surveillance and Investigation.

C. Liability protection and data release. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. Infection rate data may be released to the public by the department upon request. Data shall be aggregated to ensure that no individual patient may be identified.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-90)

Control of Communicable Diseases Manual, ~~18th~~ 19th Edition, 2008, American Public Health Association~~, 2004~~.

National Healthcare Safety Network Patient Safety Component Manual, Centers for Disease Control and Prevention:

Key Terms, June 2010.

Multidrug-Resistant Organism & *Clostridium difficile*-Associated Disease (MDRO/CDAD) Module (MDRO and CDAD Module), June 2010.

Identifying Healthcare-associated Infections (HAI) in NHSN (Identifying HAIs), November 2009.

Central Line-Associated Bloodstream Infection (CLABSI) Event (Device-associated Module CLABSI), June 2010.

CDC Locations and Descriptions, July 2010.

Specification Manual for National Hospital Inpatient Quality Measures, Version 3.3, 04-01-11 (2Q11) through 12-31-11 (4Q11), Centers for Medicare & Medicaid Services and The Joint Commission.

VA.R. Doc. No. R10-2109; Filed January 6, 2011, 10:00 a.m.

Final Regulation

Title of Regulation: **12VAC5-391. Regulations for the Licensure of Hospice (amending 12VAC5-391-10, 12VAC5-391-120, 12VAC5-391-150, 12VAC5-391-160, 12VAC5-391-180, 12VAC5-391-300, 12VAC5-391-440, 12VAC5-391-450, 12VAC5-391-460, 12VAC5-391-480, 12VAC5-391-500; adding 12VAC5-391-395, 12VAC5-391-445, 12VAC5-391-446, 12VAC5-391-485, 12VAC5-391-495, 12VAC5-391-510).**

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Effective Date: March 2, 2011.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-5100, or email carrie.eddy@vdh.virginia.gov.

Summary:

Chapter 391 of the 2007 Acts of Assembly places oversight of hospice facilities with the Department of Health and establishes that continuity of hospice services provided in a patient's home also be provided in a dedicated facility. This change in law necessitates amending the current regulation by expanding the standards addressing patient care and safety in hospice facilities. The amendments also address omissions in the regulation when it was revised in 2005.

The amendments (i) clarify definitions pertaining to hospice facility and inpatient services; (ii) provide clarification between a hospice facility and inpatient services in a hospital or nursing facility; (iii) require notifying the Department of Health of the relocation of a hospice facility; (iv) add provisions for handling medical errors and drug reactions; (v) require compliance with state and local codes, zoning and building ordinances, and the Uniform Statewide Building Code; (vi) prohibit a hospice facility from being used for any purpose other than the provision of hospice services; (vii) require that a set of as-built plans be retained; (viii) establish additional physical plant requirements for operating a hospice facility; (ix) establish necessary hospice facility financial controls and requirements for handling patient funds; (x) require 24-hour nursing services including trained and supervised staff to meet the total needs of the hospice patients; (xi) allow facilities with six or fewer beds to have a single licensed nurse as long as patient needs are met; (xii) provide for a 20-minute response time if a registered nurse is not present at the facility; and (xiii) make changes to provide consistency with other facility-type regulations.

Changes since publication of the proposed amendments include the following: (i) conform definition of "bereavement services" to federal regulation; (ii) prohibit admission of a patient to a hospice facility for the convenience of the primary caregiver or family; (iii) require inclusion of pandemic disease outbreaks in the hospice program's emergency preparedness plan; (iv) add a provision to address pressure ulcer prevention; (v) require reporting of medication-related adverse outcomes to the department; (vi) require a separate entrance within the facility when providing community-based hospice programs; and (vii) clarify that the dietary and food service provisions do not apply to family members preparing meals or bringing food into the facility.

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

Part I
Definitions and General Information

12VAC5-391-10. Definitions.

The following words and terms when used in these regulations shall have the following meaning unless the context clearly indicates otherwise.

"Activities of daily living" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient by (i) a practitioner or by his authorized agent and under his supervision or (ii) the patient at the direction and in the presence of the practitioner as defined in § 54.1-3401 of the Code of Virginia.

"Administrator" means a person designated, in writing, by the governing body as having the necessary authority for the day-to-day management of the hospice program. The administrator must be a member of the hospice staff. The administrator, director of nursing, or another clinical director may be the same individual if that individual is dually qualified.

["Adverse outcome" means the result of drug or health care therapy that is neither intended nor expected in normal therapeutic use and that causes significant, sometimes life-threatening conditions or consequences at some future time. Such potential future adverse outcome may require the arrangement of appropriate follow-up surveillance and perhaps other departures from the usual plan of care.]

"Attending physician" means a physician licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, or licensed in an adjacent state and identified by the patient as having the primary responsibility in determining the delivery of the patient's medical care. The responsibilities of physicians contained in this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Available at all times during operating hours" means an individual is available on the premises or by telecommunications.

"Barrier crimes" means certain offenses specified in § 32.1-162.9:1 of the Code of Virginia that automatically bar an individual convicted of those offenses from employment with a hospice program.

"Bereavement service" means [bereavement] counseling [~~and support offered to the patient's family after the patient's death~~ as defined in 42 CFR 418.3].

"Commissioner" means the State Health Commissioner.

"Coordinated program" means a continuum of palliative and supportive care provided to a terminally ill patient and his family, 24 hours a day, seven days a week.

"Core services" means those services that must be provided by a hospice program. Such services are: (i) nursing services, (ii) physician services, (iii) counseling services, and (iv) medical social services.

"Counseling services" means the provision of bereavement services, dietary services, spiritual and any other counseling services for the patient and family while the person is enrolled in the program.

"Criminal record report" means the statement issued by the Central Criminal Records Exchange, Virginia Department of State Police.

~~"Dedicated hospice facility" means an institution, place, or building providing room, board, and appropriate patient care 24 hours a day, seven days a week to individuals diagnosed with a terminal illness requiring such care pursuant to a physician's orders.~~

"Dispense" means to deliver a drug to the ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery as defined in § 54.1-3401 of the Code of Virginia.

"Employee" means an individual who is appropriately trained and performs a specific job function for the hospice program on a full or part-time basis with or without financial compensation.

"Governing body" means the individual, group or governmental agency that has legal responsibility and authority over the operation of the hospice program.

"Home attendant" means a nonlicensed individual performing personal care and environmental services, under the supervision of the appropriate health professional, to a patient in the patient's residence. Home attendants are also known as certified nursing assistants or CNAs, home care aides, home health aides, and personal care aides.

"Hospice" means a hospice as defined in § 32.1-162.1 of the Code of Virginia.

"Hospice facility" means an institution, place or building as defined in § 32.1-162.1 of the Code of Virginia.

"Inpatient" means ~~services provided to a hospice patient who is admitted to a hospital or nursing facility on a short-term basis for the purpose of curative care unrelated to the diagnosed terminal illness. Inpatient does not mean services provided in a dedicated hospice facility~~ the provision of services, such as food, laundry, housekeeping and staff to provide health or health-related services, including respite and symptom management, to hospice patients, whether in a hospital, nursing facility, or hospice facility.

"Interdisciplinary group" means the group responsible for assessing the health care and special needs of the patient and the patient's family. Providers of special services, such as mental health, pharmacy, and any other appropriate associated health services may also be included on the team as the needs of the patient dictate. The interdisciplinary group is often referred to as the IDG.

"Licensee" means a licensed hospice program provider.

"Medical director" means a physician currently licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, and responsible for the medical direction of the hospice program.

"Medical record" means a continuous and accurate documented account of services provided to a patient, including the prescription and delivery of the treatment or care.

"Medication error" means one or more violations of the five principles of medication administration: the correct drug to the right patient at the prescribed time in the prescribed dose via the prescribed route.

"Nursing services" means the patient care performed or supervised by a registered nurse according to a plan of care.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Operator" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity responsible for the day-to-day administrative management and operation of the hospice.

"Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process. Palliative care means treatment to enhance comfort and improve the quality of a patient's life during the last phase of his life.

"Patient" means a hospice patient as defined in § 32.1-162.1 of the Code of Virginia.

"Patient's family" means a hospice patient's family as defined in § 32.1-162.1 of the Code of Virginia.

"Patient's residence" means the place where the individual or patient makes his home.

"Person" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that operates a hospice.

"Plan of care" means a written plan of services developed by the interdisciplinary group to maximize patient comfort by symptom control to meet the physical, psychosocial, spiritual and other special needs that are experienced during the final stages of illness, during dying, and bereavement.

"Primary caregiver" means an individual that, through mutual agreement with the patient and the hospice program, assumes responsibility for the patient's care.

"Progress note" means a documented statement contained in a patient's medical record, dated and signed by the person delivering the care, treatment or service, describing the treatment or services delivered and the effect of the care, treatment or services on the patient.

"Quality improvement" means ongoing activities designed to objectively and systematically evaluate the quality of care and services, pursue opportunities to improve care and services, and resolve identified problems. Quality improvement is an approach to the ongoing study and improvement of the processes of providing services to meet the needs of patients and their families.

["Separate and distinct entrance" means an entrance to the hospice facility other than the formal public entrance used by patients and family members.]

"Staff" means an employee who receives financial compensation.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular face-to-face guidance and instruction.

"Terminally ill" means a medical prognosis that life expectancy is six months or less if the illness runs its usual course.

"Volunteer" means an employee who receives no financial compensation.

12VAC5-391-120. ~~Dedicated hospice~~ Hospice facilities.

A. Providers seeking to operate a ~~dedicated~~ hospice facility shall comply with the appropriate facility licensing regulation as follows:

1. ~~Up to five patient beds, facilities shall be licensed as:~~ Facilities with 16 or fewer beds shall be licensed as a hospice facility pursuant to this chapter. Such facilities with six or more beds shall obtain a Certificate of Use and Occupancy with a Use Group designation of I-2; or

~~a. An assisted living facility pursuant to 22VAC40-71;~~

~~b. A hospital pursuant to 12VAC5-410; or~~

~~c. A nursing facility pursuant to 12VAC5-371; or~~

2. ~~Six or more patient beds, facilities shall be licensed as:~~ Facilities with more than 16 beds shall be licensed as a hospital pursuant to 12VAC5-410 or as a nursing facility pursuant to 12VAC5-371. Such facilities shall obtain the

applicable Certificate of Public Need prior to the development or construction of the facility.

~~a. An assisted living facility, pursuant to 22VAC40-71 with a classified Use Group of I-2;~~

~~b. A hospital pursuant to 12VAC5-410; or~~

~~c. A nursing facility pursuant to 12VAC5-371.~~

~~Facilities to be licensed as a hospital or a nursing facility shall obtain the applicable Certificate of Public Need (COPN).~~

B. Only patients diagnosed terminally ill shall be admitted to a ~~dedicated~~ hospice facility. The facility shall admit only those patients whose needs can be met by the accommodations and services provided by the facility.

C. To the maximum extent possible, care shall be provided in the patient's home. Admission to a ~~dedicated~~ hospice facility shall be the decision of the patient in consultation with the patient's physician. No patient shall be admitted to a hospice facility at the discretion of, or for the convenience of, the hospice provider [, the primary caregiver, or the family].

D. [~~No~~] ~~dedicated~~ [~~hospice facility shall receive for care, treatment, or services patients in excess of~~] ~~the~~ [~~its licensed bed capacity.~~] ~~However, facilities licensed as a nursing facility may provide temporary shelter for evacuees displaced due to a disaster. In those cases, the facility may exceed the licensed capacity for the duration of that emergency only provided the health, safety, and well-being of all patients is not compromised and the OLC is notified.~~ [~~E.~~ All hospice providers operating a hospice facility shall [use its facility to] provide, to the extent possible, respite and symptom management services [~~for their~~ to all] patients [in the hospice program] needing such services.

[E. No hospice facility shall receive patients for care, palliative treatment, respite, or symptom management services in excess of its licensed bed capacity.]

~~E.~~ F. No ~~dedicated~~ hospice facility provider shall add additional patient beds or renovate facility space without first notifying the OLC ~~and the applicable facility licensing authority~~. OLC notifications must be in writing to the director of the OLC.

~~F.~~ G. The OLC will not accept any requests for variances to this section.

12VAC5-391-150. Return of a license.

A. The circumstances under which a license must be returned include~~, but are not limited to~~:

~~(i) change~~ 1. A change in ownership or operator~~,~~;

~~(ii) change in hospice~~ 2. A change in program name~~,~~;

~~(iii) relocation~~ 3. The relocation of the administrative office~~,~~;

~~(iv) discontinuation~~ 4. The discontinuation of any core services~~,~~; and

~~(v) establishment of a dedicated~~ 5. The relocation of a hospice facility.

B. The licensee shall notify its patients and the OLC in writing 30 days prior to discontinuing any services.

C. If the hospice program is no longer operational, or the license is revoked or suspended, the license shall be returned to the OLC within five working days. The licensee is responsible for notifying its patients and the OLC where all medical records will be located.

Part II
Administrative Services

12VAC5-391-160. Management and administration.

A. No person shall establish or operate a hospice program or a hospice facility, as defined in § 32.1-162.1 of the Code of Virginia, without having obtained a license.

B. The hospice program must comply with:

1. This chapter (12VAC5-391);

2. Other applicable federal, state or local laws and regulations; and

3. The hospice program's own policies and procedures.

When applicable regulations are similar, the more stringent regulation shall take precedence.

C. The hospice program shall submit or make available reports and information necessary to establish compliance with this chapter and applicable law.

D. The hospice program shall permit representatives from the OLC to conduct inspections to:

1. Verify application information;

2. Determine compliance with this chapter;

3. Review necessary records and documents; and

4. Investigate complaints.

E. The hospice program shall notify the OLC 30 working days in advance of changes effecting the hospice program, including the:

1. Location of the administrative office or mailing address of the hospice program;

2. Ownership or operator;

3. Services provided;

4. Administrator;

5. Hospice program name;

6. Establishment or relocation of a ~~dedicated~~ hospice facility; and

7. Closure of the hospice program.

F. The current license from the department shall be posted for public inspection.

G. Service providers or individuals under contract must comply with the hospice program's policies and this chapter, as appropriate.

H. The hospice program shall not use any advertising that contains [~~false, misleading or deceptive statements or claims, or false~~ untrue, deceptive, or misleading statements or claims or untrue, deceptive,] or misleading disclosures of fees and payment for services.

I. The hospice program shall have regular posted business hours and be fully operational during business hours. Patient care services shall be available 24 hours a day, seven days a week. This does not mean that a hospice program must accept new clients on an emergency basis during nonbusiness hours.

J. The hospice program shall accept a patient only when the hospice program can adequately meet that patient's needs.

K. The hospice program must have an emergency preparedness plan in case of inclement weather [~~or,~~] natural disaster [, or pandemic disease outbreaks] to include contacting and providing essential care to patients, coordinating with community agencies to assist as needed, and maintaining current information on patients who would require specialized assistance.

L. The hospice program shall encourage and facilitate the availability of flu shots for its staff and patients.

12VAC5-391-180. Administrator.

A. The governing body shall appoint as administrator an individual who has evidence of at least one year of training and experience in direct health care service delivery with at least one year, within the last five years, of supervisory or administration management experience in hospice care or a related health care delivery system.

B. The administrator shall have operational knowledge of Virginia's hospice laws and regulations and the interrelationship between state licensure and [other applicable state laws and regulations as well as] national certification or accrediting organizations such as the Centers for Medicare and Medicaid Services and The Joint Commission (formerly the Joint Commission on Accreditation [~~and~~ of] Healthcare Organizations).

~~B.~~ C. The administrator shall be responsible for the day-to-day management of the hospice program, including but not limited to:

1. Organizing and supervising the administrative functions of the hospice program;

2. Maintaining an ~~on-going~~ ongoing liaison with the governing body, the professional personnel and staff;

3. Employing qualified personnel and ensuring adequate employee orientation, training, education and evaluation;

4. Ensuring the accuracy of public information materials and activities;

5. Implementing an effective budgeting and accounting system;

6. Maintaining compliance with applicable laws and regulations and implementing corrective action in response to reports of hospice program committees and regulatory agencies;

7. Arranging and negotiating services provided through contractual agreement; and

8. Implementing the policies and procedures approved by the governing body.

~~C. An individual who meets the qualifications of subsection A of this section shall be~~ D. The individual designated ~~in writing~~ to perform the duties of the administrator when the administrator is absent from the hospice program shall be able to perform those duties of the administrator as identified in subsection C of this section.

~~Hospice programs shall have one year from the effective date of this chapter to ensure that the individuals currently designated meet the qualifications of subsection A of this section.~~

~~D.~~ E. The administrator or alternate shall be available at all times during operating hours and for emergency situations.

Part III
Hospice Program Services

Article 1
Hospice Services

12VAC5-391-300. Hospice services.

A. Each hospice shall provide a coordinated program of services encompassing the hospice philosophy that:

1. The unit of care consists of the patient, the primary caregiver, and the patient's family;

2. Emphasizes in-home care;

3. A designated interdisciplinary group supervises the patient's care;

4. A patient's symptoms and physical pain will be appropriately assessed and managed;

5. Services are available 24 hours a day, 7 days a week;

6. Inpatient care is provided in an atmosphere as home-like as practical;

7. Bereavement services are available to the family after the death of the patient; and

8. Trained volunteers are utilized to perform specific job functions in the hospice service delivery system.

B. Specific services provided according to the plan of care shall include:

1. Nursing services;

2. Counseling services;

3. Medical social services;

4. Physician services;

5. Physical therapy, occupational therapy, speech-language pathology;

6. Home attendant services;

7. Short-term inpatient care; and

8. Medical appliances and supplies, including drugs and biologicals, relevant to the patient's terminal illness.

~~C. Inpatient services shall be provided in a licensed hospital or nursing facility.~~

~~D.~~ C. There shall be a written transfer agreement with ~~an inpatient facility for~~ one or more hospitals sufficiently close to the hospice's service area to permit the transfer of patients if medical complications arise. Such agreement shall include, but is not limited to, interagency communication processes and coordination of the patient's plan of care, and shall clearly identify the services to be provided by ~~the facility and the hospice~~ each entity while the patient is at the ~~inpatient facility~~ hospital.

D. Provisions shall be made to obtain appropriate transportation in cases of emergency.

E. All prescription drugs shall be prescribed and properly dispensed to patients according to the provisions of Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the Virginia Board of Pharmacy, except for the prescription drugs authorized by § 54.1-3408 of the Drug Control Act, such as epinephrine for emergency administration, normal saline and heparin flushed for the maintenance of IV lines, and adult immunizations, which may be given by a nurse pursuant to established protocol.

[F. The hospice program shall have an active program designed to prevent the occurrence of pressure sores or decubitis ulcers by the program's hospice clients.]

12VAC5-391-395. Medication errors and drug reactions.

A. In the event of a medication error or adverse drug reaction, employees shall promptly notify the patient's physician, the medical director, the nurse and the patient's family and shall take action as directed. [Adverse outcomes of medication errors or drug reactions shall also be reported to the OLC within 48 consecutive hours of the event.]

B. Actions taken shall be documented in the patient's record.

C. The hospice [~~facility~~ program] shall review all medication errors at least quarterly as part of its quality assurance program.

Part IV
~~Dedicated~~ Hospice Facilities

12VAC5-391-440. General facility requirements.

~~A. In addition to the facility licensure requirements in 12VAC5-391-120, providers of dedicated hospice facilities shall maintain compliance with the standards of this section.~~

~~B.~~ A. All construction of new buildings and additions, renovations or alterations of existing buildings for occupancy as a ~~dedicated~~ hospice facility shall ~~comply with applicable state and federal laws and regulations~~ conform to state and local codes, zoning and building ordinances and the Uniform Statewide Building Code.

In addition, hospice facilities shall be designed and constructed according to section 4.2 of Part 4 of the 2006 Guidelines for Design and Construction of Health Care Facilities of the American Institute of Architects. However, the requirements of the Uniform Statewide Building Code and local zoning and building ordinances shall take precedence.

B. All buildings shall be inspected and approved as required by the appropriate regional state fire marshal's office or building and fire regulatory official. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.

~~C. The facility shall provide 24-hour nursing services sufficient to meet the total nursing needs according to individual plans of care, including treatments, medication, and diet as prescribed, of the patients and shall keep patients comfortable, clean, well groomed, and protected from accident, injury, and infection.~~

~~D.~~ C. The facility must have space for private patient family visiting and accommodations for family members after a patient's death. Patients shall be allowed to receive guests, including small children, at any hour.

~~E.~~ D. Patient rooms shall not exceed two beds per room and must be at grade level or above, enclosed by four ceiling-high walls~~, and able to house one or more patients~~. Each room shall be equipped for adequate nursing care, the comfort and privacy of patients, and with a device for calling the staff member on duty.

~~F.~~ E. Designated guest rooms for family members or patient guests and beds for use by employees of the facility shall not be included in the bed capacity of a hospice facility provided

such beds and locations are identified and used exclusively by staff, volunteers or patient guests.

Employees shall not utilize patient rooms nor shall bedrooms for employees be used by patients.

~~G.~~ F. Waste storage shall be located in a separate area outside or easily accessible to the outside for direct pickup or disposal. The use of an incinerator shall require permitting from the nearest regional permitting office for the Department of Environmental Quality.

~~H. The facility shall assist in obtaining transportation, when necessary, to obtain medical and psychiatric care, routine and emergency dental care, diagnostic or other services outside the facility.~~

~~I.~~ G. The facility shall provide or arrange for under written agreement, laboratory, x-ray, and other diagnostic services, as ordered by the patient's physician.

~~J.~~ H. There shall be a plan implemented to assure the continuation of essential patient support services in case of power outages, water shortage, or in the event of the absence from work of any portion of the workforce resulting from inclement weather or other causes.

I. No part of a hospice facility may be rented, leased or used for any purpose other than the provision of hospice care at the facility.

J. [A separate and distinct entrance shall be provided if the program intends to administer and provide its community-based hospice care from the facility so that such traffic and noise shall be diverted away from patient care areas.

K.] The hospice facility shall maintain a complete set of legible "as built" drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.

12VAC5-391-445. Additional building regulations and standards.

A. Water shall be obtained from an approved water supply system. Hospice facilities shall be connected to sewage systems approved by the Department of Health or the Department of Environmental Quality.

B. Each hospice facility shall establish a monitoring program for the internal enforcement of all applicable fire and safety laws and regulations.

C. The hospice facility's food services shall comply with 12VAC5-421 [, as applicable].

D. A hospice facility's pharmacy services shall comply with Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and 18VAC110-20.

12VAC5-391-446. Financial controls and patient funds.

A. All financial records, including resident funds, shall be kept according to generally accepted accounting principles.

B. Hospice facilities choosing to handle patient funds shall, upon receipt of a patient's written delegation of this responsibility:

1. Give the patient at least a quarterly accounting of financial transactions made on his behalf and shall permit the patient access to the records of financial transactions made on his behalf at least once a month;

2. Purchase a surety bond or otherwise provide assurance for the security of all personal funds deposited with the facility; and

3. Provide for separate accounting of patient funds.

C. In the event the hospice facility is sold, the provider shall verify that all patient funds have been transferred or returned to the patient and shall obtain a signed receipt from the new owner of all patient funds transferred. Upon receipt, the new owner shall provide an accounting of resident funds transferred to the respective patient.

D. When a patient with funds deposited with the facility leaves or is discharged, the facility shall give a final accounting, within 30 days, of those funds to the patient or the individual administering the patient's estate and, if appropriate, refund any money due.

12VAC5-391-450. Required staffing.

A. ~~Each shift must include at least one registered nurse providing direct patient care~~ There shall be an individual, designated in writing, responsible for the day-to-day management and operation of the hospice facility. Such individual shall report directly to the program administrator and shall be qualified to perform the duties identified in 12VAC5-391-180 C.

B. ~~Minimum staffing for a hospice facility with five patient beds shall consist of one registered nurse and one additional direct care staff member on duty at all times. Staffing for hospice facilities with six or more beds shall be based on the assessed needs of the patients in the facility~~ The facility shall provide 24-hour nursing services sufficient to meet the total nursing needs of its patients according to individual plans of care, including treatments, medication, and diet as prescribed, and shall keep patients comfortable, clean, well-groomed, and protected from [~~accident, injury and infection~~ avoidable accidents, injuries, and infections].

C. The hospice facility shall have a sufficient number of trained and supervised staff to meet the needs of each patient. At least two staff, one of which is a licensed nurse, must be on duty when patients are present. However, facilities with six or fewer beds may staff with a single licensed nurse

provided compliance with subsection B of this section is maintained.

If the nurse on duty is not a registered nurse, then a registered nurse must be on call and able to respond to emergent calls within 20 minutes.

12VAC5-391-460. Pharmacy services.

A. ~~Provision shall be made for the procurement, storage, dispensing, and accounting of drugs and other pharmacy products. This may be by arrangement with an off-site pharmacy, but must include provisions for 24-hour emergency service~~ Whether medications and biologicals are obtained from community or institutional pharmacies, the hospice facility is responsible for assuring availability for medications and biologicals, including 24-hour emergency services, for its patients and for ensuring that pharmaceutical services are provided according to accepted professional principles and appropriate federal and state laws.

B. The ~~dedicated~~ facility shall comply with the Virginia Board of Pharmacy regulations related to pharmacy services in long-term care facilities, i.e., Part XII (18VAC110-20-530 et seq.) of the Virginia Board of Pharmacy Regulations.

C. Each ~~dedicated~~ hospice facility shall develop and implement policies and procedures for the handling of drugs and biologicals, including procurement, storage, administration, medication errors, self-administration ~~and,~~ disposal and accounting of drugs and other pharmacy products.

D. Each facility shall have a written agreement with a qualified pharmacist to provide consultation on all aspects of the provision of pharmacy services in the facility.

The consultant pharmacist shall make regularly scheduled visits, at least ~~monthly~~ quarterly, to the facility for a sufficient number of hours to carry out the function of the agreement.

E. Each prescription container shall be individually labeled by the pharmacist for each patient or provided in an individualized unit dose system.

F. No drug or medication shall be administered to any patient without a valid verbal order or a written, dated and signed order from a physician, dentist or podiatrist, nurse practitioner or physician assistant, licensed in Virginia.

G. Verbal orders for drugs or medications shall only be given to a licensed nurse, pharmacist or physician.

H. Each patient's medication regimen shall be reviewed by a pharmacist licensed in Virginia. Any irregularities identified by the pharmacist shall be reported to the physician and the director of nursing, and their response documented.

I. Medication orders shall be reviewed at least every 60 days by the attending physician, nurse practitioner, or physician's assistant.

J. Prescription and nonprescription drugs and medications may be brought into the facility by a patient's family, friend or other person provided:

1. The individual delivering the drugs and medications assures timely delivery, in accordance with the facility's written policies, so that the patient's prescribed treatment plan is not disrupted;

2. Each drug or medication is in an individual container; and

3. Delivery is not allowed directly to an individual patient.

In addition, prescription medications shall be:

4. Obtained from a pharmacy licensed by the state or federal authority; and

5. Securely sealed and labeled by a licensed pharmacist according to 18VAC110-20-330 and 18VAC110-20-340.

12VAC5-391-480. ~~Food~~ Dietary and food service.

[A. This section is not applicable to family members preparing meals or bringing food into the facility.]

[~~A.~~ B.] The facility shall provide dietary services to meet the daily nutritional needs of patients.

[~~B.~~] ~~If the facility has patients requiring medically prescribed special diets, the menus for such diets shall be planned by a dietitian qualified according to Chapter 27.1 (§ 54.1-2730 et seq.) of Title 54.1 of the Code of Virginia, or shall be reviewed and approved by a physician. The facility shall provide supervision of the preparation and serving of any special diets~~ [C.] The hospice facility shall employ sufficient assigned food service personnel trained to provide a hygienic dietary service that meets the daily nutritional and special dietary needs of patients and provides palatable and attractive meals.

[~~C.~~ D.] When meals are catered ~~to a hospice facility~~, such meals shall be obtained from a food service establishment licensed by the Virginia Department of Health. There shall be a current written contract with the food service establishment pursuant to 12VAC5-391-230.

[~~D.~~ E.] The hospice facility shall contract with [or employ] a consulting registered dietitian, who meets the qualifications of § 54.1-2731 of the Code of Virginia, to provide guidance to the facility's food service personnel on methods for maintaining the dietary service, planning of nutritionally balanced meals, and assessing the dietary needs of individual patients. The dietitian's duties shall include the following:

1. Developing menus, including therapeutic diets prescribed by a patient's physician;

2. Developing, revising, and annually reviewing dietary policies, procedures and job descriptions;

3. Assisting in planning and conducting regularly scheduled inservice training that includes, but is not limited to:

a. Therapeutic diets;

b. Food preparation requirements; and

c. Principles of sanitation.

4. Visiting patients on a regular basis to discuss nutritional problems, depending upon their needs and level of care, and recommending appropriate solutions.

[~~E.~~ F.] Menus shall meet the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, as adjusted for age, sex, and activity level.

[~~F.~~ G.] A copy of a diet manual containing acceptable practices and standards for nutrition must be kept current and on file in the food preparation area.

[~~G.~~ H.] Food service facilities shall be located in a designated area and shall include the following rooms or spaces:

1. Kitchen;

2. Dishwashing;

3. Food storage; and

4. Dining room.

[~~H.~~ I.] At least three meals, served at regular intervals, shall be provided daily to each patient, unless contraindicated as documented by the attending physician in the patient's medical record.

[~~I.~~ J.] Special attention shall be given to preparation and prompt serving in order to maintain correct food temperatures for serving.

[~~J.~~ K.] Between meal snacks of nutritional value shall be available upon request to each patient according to their plan of care.

[~~K.~~ L.] Therapeutic diets shall be prepared and served as prescribed by the attending physician.

[~~L.~~ M.] Employees assigned to other duties in the facility and visitors shall not be allowed in the food preparation area during food preparation and patient meal service hours, except in cases of emergency.

[~~M.~~ N.] Weekly menus, including therapeutic diets, substitutes, and copies of menus, as served, shall be retained on file for 12 months.

[~~N.~~ O.] Disposable dinnerware or tableware shall be used only for emergencies, for infection control, as part of special activities, or as indicated in a patient's plan of care.

[~~O.~~ P.] For hospice facilities with 13 or more patient beds:

1. The dietary and food service operation shall meet all applicable sections of 12VAC5-421; and

2. There shall be a food service manager, qualified as allowed in 12VAC5-421-60, responsible for the full-time management and supervision of the dietary service.

12VAC5-391-485. Maintenance and housekeeping.

A. The hospice facility shall be maintained and equipped to provide a functional, sanitary, safe, and comfortable environment.

B. A documented preventive maintenance program shall be established to ensure that equipment is operative and that the interior and exterior of the building or buildings are maintained in good repair and free from hazards and litter.

C. The administrator shall designate an employee responsible for carrying out these functions and for training and supervising housekeeping and maintenance personnel.

D. The heating, ventilation and air conditioning system shall be capable of maintaining temperatures between 70°F and 80°F throughout patient areas.

E. The hospice facility shall have an effective pest control program either by maintenance personnel or by contract with a pest control company.

F. The hospice facility shall provide adequate space, equipment and supplies for any special services to be offered.

G. All furniture shall be kept clean and safe for use.

H. Over bed tables shall be available as needed.

I. Stretchers and wheelchairs shall be stored out of the path of normal traffic.

J. A sufficient number of wheelchairs and chairs shall be provided for patients whose physical conditions indicate a need for such equipment.

K. Refuse containers shall be emptied and cleaned at frequent intervals.

L. Hazardous cleaning solutions, compounds and substances shall be labeled, stored and kept under lock in a safe place separate from other materials.

12VAC5-391-495. Transportation.

The hospice facility shall assist a patient in obtaining transportation when it is necessary to obtain medical, psychiatric, dental, diagnostic or other services outside the facility.

12VAC5-391-500. Pet care.

A. ~~If the facility chooses to permit pets, then healthy animals that are free of fleas, ticks and intestinal parasites, that have been screened by a veterinarian prior to entering the facility, that have received required inoculations and that represent no~~

~~apparent threat to the health, safety, and well-being of the patients may be permitted provided they are properly cared for and the pet and its housing or bedding are kept clean~~ The hospice facility shall implement policies regarding pets, whether the pet is visiting or in residence.

B. ~~Pets shall not be allowed near patients with pet allergies or patients choosing not to be disturbed by animals.~~ The hospice facility shall ensure that any patient's rights, preferences, and medical needs are not compromised by the presence of an animal. [~~Pets~~ Except for working service animals, pets] shall not be allowed in dining and kitchen areas when food is being prepared or served.

C. All pets, whether visiting or in residence, shall be in good health, clean and well-groomed, show no evidence of carrying disease, have a suitable temperament, and pose no significant health or safety risks to patients, staff, volunteers, or visitors.

D. For pets in [~~residences~~ residence], the facility shall:

1. Disclose to potential and current patients the types of pets and the conditions under which pets are allowed in residence;

2. Maintain documentation of disclosure of pet policies in the patients' records;

3. Ensure that, before living in the facility, the pet's owner provides current documentation that the pet has had all recommended or required immunizations;

4. Ensure that regular pet examinations and immunizations are maintained; and

5. Ensure that resident pets are properly cared for and that the pet and its housing or bedding are kept clean.

12VAC5-391-510. Safety and emergency preparedness.

A. A written emergency preparedness plan shall be developed, reviewed, and implemented when needed. The plan shall address responses to natural disasters, as well as fire or other emergencies that disrupts the normal course of operations. The plan shall include, but not be limited to:

1. The continuation of essential patient support services in case of power outages, water shortages, or in the event of absences from work of any portion of the workforce resulting from inclement weather or other causes;

2. The preparation of patients for potential or imminent emergencies and disasters;

3. Alerting emergency personnel and sounding alarms;

4. Using, maintaining and operating emergency equipment;

5. Accessing patient emergency medical information;

6. Utilizing community support services;

7. A sheltering plan that addresses, but is not limited to:

a. Sheltering in place as well as off-site relocation arrangements;

b. Implementing evacuation procedures; and

c. A letter of agreement with off-site sheltering locations;

8. A transportation plan including:

a. Agreements with entities for relocating patients;

b. Number and type of vehicles required; and

c. Procedures for providing appropriate medical support and medications during relocation; and

9. A staffing plan for relocated patients, including:

a. The number and type of staff needed to provide appropriate care to relocated patients; and

b. Plans for relocating staff or assuring transportation to the sheltering facility.

B. All staff shall participate in periodic emergency preparedness training.

C. Staff shall have documented knowledge of, and be prepared to implement, the emergency preparedness plan in the event of an emergency.

D. At least one telephone shall be available in each area to which patients are admitted [~~and~~, in each patient room, with] additional telephones or extensions as are necessary to ensure availability in case of need.

E. In the event of a disaster, fire, medication error, suspicious death, emergency or any other condition that may jeopardize the health, safety and well-being of patients, the facility shall notify the department of the conditions and status of the patients and the hospice facility as soon as possible, but no later than 24 hours after the incident.

F. The hospice facility shall have a policy on smoking.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-391)

Personal Care Aide Training Curriculum, 2003, Department of Medical Assistance Services.

2006 [,] Guidelines for Design and Construction of Health Care Facilities, The Facility Guidelines Institute, The American Institute of Architects Academy of Architecture for Health, 1-800-242-3837.

VA.R. Doc. No. R08-964; Filed December 28, 2010, 1:23 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Proposed Regulation

Title of Regulation: **13VAC5-21. Virginia Certification Standards (amending 13VAC5-21-51).**

Statutory Authority: § 36-137 of the Code of Virginia.

Public Hearing Information:

March 28, 2011 - 10 a.m. - Virginia Housing Center, 4224 Cox Road, Richmond, VA

Public Comment Deadline: March 31, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-137 of the Code of Virginia requires the Board of Housing and Community Development to issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia, Chapter 9 (§ 27-94 et seq.) of Title 27 of the Code of Virginia, and any regulations adopted thereunder, who have completed training programs, topic examinations, or in other ways demonstrated adequate knowledge.

Purpose: As recognized in § 36-99 of the Code of Virginia, the purpose of the Uniform Statewide Building Code (USBC) is to protect the health, safety, and welfare of the citizens of the Commonwealth, while permitting buildings to be constructed in the most economical manner consistent with such pertinent recognized standards relative to construction, health, and safety. Therefore, the certification and associated training and education of the local code enforcement personnel are inherent in and critical to the achievement of this purpose and ensure the technical and professional level of those personnel, including the knowledge and skill gained from the mandated periodic training and continuing education, as well as a familiarity with and understanding of recent developments within the building codes and construction industry. This regulatory action also clarifies the dual requirements for both training and education categories to sustain an active status of the certificate holder and correlates the requirements with the proposed amendments in the USBC.

Substance: Not being substantive in nature, this regulatory action primarily serves to clarify and correlate the existing regulatory requirements.

Issues: The primary advantage of this regulatory action, beyond the clarification and correlation of the existing regulations, is to provide for a consistent interpretation and application of the existing regulation among the local code enforcement personnel, ensure adequate training and education of the local code enforcement personnel, and promote a knowledge and skill level of the local code enforcement personnel that progresses concurrently with the building code cycles and construction industry developments. All certificate holders in code enforcement, consisting of building officials and technical assistants, must separately obtain both periodic training to maintain a level of technical knowledge required of the certificate topic as well continuing education to progress the level of professional skill commensurate with the building code cycles and the construction industry developments. The identification of active versus inactive status of certificate holders assists the localities and the general public with the determination of the eligibility of the local code enforcement personnel as a building official or technical assistant and assurance of the technical and professional levels of the local code enforcement personnel. This regulatory action poses no foreseen disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to amend its Virginia Certification Standards to clarify that regulated entities must complete both periodic maintenance training and required continuing education credits in order to maintain certification.

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

Estimated Economic Impact. Currently, these certification standards require active certificate holders to have attended all periodic training designated by the Board but do not specify what this training entails. The Board proposes to flesh out this requirement by including the types of training (maintenance training and pertinent continuing education) that certificate holders will have to periodically complete.

Because the categories of training that the Board proposes to insert into these standards are already required, no regulated entity is likely to incur any additional costs on account of this proposed change. To the extent that current regulatory language may have led to confusion about what is expected of certificate holders, this change will provide the benefit of clarity.

Businesses and Entities Affected. The Department of Housing and Community Development (DHCD) reports that

approximately 2,900 local building code enforcement personnel are currently certified by the Board.

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

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

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

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

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

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis provided by the Department of Planning and Budget.

Summary:

This regulatory action amends the existing regulation to clarify the existing mandatory requirements for all certificate holders in code enforcement, consisting of building officials and technical assistants, to separately obtain both periodic training to maintain a level of technical knowledge required of the certificate holder as well continuing education to progress to the level of professional skill commensurate with the building code cycles and the construction industry developments. This regulatory action further correlates the proposed amendments within the Virginia Uniform Statewide Building Code (USBC), which encompass the relevant sections of the Virginia Construction Code (Section 105.2.3), Virginia Residential Code (Section 105.2.3), and Virginia Maintenance Code (Section 104.4.4), regarding compliance with each of the two requirements for periodic maintenance training and continuing education credits. In addition, this regulatory action applies the mandated training and education requirements to further define the active and inactive certificate status of certificate holders relative to the ongoing training and education of certificate holders. In order to achieve and sustain active status once certified, an individual must satisfactorily attend the periodic training as designated by Department of Housing and Community Development and complete the continuing education as additionally required by the regulations; the failure to satisfactorily accomplish one or both of these periodic training or continuing education requirements results in an inactive certificate status.

13VAC5-21-51. Issuance of certificates.

A. Certificates will be issued when an applicant has complied with the applicable requirements of this chapter. Certificate holders will be classified as active or inactive. An active certificate holder is a person who is certified and who has attended all periodic maintenance training ~~courses~~ designated by the department and completed the required continuing education subsequent to becoming certified. An inactive certificate holder is a person who is certified but who has not attended all such periodic maintenance training ~~courses~~ or completed the required continuing education subsequent to becoming certified. An inactive certificate holder may request reinstatement as an active certificate holder after completing make-up training courses authorized by the department. Provisional certificates may also be issued in accordance with subsection C of this section.

B. All certificates issued since June 1978 are considered to be valid unless revoked or suspended, except that provisional certificates shall remain valid as set out under subsection C of this section.

C. A provisional certificate may be issued to (i) a person who has been directed by the department to obtain a certificate; (ii) an applicant requesting a certificate under the

alternative examination or training provisions of 13VAC5-21-45; or (iii) an applicant when the required training has not been provided or offered.

Such a provisional certificate may be issued when the applicant has (i) provided the written endorsement or documentation required by 13VAC5-21-31, (ii) satisfactorily completed the code academy core module, and (iii) completed any training through the code academy or through other providers determined to warrant the issuance of the provisional certificate.

The provisional certificate is valid for a period of one year after the date of issuance and shall only be issued once to any individual, except that a provisional certificate shall remain valid when the required training has not been provided or offered.

VA.R. Doc. No. R09-1897; Filed December 30, 2010, 9:43 a.m.

Proposed Regulation

Title of Regulation: **13VAC5-95. Virginia Manufactured Home Safety Regulations (amending 13VAC5-95-10 through 13VAC5-95-60, 13VAC5-95-80 through 13VAC5-95-100; repealing 13VAC5-95-70).**

Statutory Authority: § 36-85.7 of the Code of Virginia.

Public Hearing Information:

March 28, 2011 - 10 a.m. - Virginia Housing Center, 4224 Cox Road, Richmond, VA

Public Comment Deadline: March 31, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-85.7 of the Code of Virginia requires the Board of Housing and Community Development to keep the Manufactured Housing Safety Regulations (MHSR) up to date and in compliance with federal law and regulation.

Purpose: The proposed regulatory action is essential to protect the health, safety, and welfare of citizens of the Commonwealth by providing the most up-to-date installation standards available and mandated. The current installation standards are outdated and no longer available as a viable resource upon request by clients, building officials, and installers; also the U.S. Department of Housing and Urban Development's (HUD) new Manufactured Home Installation Standards are enforced as a mandatory installation standard under federal regulation. The proposed regulation will delineate the mandatory installation standard per HUD that is fundamental to the protection of the health, safety, and welfare of citizens and is readily available for clients, building officials, and installers.

Substance: The proposed MHSR will be updated to include all references to the Federal Installation Standards (24 CFR Part 3285). The proposed regulation will contain minor changes to the provisions of the regulations that have been vetted through the client groups affected by the MHSR and have met no opposition. A more up-to-date standard is required to provide assistance to building officials and local building inspections departments, installers, and home owners regarding installation and inspections procedures and all processes related to the installation of manufactured homes within the Commonwealth.

Issues: The advantage for the public, building officials, installers, and private citizens is the revision removing the outdated and unattainable NCSBCS/ANSI A225.1 standard 1994 edition and specifying the new mandated HUD installation regulation in the MHSR. The HUD installation standards provide minimum requirements for the initial installation of new manufactured homes and each new home installation designs and instructions have been approved by the Secretary of HUD or Design Approval Primary Inspection Agency (DAPIA). The Federal Construction Standards are enforcement provisions for the design, construction, distribution, and the installation of manufactured homes. A more up to date standard is required to provide assistance to building officials and local building inspections departments, installers, and home owners regarding installation and inspection procedures and all processes related to the installation of manufactured homes within the Commonwealth. The building official is responsible for, but not limited to the aspects of, the installation and set up of a new manufactured home for footings, foundation systems, anchoring of the home, exterior and interior close-up, additions and alterations, and system connections done during initial installation. Such aspects are subject to and must comply with the installation instructions provided by the manufacturer of the home; when the manufacturer's installation instructions are not available, such aspects are subject to and must comply with 24 CFR Part 3285 Model Manufactured Home Installation Standards. Where the installation or erection of a manufactured home utilizes components that are to be concealed, the installer must notify the building official that an inspection is necessary and assure that an inspection is performed and approved prior to concealment of such components, unless the building official has agreed to an alternative method of verification.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to amend its Manufactured Housing Safety Regulations to reword some sections with currently preferred terms, move the regulations that define the role of local building inspectors in inspecting new manufactured housing

and delineate the statutory punishment for violation of these regulations.

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

Estimated Economic Impact. Current regulations use the terms "local code inspector and distributer" through the regulatory text; the Board proposes to replace these terms with "local building inspector" and "broker." As these new terms refer to the same groups of people, no regulated entity is likely to incur any additional costs on account of these proposed changes.

Currently, the regulations that specify the code enforcement role of local building officials are in 13VAC5-95-30 (Effect of label). The Board proposes to move these regulations into 13VAC5-95-20 (Application and enforcement). Nothing new will be required of local building inspectors under the proposed regulations; local building inspectors and other interested parties will, however, be able to more easily locate these requirements as the new section title makes it a much more intuitively obvious place in which to look.

Current regulations delineate procedures for handling violations of manufactured housing safety rules. The Board proposes to add notice of the statutory language that governs punishment of any violations. Because affected entities must already adhere to both the relevant statutes and regulations, and so would already be subject to any listed fines and other punishments, no regulated entity is likely to incur any additional costs on account of this proposed change. To the extent that the addition of the statutory language makes the rules less opaque, this change will provide the benefit of clarity.

Businesses and Entities Affected. The Department of Housing and Community Development (DHCD) reports that up to 42 manufacturers, 238 dealers, 3 brokers, 699 salespeople and 570 installers are governed by these regulations. All of these entities will be affected by these proposed changes.

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

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

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

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

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

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis provided by the Department of Planning and Budget.

Summary:

The Board of Housing and Community Development proposes to amend the Manufactured Housing Safety Regulations to (i) reword certain sections with currently preferred terms, (ii) move the regulations defining the role of local building inspectors in inspecting new manufactured housing from 13VAC5-95-30 to 13VAC5-95-20, (iii) delineate the punishment for violation of the regulations, (iv) incorporate by reference the recent changes and additions to the Federal Construction Standards of the U.S. Department of Housing and Urban Development (HUD), and (v) adopt Installation Standards of HUD Part 3285 as the most current installation standard available to replace current outdated standards no longer in print and not readily available to clients and constituents of the State Building Code Administrative Office.

13VAC5-95-10. Definitions.

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

"Act" or "the Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, Title VI of the Housing and Community Development Act of 1974 (42 USC § 5401 et seq.).

"Administrator" means the Director of DHCD or his designee.

"DHCD" means the Virginia Department of Housing and Community Development.

"Dealer" means any person engaged in the sale, lease, or distribution of manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use of which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Design Approval Primary Inspection Agency" or "DAPIA" means a state agency or private organization that has been accepted by the secretary, in accordance with the federal regulation, to evaluate and either approve or disapprove manufactured home designs and quality control procedures.

~~"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.~~

"Federal installation standards" means the federal Model Manufactured Home Installation Standards (24 CFR Part 3285) or any set of state standards that the secretary has determined provide protection to the residents of manufactured homes that equals or exceeds the protection provided by the installation standards.

"Federal regulation" means the federal Manufactured Home Procedural and Enforcement Regulations, enacted May 13, 1976, under authority granted by § 625 of the Act, and designated as Part 3282, Chapter XX, Title 24 of HUD's regulations (24 CFR Part 3282). (Part 3282 consists of subparts A through L, with sections numbered 3282.1 through 3282.554, and has an effective date of June 15, 1976.)

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Installation" means completion of work to include but not be limited to stabilize, support, anchor, and close up a manufactured home and to join sections of a multi-section manufactured home, when any such work is governed by the federal installation standards or by state installation standards that are certified as part of a qualifying installation program.

"Installer" means the person or entity who is retained to engage in, or who engages in, the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home.

"Label" or "certification label" means the approved form of certification by the manufacturer that, under ~~24 CFR 3282.362(c)(2)(i)~~ § 3280.11 of the ~~Manufactured Home Procedural and Enforcement Regulations~~ federal standards, is permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States.

"Local ~~code~~ building official" means the officer or other designated authority charged with the administration and enforcement of USBC, or duly authorized representative.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Manufacturer's installation instructions" means DAPIA-approved instructions provided by the home manufacturer that accompany each new manufactured home and detail the home manufacturer requirements for support and anchoring systems and other work completed at the installation site to comply with the federal installation standards and the federal standards.

"Noncompliance" means a failure of a manufactured home to comply with a federal manufactured home construction or safety standard that does not constitute a defect, serious defect, or imminent safety hazard.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Recreational vehicles" means vehicles that meet all of the following criteria:

1. Built on a single chassis.

2. Four hundred square feet or less when measured at the largest horizontal projections.

3. Self-propelled or permanently towable by a light duty truck.

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Secretary" means the Secretary of HUD.

"Serious defect" means any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

"Standards" or "federal standards" means the federal Manufactured Home Construction and Safety Standards (24 CFR Part 3280) adopted by HUD, in accordance with authority in the Act. The standards were enacted December 18, 1975, and amended May 11, 1976, to become effective June 15, 1976.

"State administrative agency" or "SAA" means DHCD which is responsible for the administration and enforcement of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 of the Code of Virginia throughout Virginia and of the plan authorized by § 36-85.5 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC 5-63).

B. Terms defined within the federal regulations and standards shall have the same meanings in this chapter.

13VAC5-95-20. Application and enforcement.

A. This chapter shall apply to manufactured homes ~~as defined in 13VAC5-95-10 and 13VAC5-95-20~~.

B. Enforcement of this chapter shall be in accordance with the federal regulation.

C. Manufactured homes produced on or after June 15, 1976, shall conform to all the requirements of the federal standards, as amended.

D. DHCD is delegated all lawful authority for the enforcement of the federal standards pertaining to manufactured homes by the administrator according to § 36-85.5 of the Code of Virginia. The Division of Building and Fire Regulation of DHCD is designated as a state administrative agency in the HUD enforcement program, and shall act as an agent of HUD. The administrator is authorized to perform the activities required of an SAA by the HUD enforcement plan including, but not limited to, investigation, inspections, citation of violations, handling of complaints, conducting hearings, supervising remedial actions, monitoring, and making such reports as may be required.

E. All local ~~code~~ building officials are authorized by § 36-85.11 of the Code of Virginia to enforce the provisions of this chapter ~~within the limits of their jurisdiction. Such local code officials shall enforce this chapter, subject to the general oversight of the Division of Building and Fire Regulation and shall not permit the use of any manufactured home containing a serious defect or imminent safety hazard within their jurisdiction.~~ and shall be responsible for and authorized to do the following:

1. Verify through inspection that a manufactured home displays the required HUD label.

2. Determine whether the manufactured home has been damaged in transit to a degree that may make it unsafe. If the manufactured home has been damaged, then the local building official is authorized to require tests for tightness of plumbing systems and gas piping and an operational test to ensure that all luminaries and receptacles are operable.

3. Prevent the use or occupancy of a manufactured home that in the opinion of the local building official contains a serious defect or imminent safety hazard and notify the administrator immediately.

4. Notify the administrator of any apparent violations of this chapter to include defects and noncompliance.

F. ~~Mounting and anchoring~~ In accordance with § 36-99 of the Code of Virginia, all site work associated with the installation of manufactured homes ~~shall be in accordance with the applicable requirements of~~ is subject to the USBC. Also, as set out by the USBC, all administrative requirements for permits, inspections, and certificate of occupancy are applicable.

G. Recreational vehicles are not subject to this chapter.

13VAC5-95-30. Effect of label.

~~A.~~ In accordance with § 36-85.11 of the Code of Virginia, manufactured homes displaying the certification label as prescribed in the federal standards shall be accepted in all localities as meeting the requirements of the Manufactured Housing Construction and Safety Standards Law (Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 of the Code of Virginia), which shall supersede the building codes of the counties, municipalities and state agencies. ~~In addition, as a requirement of this chapter, local code officials shall carry out the following functions with respect to manufactured homes displaying the HUD label, provided such functions do not involve disassembly of the homes or parts of the homes, change of design, or result in the imposition of more stringent conditions than those required by the federal regulations.~~

~~1. Verify through inspection that the manufactured home has not been damaged in transit to a degree that would render it unsafe. If the manufactured home has been damaged, then the local code official is authorized to~~

~~require tests for tightness of plumbing systems and gas piping, and electrical short circuits at meter connections.~~

~~2. Verify through inspection that (i) supplemental components required by the manufacturer's installation instructions or this chapter are properly provided, (ii) manufacturer's installation or erection instructions are followed, and (iii) any special conditions or limitations of use stipulated by the manufacturer's installation instructions or the label in accordance with the standards or this chapter are followed.~~

~~B. Local code officials are required by the USBC to enforce applicable requirements of the USBC for utility connections, site preparation, foundations, stoops, decks, porches, alterations and additions to existing manufactured homes, building permits, skirting, certificates of use and occupancy, and all other applicable requirements, except those governing the design and construction of the labeled units. In addition, local code officials shall verify that a manufactured home displays the required HUD label.~~

13VAC5-95-40. Report to DHCD.

Whenever any manufactured home is moved from a local jurisdiction before a noted violation has been corrected, the local ~~code~~ building official shall make a prompt report of the circumstances to the administrator. The report shall include a list of uncorrected violations, all information pertinent to identification and manufacture of the home contained on the label and the data plate, the destination of the home if known, and the name of the party responsible for moving it.

13VAC5-95-50. Alterations.

A. No ~~distributor~~ installer, broker, or dealer shall perform or cause to be performed on a new manufactured home any alteration affecting one or more requirements set forth in the federal standards, except those alterations approved by the administrator.

B. In handling and approving dealer requests for alterations on a new manufactured home, the administrator may be assisted by local ~~code~~ building officials. The local ~~code~~ building official shall report violations of subsection A of this section and failures to conform to the terms of their approval to the administrator.

C. In accordance with § 36-99 of the Code of Virginia and in accordance with the USBC, alterations, additions, and repairs associated with used manufactured homes are regulated by the USBC and not this chapter. The USBC provides for administrative requirements for permits, inspections, and certificates of occupancy and allows the use of Appendix E of the International Residential Code, entitled, "Manufactured Housing Used As Dwellings" as an acceptable alternative to the general requirements of the USBC for construction work associated with additions, alterations, and repairs to used manufactured homes.

13VAC5-95-60. Installations.

~~Distributors or~~ Broker's, dealers ~~installing,~~ or installers setting up a new manufactured home shall perform such installation in accordance with the manufacturer's installation instructions ~~or other support and anchoring system approved by the local code official in accordance with the USBC~~.

13VAC5-95-70. ~~Prohibited resale.~~ (Repealed.)

~~No distributor or dealer shall offer for resale any manufactured home possessing a serious defect or imminent safety hazard.~~

13VAC5-95-80. Lot inspections.

At any time during regular business hours when a manufactured home is located on a dealer's or ~~distributor's~~ broker's lot and offered for sale, the administrator shall have authority to inspect such home for transit damages, seal tampering, violations of the federal standards and the dealer's or ~~distributor's~~ broker's compliance with applicable state and federal laws and regulations. The administrator shall give written notice to the dealer or ~~distributor~~ broker when any home inspected does not comply with the federal standards.

13VAC5-95-90. Consumer complaints~~; on-site inspections~~.

A. The administrator shall receive all consumer complaints on new manufactured homes reported to DHCD by owners, dealers, ~~distributors~~ brokers, ~~code~~ local building officials, and other state or federal agencies. The administrator may request such reports to be submitted by letter or on a report form supplied by DHCD or in other format acceptable by the administrator.

B. The administrator may conduct, or cause to be conducted, an on-site inspection of a manufactured home at the request of the owner reporting a complaint with the home or under the following conditions with the permission of the owner of the home:

1. The dealer, ~~distributor~~ broker, or manufacturer requests an on-site inspection;

2. The reported complaint indicates extensive and serious noncompliances;

3. Consumer complaints lead the administrator to suspect that a class of homes may be similarly affected; or

4. Review of manufacturer's records, corrective action, and consumer complaint records leads the administrator to suspect secondary or associated noncompliances may also exist in a class of homes.

C. When conducting an on-site inspection of a home involving a consumer complaint, the administrator may request the dealer, ~~distributor~~ installer, broker, and manufacturer of the home to have a representative present to coordinate the inspection and investigation of the consumer complaint.

D. After reviewing the complaint report or the on-site inspection of the home involved, the administrator shall, where possible, indicate the cause of any nonconformance and, where possible, indicate the responsibility of the manufacturer, dealer, ~~distributor~~ installer, broker, or owner for the noncompliance and any corrective action necessary.

E. The administrator shall refer to the manufacturer of the home, in writing, any consumer complaint concerning that home reported to the administrator. The administrator may refer any such reported complaint to HUD, to the SAA in the state where the manufacturer is located and to the inspection agency involved with certifying the home.

F. The administrator shall assist the owner, dealer, ~~distributor~~ installer, broker, and manufacturer in resolving consumer complaints. The administrator shall monitor the manufacturer's performance to assure compliance with Subpart I of the federal regulations for consumer complaint handling and shall take such actions as are necessary to assure compliance of all involved parties with applicable state and federal regulations.

13VAC5-95-100. Violation; appeal; penalty.

A. ~~Where the administrator finds any violation of the provisions of this chapter, a notice of violation shall be issued. This notice of violation shall order the party responsible to bring the unit into compliance, within a reasonable time.~~ In accordance with § 36-85.12 of the Code of Virginia, it shall be unlawful for any person, firm, or corporation, to violate any provisions of this law, the rules and regulations enacted under authority of this law, or the federal law and regulations. Any person, firm, or corporation violating any provision of said laws, rules, and regulations, or any final order issued there under, shall be liable for civil penalty not to exceed $1,000 for each violation. Each violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or to perform an act required by the legislation or regulations. The maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation. An individual or a director, officer, or agent of a corporation who knowingly and willfully violates Section 610 of the National Manufactured Housing Construction and Safety Standards Act in a manner that threatens the health or safety of any purchaser shall be deemed guilty of a Class 1 misdemeanor and upon conviction fined not more than $1,000 or imprisoned not more than one year, or both.

B. ~~Parties aggrieved by the findings of the notice of violation may appeal to~~ In accordance with § 36-114 of the Code of Virginia, the State Building Code Technical Review Board~~, which~~ shall ~~act on the appeal in accordance with the provisions of the USBC. The aggrieved party shall file the appeal within 10 days of the receipt of the notice of violation. Unless the notice of violation is revoked by the review board, the aggrieved party must comply with the stipulations of the notice of violation~~ have the power and duty to hear all appeals from decisions arising under the application of this chapter. Appeals concerning application of the federal regulations or federal standards by the administrator shall be in accordance with the federal regulations.

~~C. Any person, firm or corporation violating any provisions of this chapter shall, upon conviction, be considered guilty of a misdemeanor in accordance with § 36-85.12 of the Code of Virginia.~~

VA.R. Doc. No. R09-1896; Filed December 30, 2010, 9:44 a.m.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

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

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

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

Effective Date: January 6, 2011.

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Summary:

The amendments (i) make elderly rehabilitation developments eligible for points awarded for creating accessible units, (ii) tier available points for level of compliance with EarthCraft of LEED requirements, (iii) revise negative point category for noncompliance to encourage compliance training, and (iv) suspend the preservation pool for credit year 2011. No changes were made to the final regulation since publication of the proposed regulation.

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

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

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

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

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

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

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

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to

such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

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

1. Readiness.

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

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

2. Housing needs characteristics.

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

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

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

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

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

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

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

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

prospective tenants that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by such tenants.)

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

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

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

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

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

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

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

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

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

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

3. Development characteristics.

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

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

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

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

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

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

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

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

(f) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a SEER rating of 15.0 or more and a HSPF rating of 8.5 or more or (ii) air conditioning equipment with a SEER rating of 15.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

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

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

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

(j) If all the water heaters meet the EPA's Energy Star qualified program requirements. (5 points)

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the ~~Authority's~~ authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development, or a new construction development that is 15% more energy efficient than the 2004 International Energy Conservation Code (IECC) as measured by EarthCraft or a rehabilitation development that is 30% more energy efficient post-rehabilitation as measured by EarthCraft; 30 points for a LEED Gold development, or a new construction development that is 20% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 40% more energy efficient post-rehabilitation as measured by EarthCraft; 45 points for a LEED Platinum development, or a new construction development that is 25% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 50% more energy efficient post-rehabilitation as measured by EarthCraft.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving 30 or 45 points under this subdivision ~~and 60 points under either subdivision 7 a or b of this section~~, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis for 30 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis. ~~(30 points)~~

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

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

j. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

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

5. Sponsor characteristics.

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

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

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

d. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the ~~time~~ year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the ~~applicant)~~ applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the authority)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit

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

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

6. Efficient use of resources.

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

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

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

7. Bonus points.

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

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

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

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

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

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of 500 points (475 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

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

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

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

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

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under

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

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

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

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

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and

allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's

or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

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

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

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

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

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

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

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

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith

deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

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

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

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

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

Notwithstanding the provisions of this section, the executive director may, except in calendar ~~year~~ years 2010 and 2011, make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

VA.R. Doc. No. R11-2571; Filed January 6, 2011, 10:09 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Final Regulation

Title of Regulation: **18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-10, 18VAC15-40-30, 18VAC15-40-50, 18VAC15-40-80, 18VAC15-40-90, 18VAC15-40-120, 18VAC15-40-130, 18VAC15-40-140, 18VAC15-40-190; adding 18VAC15-40-45, 18VAC15-40-48, 18VAC15-40-52, 18VAC15-40-72, 18VAC15-40-85, 18VAC15-40-105; repealing 18VAC15-40-70, 18VAC15-40-100, 18VAC15-40-110).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Effective Date: April 1, 2011.

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8588, FAX (804) 527-4297, or email david.dick@dpor.virginia.gov.

Summary:

The amendments (i) update the definitions, the qualifications for certification, the certified home inspection contract provisions, the certified home inspection report provisions, the conflict of interest provisions, and the unworthiness and incompetence provisions; (ii) add continuing professional education requirements; and (iii) change several sections to conform to DPOR's model regulations with no substantive impact.

Changes between proposed and final regulations include (i) adding a definition of "financial interest," (ii) adding a requirement that the home inspection contract disclose any financial interest that the home inspector may have with a person recommended for repairs, and (iii) clarifying the language defining a conflict of interest situation.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I
General

18VAC15-40-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless a different meaning is provided or is plainly required by the context:

"Adjacent" means structures, grading, drainage, or vegetation within three feet of the residential building that may affect the [residential] building.

"Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

"Certificate holder" means any person holding a valid certificate as a certified home inspector issued by the board.

"Certification" means an authorization issued to an individual by the board to perform certified home inspections by meeting the entry requirements established in these regulations.

"Client" means a person who engages or seeks to engage the services of a certified home inspector for the purpose of obtaining an inspection of and a written report upon the condition of a residential building.

"Compensation" means the receipt of monetary payment or other valuable consideration for services rendered.

"Component" means a part of a system.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Department" means the Department of Professional and Occupational Regulation.

["Financial interest" means financial benefit accruing to an individual or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership exceeds 3.0% of the total equity of the business; (ii) annual gross income that exceeds or may be reasonably anticipated to exceed $1,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination of it, paid or provided by a business that exceeds or may be reasonably expected to exceed $1,000 annually; or (iv) ownership of real or personal property if the interest exceeds $1,000 in value and excluding ownership in business, income, salary, other compensation, fringe benefits, or benefits from the use of property.]

"Fireplace" means an interior fire-resistant masonry permanent or prefabricated fixture that can be used to burn fuel and is either vented or unvented.

"Foundation" means the base upon which the structure or a wall rests, usually masonry, concrete, or stone, and generally partially underground.

~~"Function" means the action for which an item, component or system is specially fitted or used, or for which an item, component or system exists.~~

"Inspect" or "inspection" means to visually examine readily accessible systems and components of a building established in this chapter.

"Outbuilding" means any building on the property that is more than three feet from the residential building that might burn or collapse and affect the residential building.

"Readily accessible" means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action that will likely involve risk to persons or property.

"Reinstatement" means having a certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a certificate for another period of time.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Solid fuel burning appliances" means a hearth and fire chamber or similarly prepared place in which a fire may be built and that is built in conjunction with a chimney, or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

~~"Structural component" means a component that supports nonvariable forces or weights (dead loads) and variable forces or weights (live loads).~~

"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

Terms not defined in this chapter have the same definitions as those set forth in § 54.1-500 of the Code of Virginia.

18VAC15-40-30. Qualifications for certification.

Every applicant for an individual home inspector certificate shall have the following qualifications:

1. The applicant shall be at least 18 years old.

2. The applicant shall meet the following educational and experience requirements:

a. High school diploma or equivalent; and

b. One of the following:

(1) Completed 35 contact hours of classroom instruction and have completed a minimum of 100 home inspections; ~~or~~

(2) Completed 35 contact hours of classroom instruction and have completed a minimum of 50 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection;

~~(2)~~ (3) Completed 70 contact hours of classroom instruction and have completed a minimum of 50 home inspections; or

(4) Completed 70 contact hours of classroom instruction and have completed a minimum of 25 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection.

Instruction courses shall cover the content areas of the board-approved examinations.

An applicant who cannot fulfill the classroom instruction requirement as outlined in this subsection may ~~substitute~~ provide documentation of a minimum of 10 years of experience as a home inspector with a minimum of 250 home inspections completed in substantial compliance with this chapter to satisfy this requirement. The ~~experience substitution~~ documentation is subject to board review and approval.

3. The applicant shall have passed a written competency examination approved by the board.

4. The board may accept proof of membership in good standing, in a national or state professional home inspectors association approved by the board, as satisfaction of subdivisions 1, 2, and 3 of this section, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the board for all applicants.

5. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a home inspector in such a manner as to safeguard the interests of the public.

6. The applicant shall disclose whether a certificate or license as a home inspector from any jurisdiction where certified or licensed has ever been suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia. The board may deny certification to any applicant so disciplined after examining the totality of the circumstances.

7. The applicant shall disclose any conviction or finding of guilt, regardless of adjudication, in any jurisdiction of the United States of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Subject to the provisions of § 54.1-204 of the Code of Virginia, the board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of

residential home inspections. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or guilt.

8. Procedures and appropriate conduct established by either the board or any testing service administering an examination approved by the board or both shall be followed by the applicant. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

9. Applicants shall show evidence of having obtained general liability insurance with minimum limits of $250,000.

18VAC15-40-45. Application denial.

The board may refuse initial certification due to an applicant's failure to comply with entry requirements or for any of the reasons it may discipline a regulant.

18VAC15-40-48. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC15-40-50. Application fees.

~~A. All application fees for certificates are nonrefundable and the date of actual receipt by the board or its agent is the date that will be used to determine whether it is timely received~~ The application fee for an initial home inspector certification shall be $25.

~~B. The fee for an initial application for Certified Home Inspector shall be $25.~~

18VAC15-40-52. Renewal and reinstatement fees.

Renewal and reinstatement fees are as follows:

Fee type	Fee amount	When due
Renewal	$25	With renewal application
Late renewal	$25 (renewal) + $25 (late fee) = $50 total fee	With renewal application
Reinstatement	$75 (reinstatement) + $25 (renewal) = $100 total fee	With reinstatement application

18VAC15-40-70. ~~Qualification for renewal.~~ (Repealed.)

~~A. As a condition of renewal, all certified home inspectors shall be required to affirm that they continue to maintain insurance as required by 18VAC15-40-30. Failure to maintain the required insurance as directed by the board will result in the certification not being renewed or disciplinary action pursuant to this chapter, or both.~~

~~B. Each certificate holder desiring to renew the certificate shall return to the board the renewal application form and the appropriate fee as outlined in 18VAC15-40-100.~~

18VAC15-40-72. Continuing professional education (CPE) required.

A. Each certificate holder shall have completed 16 contact hours of continuing professional education (CPE) during each certificate renewal cycle, beginning with the certificate renewal cycle that ends [~~(insert date two years after the effective date of this chapter)~~ April 30, 2013].

B. The subject matter addressed during CPE contact hours shall be limited to the content areas covered by the board's examination.

C. The following shall be maintained by the certificate holder to document completion of the hours of CPE specified in subsection A of this section:

1. Evidence of completion that shall contain the name, address, and telephone number of the training sponsor;

2. The dates the applicant participated in the training;

3. Descriptive material of the subject matter presented documenting that it covers the content areas covered by the board's examination; and

4. A statement from the sponsor verifying the number of CPE contact hours completed.

D. Each certificate holder shall maintain evidence of the satisfactory completion of CPE for at least three years following the end of the certificate renewal cycle for which the CPE was taken. Such documentation shall be in the form required by subsection C of this section and shall be provided to the board or its duly authorized agents upon request.

E. The certificate holder shall not receive CPE credit for the same training course more than once during a single certificate renewal cycle.

F. Distance learning courses that comply with subsection B of this section and provide the documentation required by subsection C of this section shall comply with the CPE requirement.

G. The certificate holder may request additional time to meet the CPE requirement; however, CPE hours earned during a certificate renewal cycle to satisfy the CPE

requirement of the preceding certificate renewal cycle shall be valid only for that preceding certificate renewal cycle.

18VAC15-40-80. Procedures for renewal.

A. The board [~~will~~ shall] mail a renewal application form to the certificate holder at the last known home address of record. These notices shall outline the procedures for renewal. Failure of the board to mail or of the certificate holder to receive these notices does not relieve the certificate holder of the obligation to renew.

B. Prior to the expiration date shown on the certificate, regulants desiring to renew their certificate shall return the renewal application form to the board together with the appropriate fee specified in 18VAC15-40-52. If the regulant fails to receive the renewal notice, a copy of the certificate may be submitted with the required fee as an application for renewal. The date on which the fee is received by the department or its agent will determine whether the fee is on time.

C. By causing a renewal application to be sent to the board or its authorized agent, the regulant is affirming that the insurance required by 18VAC15-40-30 continues to be in effect, that the CPE requirements of 18VAC15-40-72 have been met, and that he is in continued compliance with this chapter.

18VAC15-40-85. Late renewal.

If the renewal requirements of 18VAC15-40-80 are met more than 30 days but less than six months after the expiration date on the certificate, a late renewal fee shall be required as established in 18VAC15-40-52. The date on which the renewal application and the required fees are actually received by the board or its agent shall determine whether the certificate holder must pay the renewal fee only or whether the late renewal fee must be paid.

18VAC15-40-90. ~~Failure to renew; reinstatement required~~ Reinstatement.

~~A. If the requirements for renewal of a certificate, including receipt of the fee by the board, are not completed by the certificate holder within 30 days of the expiration date noted on the certificate, a late renewal fee shall be required in addition to the renewal fee.~~

~~B.~~ A. If the requirements for renewal of a certificate, including receipt of the fee by the board, are not completed by the certificate holder within six months ~~of~~ after the expiration date noted on the certificate, a reinstatement fee shall be required.

~~C.~~ B. All applicants for reinstatement shall meet all requirements set forth in 18VAC15-40-30, 18VAC15-40-72 and 18VAC15-40-80.

~~D.~~ C. A certificate may be reinstated for up to two years following the expiration date with payment of the reinstatement fee. After two years, the certificate shall not be reinstated under any circumstances and the applicant shall apply as a new applicant, requiring the applicant to retake the examination.

~~E. The certificate holder who reinstates his certification shall be regarded as having been continuously certified without interruption. Therefore, the certificate holder shall remain under the disciplinary authority of the board during this entire period and shall be held accountable for his activities during this period.~~

18VAC15-40-100. ~~Fees for renewal, reinstatement and examination.~~ (Repealed.)

~~A. All fees for renewal and reinstatement are nonrefundable, and the date of actual receipt by the board or its agent is the date that will be used to determine whether it is timely received.~~

~~B. Renewal and reinstatement fees are as follows:~~

~~Renewal fee~~	~~$25~~
~~Late renewal fee~~	~~$25~~
~~Reinstatement fee~~	~~$100~~

~~C. The examination fee shall consist of the administration expenses of the department ensuing from the board's examination procedures and contract charges. Examination service contracts shall be established through competitive negotiations in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).~~

18VAC15-40-105. Status of certificate holder during the period prior to reinstatement.

A certificate holder who reinstates his certificate shall be regarded as having been continuously certified without interruption and shall remain under the disciplinary authority of the board during this entire period and shall be held accountable for activities during this period.

18VAC15-40-110. ~~Board discretion to deny renewal or reinstatement.~~ (Repealed.)

~~A. The board may deny renewal or reinstatement of a certificate for the same reasons as it may refuse initial certification or discipline a current certificate holder.~~

~~B. The board may deny renewal or reinstatement of a certificate if the applicant has not met the terms of an agreement for certification or not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.~~

Part IV
Minimum Standards for Conducting Certified Home Inspections

18VAC15-40-120. Certified home inspection contract.

A. For the protection of both the client and the certificate holder, both parties shall sign a legible written contract clearly specifying the terms, conditions, and limitations and exclusions of the work to be performed.

B. At a minimum, the written contract shall include:

1. Name, business name (if applicable), business address, and telephone number of the certified home inspector.

2. Certificate number and expiration date of the certified home inspector.

3. Name of the clients.

4. Physical address of the residential properties to be inspected.

5. Cost and method of payment of the certified home inspection.

6. A listing of all areas~~,~~ and systems~~, and components~~ to be inspected, including those inspections that are either partial or limited in scope.

7. To the extent that any of the following categories are not covered by the home inspection, they shall be noted as exclusions in the inspection contract:

a. The condition of systems or components that are not readily accessible.

b. The remaining life of any system or component.

c. The strength, adequacy, effectiveness, or efficiency of any system or component.

d. The causes of any condition or deficiency.

e. The methods, materials, or costs of corrections.

f. Future conditions including, but not limited to, failure of systems and components.

g. The suitability of the property for any specialized use.

h. Compliance with regulatory requirements (codes, including the Virginia Uniform Statewide Building Code, regulations, laws, ordinances, etc.).

i. The market value of the property or its marketability.

j. The advisability of the purchase of the property.

k. The presence of diseases harmful to humans or potentially hazardous plants or animals including, but not limited to, wood destroying organisms and mold.

l. The presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, asbestos, lead-based paint, mold, radon, and contaminates in soil, water, and air.

m. The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.

n. The operating costs of systems or components.

o. The acoustical properties of any system or component.

p. The presence of components involved in manufacturer's recalls.

q. The inspection of outbuildings.

To the extent any other items are not specifically included in the home inspection by agreement of the parties, they shall also be noted as exclusions in the inspection contract.

8. Expected delivery date to the client of the certified home inspection report.

9. Dated signatures of both the certified home inspector and the client or the client's authorized representative.

C. The certified home inspection contract shall make written disclosure that the certified home inspection report is based upon visual observation of existing conditions of the inspected property at the time of the inspection and is not intended to be, or to be construed as, a guarantee, warranty, or any form of insurance.

[D. If the certified home inspector recommends a person to the client for repairs or modifications to the inspected property, the certified home inspector shall disclose to the client all financial interests that the certified home inspector has with the recommended person. The disclosure shall be written within the certified home inspection contract.]

18VAC15-40-130. Certified home inspection report.

A. Certified home inspection reports shall contain:

1. The name, business address and telephone number of the certificate holder as well as his certificate number and expiration date;

2. The name, address, and telephone number of the ~~clients~~ client or the client's authorized representative, if available at the time of the inspection;

3. The physical address of the residential properties inspected; and

4. The date, time (to include both start and finish times of the inspection), and weather conditions at the time of the certified home inspection.

B. In conducting a certified home inspection and reporting its findings, the certified home inspector, at a minimum, shall inspect the condition of and shall describe in writing the composition/characteristics of the following readily accessible components and readily observable defects, except

as may be limited in the certified home inspection contract agreement:

1. Structural system.

a. Foundation.

b. Framing.

c. Stairs.

d. Crawl space, the method of inspecting the crawl space shall be noted and explained in the inspection report. If the crawl space cannot be inspected, the certificate holder shall explain in the inspection report why this component was not inspected.

e. Crawl space ventilation and vapor barriers.

f. Slab floor, when present.

g. Floors, ceilings, and walls.

2. Roof structure, attic, and insulation.

a. Roof covering. The method of inspecting the roof covering shall be noted and explained in the inspection report. If the roof covering cannot be inspected, the certificate holder shall explain in the inspection report why this component was not inspected.

b. Roof ventilation.

c. Roof drainage system, to include gutters and downspouts.

d. Roof flashings, if readily visible.

e. Skylights, chimneys, and roof penetrations, but not antennae or other roof attachments.

f. Roof framing and sheathing.

g. Attic, unless area is not readily accessible ~~due to size or condition of structure~~.

h. Attic insulation.

3. Exterior of dwelling.

a. Wall covering, flashing, and trim~~, and protective coatings~~.

b. Readily accessible doors and windows, but not the operation of associated security locks, devices, or systems.

c. Attached, or adjacent and on the same property, decks, balconies, stoops, steps, porches, carports, and any associated railings, but not associated screening, shutters, awnings, storm windows, garages, or storm doors.

d. Eaves, soffitts, and fascias where readily accessible from ground level.

e. Walkways, grade steps, patios, and driveways, but not fences or privacy walls.

f. Vegetation, trees, grading, drainage, and any retaining walls in contact with or ~~immediately~~ adjacent to the dwelling that may affect the dwelling.

g. Visible exterior portions of chimneys.

4. Interior of dwelling.

a. Readily accessible interior walls, ceilings, and floors of dwelling and any attached or adjacent garage.

b. Steps, stairways, railings, and balconies and associated railings.

c. Countertops and installed cabinets, including hardware.

d. Readily accessible doors and windows, but not the operation of associated security locks, devices, or systems.

e. Garage doors and permanently mounted and installed garage door operators. The automatic safety reverse function of garage door openers shall be tested, either by physical obstruction as specified by the manufacturer, or by breaking the beam of the electronic photo eye but only when the test can be safely performed and will not risk damage to the door, the opener, any nearby structure, or any stored items.

f. Fireplaces, including flues, venting systems, hearths, dampers, and fireboxes, but not mantles, fire screens and doors, seals and gaskets.

g. Solid fuel burning appliances if applicable.

5. Plumbing system.

a. Interior water supply and distribution systems, including water supply lines and all fixtures and faucets, but not water conditioning systems or fire sprinkler systems.

b. Water drainage, waste, and vent systems, including all fixtures.

c. Drainage sumps, sump pumps, and related piping.

d. Water heating equipment, including ~~heat~~ energy source and related vent systems, flues, and chimneys, but not solar water heating systems.

e. Fuel storage and distribution systems for visible leaks.

6. Electrical system.

a. Service drop.

b. Service entrance conductors, cables, and raceways.

c. Service equipment and main disconnects.

d. Service grounding.

e. Interior components of service panels and sub panels, including feeders.

f. Conductors.

g. Overcurrent protection devices.

h. Readily accessible installed lighting fixtures, switches, and receptacles.

i. Ground fault circuit interrupters.

j. Presence or absence of smoke detectors.

k. Presence of solid conductor aluminum branch circuit wiring.

l. Arc fault interrupters shall be noted if installed but not tested if equipment is attached to them.

7. Heating system.

a. Heating equipment, including operating controls, but not heat exchangers, gas logs, built-in gas burning appliances, grills, stoves, space heaters, solar heating devices, or heating system accessories such as humidifiers, air purifiers, motorized dampers, and heat reclaimers.

b. Energy source.

c. Heating distribution system.

d. Vent systems, flues, and chimneys, including dampers.

8. Air conditioning system.

a. Central and installed ~~window/wall~~ wall air conditioning equipment.

b. Operating controls, access panels, and covers.

c. Energy source.

d. Cooling distribution system.

C. Systems in the home that are turned off, winterized, or otherwise secured so that they do not respond to normal activation using standard operating controls need not be put into operating condition. The certified home inspector shall state, in writing, the reason these systems or components were not tested.

Part V
Standards of Conduct and Practice

18VAC15-40-140. Conflict of interest.

A. The certificate holder shall not:

1. Design or perform repairs or modifications to a residential building on which he has performed a certified home inspection as a result of the findings of the certified home inspection within 12 months after the date he performed the certified home inspection, except in cases where the home inspector purchased the residence after he performed the inspection;

2. Perform a certified home inspection of a residential building upon which he has designed or performed repairs or modifications within the preceding 12 months without disclosing to the client in the certified home inspection contract the specifics of the repairs or modifications he designed or performed;

3. Refer his client to another [~~party~~ person] to make repairs or modifications to a residential building on which he has performed a certified home inspection ~~within the preceding 12 months.~~ [~~However, such inspection may be performed if such repairs or modifications are disclosed to the client or to the client's authorized representative~~ unless, in accordance with 18VAC15-40-120 D, he provides written documentation to his client that clearly discloses all financial interests that the certificate holder has or reasonably expects to have with the person who is recommended for the repairs or modifications]; ~~or~~

4. Represent the financial interests, either personally or through his employment, of any of the parties to the transfer or sale of a residential building on which he has performed a certified home inspection; or

5. Perform a certified home inspection of a residential building under a contingent agreement whereby any compensation or future referrals are dependent on the reported findings or on the sale of the property.

B. The certificate holder shall not disclose any information concerning the results of the certified home inspection without the approval of the client for whom the certified home inspection was performed. However, the certificate holder may disclose information in situations where there is an imminent endangerment to life [~~and~~ or] health.

C. The certificate holder will not accept compensation, financial or otherwise, from more than one interested party for the same service on the same property without the consent of all interested parties.

D. The certificate holder shall not accept nor offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the certificate holder is responsible. Additionally, the certificate holder shall not enter into any financial relationship with any party that may compromise the certificate holder's commitment to the best interest of his client.

E. The certified home inspection shall not be used as a ~~tool~~ pretext by the certificate holder to solicit or obtain work in another field, except for additional diagnostic inspections or testing.

18VAC15-40-190. Unworthiness and incompetence.

~~Actions constituting~~ The following shall constitute unworthy and incompetent conduct ~~include~~ and may result in disciplinary action by the board:

1. Obtaining a certificate by false or fraudulent representation.

2. Performing improvements or repairs to a residential building as a result of the findings of the certified home inspection within 12 months before or after performing a certified home inspection on it, except in cases where the home inspector purchased the residential building after he performed the inspection.

3. Violating or inducing another person to violate any of the provisions of Chapter 1, 2, 3, or 5 of Title 54.1 of the Code of Virginia or this chapter.

4. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of adjudication in any jurisdiction of the United States, of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or guilt.

5. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication in any jurisdiction of the United States of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed.

6. Failing to act as a certificate holder in such a manner as to safeguard the interests of the public.

7. Engaging in improper, fraudulent, or dishonest conduct in conducting a certified home inspection.

8. Having been found guilty by the board, an administrative body, or by any court of any misrepresentation in the course of performing home inspections.

9. Having performed a certified home inspection when not qualified by training or experience to competently perform any part of the certified home inspection.

10. Failing to maintain, through training, the proficiency to perform Virginia certified home inspections.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[FORMS (18VAC15-40)

~~Home Inspector Association Membership Form, 3380 AMF (eff. 7/03).~~

~~Home Inspector Certificate Application Instructions, 3380 INS (eff. 7/03).~~

~~Home Inspector Certificate Application, 3380 CERT (rev. 7/03).~~

~~Home Inspector Experience Verification Form, 3380 EXP (rev. 7/03).~~

Home Inspector Association Membership Form, 3380 AMF (rev. 1/11).

Home Inspector Certificate Application Instructions, 3380 INS (rev. 1/11).

Home Inspector Certificate Application, 3380 CERT (rev. 1/11).

Home Inspector Experience Verification Form, 3380 EXP (rev. 1/11).]

VA.R. Doc. No. R08-1010; Filed January 6, 2011, 1:21 p.m.

COMMON INTEREST COMMUNITY BOARD

Fast-Track Regulation

Title of Regulation: **18VAC48-20. Condominium Regulations (adding 18VAC48-20-733, 18VAC48-20-735, 18VAC48-20-737, 18VAC48-20-739).**

Statutory Authority: §§ 54.1-2349 and 55-79.84:1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 2, 2011.

Effective Date: April 1, 2011.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

Basis: Section 54.1-2349 of the Code of Virginia states in part that the board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 23.3 of Title 54.1 of the Code of Virginia. In addition, § 55-79.98 of the Condominium Act states in part that the board shall prescribe reasonable rules which shall be adopted, amended, or repealed in compliance with law applicable to the administrative procedures of agencies of government. Section 55-79.84:1 B of the Code of Virginia specifies that the board may promulgate reasonable

regulations that govern the return of bonds submitted in accordance with this section. Section 54.1-201 E of the Code of Virginia states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. This regulation is necessary to protect the interests of associations by ensuring that the declarant has filed an appropriate bond or letter of credit, as well as the interests of the declarant by providing the requirements for returning a bond or letter of credit if the unit owners' association is unresponsive. In addition, the regulation clarifies the boards authority to discipline a regulant for failing to properly maintain the bond or letter of credit required by law.

Purpose: Section 55-79.83 of the Code of Virginia provides that the expenses for common elements are to be paid by the condominium unit in accordance with this section and the condominium instruments. In addition, § 55-79.83 states in part that "neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner thereof." Section 55-79.84:1 A of the Code of Virginia states that the declarant of a condominium containing registered units shall post and file with the board a bond in favor of the unit owners' association for the payment of delinquent assessments. The amount of the bond is $1,000 per unit, with a minimum of $10,000 and a maximum of $100,000. The bond shall be maintained by the declarant for so long as the declarant owns more than 10% of the units in the condominium or, if the declarant owns less than 10% of the units, until the declarant is current in the payment of assessments. For a condominium containing less than 10 units, the bond may be returned once the declarant owns one unit in the condominium and is current in the payment of assessments. Further, the amendment includes the procedures for returning a bond or letter of credit upon proper termination of the condominium registration. In addition, the regulation clarifies the board's authority to discipline a regulant for failing to properly maintain the bond or letter of credit required by law. Because the statute only covers the filing of the bond with the board, the amount, and the point at which it may be returned, there has been confusion and inconsistency in the process for determining whether a declarant is current in the payment of assessments, the process for the unit owners' association to affirm such, and the requirements for ensuring the bond or letter of credit is current and maintained throughout the required period. There have been situations where a unit owners' association cannot collect assessments from a declarant but is unable to make a claim on the bond or letter of credit because it has lapsed and the board has not been notified. In addition, the procedures currently being followed for returning bonds and terminating condominium registrations are often not known by declarants of condominiums, or their agents, or the unit owners' associations. The amendments will place in administrative code these provisions, thus providing more accessibility to affected parties and ensuring consistency in their application.

Rationale for Using Fast-Track Process: The amendments formalize the procedures currently used by the Common Interest Community Board staff to return the bond or letter of credit required by § 55-79.84:1 of the Code of Virginia. Currently, it is more detrimental to protection of the public (including associations and declarants) by not having the process formalized in regulation in a manner that can be clearly understood by the affected consitutents. The board determined that these procedures should be codified in the board's regulations to ensure accessibility by affected persons and consistency in their application.

Substance: The regulation creates a section that specifies requirements for both the declarant of a registered condominium and the unit owners' association for the release of a bond or letter of credit to ensure the payment of assessments by the declarant. The section also specifies action taken by the board if the unit owners' association indicates that the declarant is not current in the payment of assessments, or no response is received from the unit owners' association.

The regulation includes provisions regarding the return of a bond or letter of credit upon the proper termination of a condominium registration when all units have been sold, or if no units have been sold and the declarant decides to use the property for other purposes other than residential condominiums (i.e., rental apartments). Further, the proposed amendment includes provisions for maintaining the bond or letter of credit and the consequences for failure to do so. Finally, the proposed regulatory amendment clarifies the board's authority against regulants that fail to respond to requests for specific information in a timely manner.

Issues: The primary advantage to declarants of condominiums is that the requirements for having a bond or letter of credit returned in accordance with § 55-79.84:1 of the Code of Virginia will be clearer and more consistent and their obligation to pay assessments on units they own will be emphasized. In addition, the expectations for maintaining the bond or letter of credit will be clearly stated, as well as the consequences for failure to do so.

The primary advantage to unit owners' associations and their membership is that their role in verifying payment of assessments will be clarified, as well as the importance of responding to the request for such verification by the board, as failure to respond could result in the return of the bond or letter of credit to a declarant that is delinquent in assessments if the association fails to respond, thus removing a source available to the association to recover unpaid funds.

The primary advantage to the board is that the proposed language codifies and streamlines the requirements, thus ensuring consistency in application and clarifying the requirements related to bonds and letters of credit for which there is only a brief statutory reference at this time.

There are no known advantages or disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Section 55-79.84:1 A of the Code of Virginia states that the declarant of a condominium containing registered units shall post and file with the Common Interest Community Board (Board) a bond in favor of the unit owners association for the payment of delinquent assessments. Further, the Code specifies the amount of the bond and when it shall be returned. According to the Department of Professional and Occupational Regulation, the procedures currently being followed for returning bonds and terminating condominium registrations are often not known by declarants of condominiums, or their agents, or the unit owners associations. Therefore the Board proposes to incorporate into these regulations the procedures currently practiced by the Board staff concerning the requirements governing return of a bond or letter of credit to the declarant of a condominium project.

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

Estimated Economic Impact. The proposed new language for these regulations is for the most part repetitive of statute and thus will have no impact beyond the benefit of clarifying the law. Section 55-79.84:1 does state that "The Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section." The proposed language repeats the statute by stating that "The board shall return the bond or letter of credit to the declarant if (i) the unit owners' association confirms that the declarant is current in the payment of assessments and owns less than 10 percent of the units in the condominium," but adds that the Board shall return the bond or letter of credit if "no response is received from the unit owners' association within 90 days. The 90-day timeframe in subsection (ii) may be extended at the discretion of the board." Ninety days is plenty of time for the owners' association to respond with information toward whether the declarant is current in the payment of assessments and owns less than 10 percent of the units in the condominium. Adding this language to the regulations will be beneficial in that it will inform declarants as to when they can expect to have their bond or letter of credit returned.

Businesses and Entities Affected. The proposed amendments affect the 572 registered condominiums in Virginia and the same number of unit owners associations connected with them.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect costs for small businesses, but will reduce some uncertainty for condominium project declarants concerning when they can expect to have their bond or letter of credit returned.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to have a large impact on real estate development costs, but will reduce some uncertainty for declarants of condominiums concerning when they can expect to have their bond or letter of credit returned.

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: Concur with the approval.

Summary:

The amendments incorporate the requirements governing return of a bond or letter of credit to the declarant of a condominium project as required by § 55-79.84:1 of the Code of Virginia. The amendments also require the declarant to maintain the bond or letter of credit and notify the board office of any change to the bond or letter of credit.

18VAC48-20-733. Return of bond or letter of credit to declarant.

A. The declarant of a condominium required to post a bond or letter of credit pursuant to § 55-79.84:1 of the Code of Virginia shall maintain such bond or letter of credit for all units registered with the board until the declarant owns less than 10% of the units in the condominium and is current in the payment of assessments. For condominiums containing less than 10 units, the bond or letter of credit shall be maintained until the declarant owns only one unit.

B. The declarant shall submit a written request to the board for the return of the bond or letter of credit. The written request shall attest that the declarant (i) owns less than 10% of the units or for condominiums containing less than 10 units, that the declarant owns only one unit and (ii) is current in the payment of assessments. The written request shall provide contact information for the unit owners' association.

C. Upon receipt of the written request from the declarant, the board shall send a request to the unit owners' association to confirm the information supplied by the declarant.

D. The board shall return the bond or letter of credit to the declarant if (i) the unit owners' association confirms that the declarant is current in the payment of assessments and owns less than 10% of the units in the condominium or (ii) no response is received from the unit owners' association within 90 days. The 90-day timeframe in clause (ii) of this subsection may be extended at the discretion of the board.

E. If the unit owners' association attests the declarant is not current in the payment of assessments, the board shall retain the bond or letter of credit until confirmation is received that the declarant is current in the payment of assessments.

The board may ask for additional information from the unit owners' association or the declarant as needed to confirm compliance with § 55-79.84:1 of the Code of Virginia.

18VAC48-20-735. Return of bond or letter of credit upon termination of registration.

A. Pursuant to § 55-79.93 of the Code of Virginia, the board shall terminate the registration of the condominium upon receipt of written notification from the declarant attesting that all units have been disposed of and that all periods for conversion or expansion have expired. If the bond or letter of credit on file with the board has not been returned previously, it will be considered for return in accordance with 18VAC48-20-733.

B. If no units have been sold and the declarant decides to use the property for other purposes other than residential condominiums, the board shall issue an order terminating the registration of the condominium upon receipt of written request from the declarant and shall return the bond or letter of credit required.

18VAC48-20-737. Maintenance of bond or letter of credit.

A. The declarant shall report the cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with § 55-79.84:1 of the Code of Virginia within five days of the change.

B. Failure to report a change in the bond or letter of credit shall result in further action by the board in accordance with Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.

18VAC48-20-739. Response to inquiry and provision of records.

A. The declarant must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

B. Unless otherwise specified by the board, the declarant shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction in which the declarant was involved, or for which the declarant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A declarant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a declarant must respond to an inquiry by the board or its agent within 21 days.

VA.R. Doc. No. R11-2504; Filed January 11, 2011, 11:09 a.m.

BOARD FOR CONTRACTORS

Emergency Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10, 18VAC50-22-100; adding 18VAC50-22-65, 18VAC50-22-66).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Dates: March 2, 2011, and until replaced by final regulations as provided in the third enactment of Chapters 260 and 280 of the 2010 Acts of Assembly.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Preamble:

This action is an emergency situation pursuant to § 2.2-4011 of the Code of Virginia. Chapters 260 and 280 of the 2010 Acts of Assembly require regulations to be effective within 280 days of enactment.

The General Assembly determined that boards within the Department of Professional and Occupational Regulation need to develop regulations to address temporary licensure and certification. The amendments to the statutes introduce "temporary license" to the regulatory authority of the Board for Contractors and state that the Board for Contractors will issue temporary licenses. These regulations define entry requirements, list fees, and set forth the disciplinary authority of the board for this license.

The Board for Contractors determined that the issuance of temporary licenses would help protect the health, safety, and welfare of the citizens of Virginia by assuring those contractors entering the Commonwealth of Virginia, and who apply for licensure, do not have to wait through the delay in the normal licensing process. The issuance of temporary licenses allow companies to bid on or do contracting work faster than if those companies had to wait through the normal licensing process. Additionally, temporary licenses provide protection to consumers as temporary licensees are subject to the rules, regulations, and disciplinary processes of the board during the period of temporary licensure. The Contractor's Union also supports temporary licenses for contractor entities.

Part I
Definitions

18VAC50-22-10. General definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18VAC50-30-10.

"Licensee" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"Net worth" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;

2. The partners of a general partnership;

3. The managing partners of a limited partnership;

4. The officers of a corporation;

5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title

54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.

"Temporary license" means a license issued by the board pursuant to § 54.1-201.1 of the Code of Virginia that authorizes that person to engage in the practice of contracting until such time as the license is issued, or 45 days from the date of issuance of the temporary license, whichever occurs first.

"Tenants by the entirety" means a tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, the other takes whole to exclusion of the deceased's remaining heirs.

18VAC50-22-65. Temporary licenses.

A. A firm applying for a temporary license must meet all of the requirements of § 54.1-201.1 of the Code of Virginia, including the simultaneous submission of a completed application for licensure, and the provisions of this section.

B. A firm must hold a comparable license or certificate in another state and provide verification of current licensure or certification from the other state in a format acceptable to the board. The license or certificate, as applicable, must be in good standing and have comparable qualifications to the Virginia license applied for by the firm.

C. The following provisions apply to a temporary license issued by the board:

1. A temporary license shall not be renewed.

2. A firm shall not be issued more than one temporary license.

3. The issuance of the license shall void the temporary license.

4. If the board denies approval of the application for a license, the temporary license shall be automatically suspended.

D. Any firm continuing to practice as a contractor after a temporary license has expired and who has not obtained a comparable license or certificate may be prosecuted and fined by the Commonwealth under § 54.1-111 A 1 of the Code of Virginia.

18VAC50-22-66. Board's disciplinary authority over temporary license holders.

A. A temporary licensee shall be subject to all laws and regulations of the board, and shall remain under and be subject to the disciplinary authority of the board during the period of temporary licensure.

B. The license shall be subject to disciplinary action for any violations of the board's statutes or regulations during the period of temporary licensure or certification.

18VAC50-22-100. Fees.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	$210
Class B Initial License	with license application	$345
Class A Initial License	with license application	$360
Temporary License	with license application and applicable initial license fee	$50
Qualified Individual Exam Fee	with exam application	$20
Class B Exam Fee	with exam application ($20 per section)	$40
Class A Exam Fee	with exam application ($20 per section)	$60

Note: A $25 Recovery Fund assessment is also required with each initial license application. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC50-22)

~~Contractor Licensing Information, 27INTRO (5/09).~~

~~Trade-Related Examinations and Qualifications Information, 27EXINFO (5/09).~~

~~License Application, 27LIC (rev. 4/10).~~

~~Class C License Application (Short Form), 27CSF (rev. 4/10).~~

Contractor Licensing Information, 27INTRO (8/10).

Trade-Related Examinations and Qualifications Information, 27EXINFO (3/10).

License Application, 27LIC (rev. 3/11).

Class C License Application (Short Form), 27CSF (rev. 9/10).

Additional License Classification/Specialty Designation Application, 27ADDCL (rev. 4/10).

Change of Qualified Individual Application, 27CHQI (rev. 4/10).

Change of Designated Employee Application, 27CHDE (rev. 4/10).

Changes of Responsible Management Form, 27CHRM (eff. 5/09).

~~Experience Reference, 27EXP (8/07).~~

Certificate of License Termination, 27TERM (5/09).

~~Education Provider Registration/Course Approval Application; Contractors Prelicense and Continuing Education, 27EDREG (rev. 6/09).~~

Education Provider Registration/Course Approval Application; Contractors Prelicense and Remedial Education, 27EDREG (rev. 3/10).

Certificate of License Termination, 27TERM (5/09).

Education Provider Listing Form, 27EDLIST (5/09).

~~Financial Statement, 27FINST (5/09).~~

Financial Statement, 27FINST (12/10).

Additional Qualified Individual Experience Reference Form, 27QIEXP (5/09).

VA.R. Doc. No. R11-2484; Filed January 7, 2011, 2:14 p.m.

BOARD OF DENTISTRY

Final Regulation

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18VAC60-20-10, 18VAC60-20-15, 18VAC60-20-16, 18VAC60-20-20, 18VAC60-20-30, 18VAC60-20-50, 18VAC60-20-60, 18VAC60-20-70, 18VAC60-20-105, 18VAC60-20-170, 18VAC60-20-190, 18VAC60-20-200, 18VAC60-20-210, 18VAC60-20-220, 18VAC60-20-230; adding 18VAC60-20-61, 18VAC60-20-72).**

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

Effective Date: March 2, 2011.

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

Summary:

The amendments specify requirements for the registration and scope of practice of a dental assistant II in accordance with Chapters 84 and 264 of the 2008 Acts of the Assembly. The regulation establishes definitions for supervision, fees for registration and renewal, qualifications (including education, clinical training, examination and national certification), continuing competency requirements, and duties that may be delegated to a dental assistant II.

No substantive changes were made to the final regulation after publication of the proposed regulation. Several definitions relating to direction and supervision were amended for clarification and inclusion of a dental assistant I.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 20
REGULATIONS GOVERNING ~~THE~~ DENTAL PRACTICE ~~OF DENTISTRY AND DENTAL HYGIENE~~

Part I
General Provisions

18VAC60-20-10. Definitions.

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

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or

associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant [I]" means any unlicensed person under the [~~supervision~~ direction] of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Dental assistant II" means a person under the direction [and direct supervision] of a dentist who is registered to perform reversible, intraoral procedures as specified in this chapter.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to [a] dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains [~~in the operatory or an area immediately adjacent to the operatory in order to be~~] immediately available to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means ~~the dentist examines the patient and is present for observation, advice, and control over the performance of dental services~~ the level of supervision that a dentist is required to exercise with a dental hygienist [~~and with~~ ,] a dental assistant [I, or a dental assistant II] or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"Enteral" [~~is~~ means] any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that ~~the dentist has examined the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided~~ a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. The order may authorize the dental hygienist to supervise a dental assistant [~~who prepares the patient for treatment and prepares the patient for dismissal following treatment~~ performing duties delegable to dental assistants I].

"Indirect supervision" means the dentist examines the patient at some point during the appointment, and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist or dental hygienist, or (iii) preparing the patient for dismissal following treatment.

"Inhalation" [~~is~~ means] a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-15. Recordkeeping.

A dentist shall maintain patient records for not less than three years from the most recent date of service for purposes of review by the board to include the following:

1. Patient's name and date of treatment;

2. Updated health history;

3. Diagnosis and treatment rendered;

4. List of drugs prescribed, administered, dispensed and the quantity;

5. Radiographs;

6. Patient financial records;

7. Name of the dentist and the dental hygienist or the dental assistant II providing service; and

8. Laboratory work orders which meet the requirements of § 54.1-2719 of the Code of Virginia.

18VAC60-20-16. Address of record; posting of licenses or registrations.

A. Address of record. At all times, each licensed dentist ~~and~~, dental hygienist, and dental assistant II shall provide the board with a current address of record. All required notices mailed by the board to any ~~such~~ licensee or registrant shall be validly given when mailed to the latest address of record given ~~by the licensee~~. All changes in the address of record or in the public address, if different from the address of record, shall be furnished to the board in writing within 30 days of such changes.

B. Posting of license or registration. A copy of the registration of a dental assistant II shall either be posted in an operatory in which the person is providing services to the public or in the patient reception area where it is clearly visible to patients and accessible for reading.

Part II
~~Licensure~~ Renewal and Fees

18VAC60-20-20. ~~License renewal~~ Renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license or a dental assistant II registration or a full-time faculty license shall, on or before March 31, renew his license or registration. Every person holding a teacher's license, temporary resident's license, a restricted volunteer license to practice dentistry or dental hygiene, or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, request renewal of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be $285, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be $75. The fee for renewal of registration as a dental assistant II shall be $50.

2. The fee for renewal of an inactive license shall be $145 for dentists and $40 for dental hygienists. The fee for renewal of an inactive registration as a dental assistant II shall be $25.

3. The fee for renewal of a restricted volunteer license shall be $15.

4. The application fee for temporary resident's license shall be $60. The annual renewal fee shall be $35 a year. An additional fee for late renewal of licensure shall be $15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of $100 for dentists with an active license ~~and~~, $25 for dental hygienists with an active license, and $20 for a dental assistant II with active registration. The late fee shall be $50 for dentists with an inactive license ~~and~~, $15 for dental hygienists with an inactive license, and $10 for a dental assistant II with an inactive registration. The board shall renew a license or dental assistant II registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license or registration of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice ~~of dentistry/dental hygiene~~ as a dentist, dental hygienist, or dental assistant II shall be illegal.

1. Any person whose license or dental assistant II registration has expired for more than one year and who wishes to reinstate such license or registration shall submit to the board a reinstatement application and the reinstatement fee of $500 for dentists ~~and~~, $200 for dental hygienists [,] or $125 for dental assistants II.

2. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, practicing in Virginia with an expired license or registration may subject the licensee to disciplinary action by the board.

3. The executive director may reinstate such expired license or registration provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18VAC60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18VAC60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license or dental assistant II registration previously revoked or indefinitely suspended. Any person whose license or registration has been revoked shall submit to the board for its approval a reinstatement application and fee of $1,000 for dentists ~~and~~, $500 for dental hygienists [,] and $300 for dental assistants II. Any person whose license or registration has been indefinitely suspended shall submit to the board for its approval a reinstatement

application and fee of $750 for dentists ~~and~~, $400 for dental hygienists, and $250 for dental assistants II.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license by examination, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be $400. The application fee for dental license by credentials shall be $500.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be $175. The application fee for dental hygienist license by endorsement shall be $275.

C. Dental assistant II registration application fee. The application fee for registration as a dental assistant II shall be $100.

~~C. Duplicate wall~~ D. Wall certificate. Licensees desiring a duplicate wall certificate or a dental assistant II desiring a wall certificate shall submit a request in writing stating the necessity for ~~such duplicate~~ a wall certificate, accompanied by a fee of $60.

~~D.~~ E. Duplicate license or registration. Licensees or registrants desiring a duplicate license or registration shall submit a request in writing stating the necessity for such duplicate ~~license~~, accompanied by a fee of $20. If a licensee or registrant maintains more than one office, a notarized photocopy of a license or registration may be used.

~~E.~~ F. Licensure or registration certification. Licensees or registrants requesting endorsement or certification by this board shall pay a fee of $35 for each endorsement or certification.

~~F.~~ G. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of $285.

~~G.~~ H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be $25.

~~H.~~ I. Returned check. The fee for a returned check shall be $35.

~~I.~~ J. Inspection fee. The fee for an inspection of a dental office shall be $350.

18VAC60-20-50. Requirements for continuing education.

A. ~~After April 1, 1995, a~~ A dentist or a dental hygienist shall be required to have completed a minimum of 15 hours of approved continuing education for each annual renewal of licensure. A dental assistant II shall be required to maintain current certification from the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association.

1. ~~Effective June 29, 2006, a~~ A dentist, ~~or~~ a dental hygienist, or a dental assistant II shall be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

2. ~~Effective June 29, 2006, a~~ A dentist who administers or a dental hygienist who monitors patients under general anesthesia, deep sedation or conscious sedation shall complete four hours every two years of approved continuing education directly related to administration or monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in ~~dentistry and dental hygiene~~ dental practice; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in subdivision B 1 of this section and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;

2. American Dental Hygienists' Association and National Dental Hygienists Association, their constituent and component/branch associations;

3. American Dental Assisting Association, its constituent and component/branch associations;

4. American Dental Association specialty organizations, their constituent and component/branch associations;

5. American Medical Association and National Medical Association, their specialty organizations, constituent, and component/branch associations;

6. Academy of General Dentistry, its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Health Care Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute and the American Cancer Society;

10. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic and Research Foundation;

14. The Dental Assisting National Board; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, or Western Regional Examining Board) when serving as an examiner.

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

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

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. A dental assistant II is required to attest to current certification by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association. Following the renewal period, the board may conduct an audit of licensees or registrants to verify compliance. Licensees or registrants selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees or registrants are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement. A dental assistant II who has allowed his registration to lapse or who has had his registration suspended or revoked must submit evidence of current certification from a credentialing organization recognized by the American Dental Association to reinstate his registration.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license or registration renewal or reinstatement.

J. Failure to comply with continuing education requirements or current certification requirements may subject the licensee or registrant to disciplinary action by the board.

Part III
Entry ~~and Licensure~~ Requirements

18VAC60-20-60. ~~Education~~ Educational requirements for dentists and dental hygienists.

A. Dental licensure. An applicant for dental licensure shall be a graduate and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental education program in any other specialty.

B. Dental hygiene licensure. An applicant for dental hygiene licensure shall have graduated from or have been issued a certificate by a program of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association.

18VAC60-20-61. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board.

B. To be registered as a dental assistant II, a person shall complete the following requirements from an educational program accredited by the Commission on Dental Accreditation of the American Dental Association:

1. At least 50 hours of didactic course work in dental anatomy and operative dentistry that may be completed on-line.

2. Laboratory training that may be completed in the following modules with no more than 20% of the specified instruction to be completed as homework in a dental office:

a. At least 40 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 60 hours of placing and shaping composite resin restorations;

c. At least 20 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 30 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

3. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training that may be completed in a dental office in the following modules:

a. At least 80 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 120 hours of placing and shaping composite resin restorations;

c. At least 40 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 60 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

4. Successful completion of the following competency examinations given by the accredited educational programs:

a. A written examination at the conclusion of the 50 hours of didactic coursework;

b. A practical examination at the conclusion of each module of laboratory training; and

c. A comprehensive written examination at the conclusion of all required coursework, training, and experience for each of the corresponding modules.

C. All treatment of patients shall be under the direct and immediate supervision of a licensed dentist who is responsible for the performance of duties by the student. The dentist shall attest to successful completion of the clinical competencies and restorative experiences.

18VAC60-20-70. Licensure examinations; registration certification.

A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. All applicants to practice dentistry shall satisfactorily pass the complete board-approved examinations in dentistry. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. All applicants to practice dental hygiene shall successfully complete the board-approved examinations in dental hygiene, except those persons eligible for licensure pursuant to 18VAC60-20-80.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

C. Dental assistant II certification. All applicants for registration as a dental assistant II shall provide evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another certification from a credentialing organization recognized by the American Dental Association and acceptable to the board, which was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control.

~~C.~~ D. All applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure or registration by this board may be required to retake the board-approved examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure or registration.

~~D.~~ E. All applicants for licensure by examination or registration as a dental assistant II shall be required to attest that they have read and understand and will remain current

with the applicable Virginia dental and dental hygiene laws and the regulations of this board.

18VAC60-20-72. Registration by endorsement as a dental assistant II.

A. An applicant for registration by endorsement as a dental assistant II shall provide evidence of the following:

1. Hold current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association;

2. Be currently authorized to perform expanded duties as a dental assistant in another state, territory, District of Columbia, or possession of the United States;

3. Hold a credential, registration, or certificate with qualifications substantially equivalent in hours of instruction and course content to those set forth in 18VAC60-20-61 or if the qualifications were not substantially equivalent the dental assistant can document experience in the restorative and prosthetic expanded duties set forth in 18VAC60-20-230 for at least 24 of the past 48 months preceding application for registration in Virginia.

B. An applicant shall also:

1. Be certified to be in good standing from each state in which he is currently registered, certified, or credentialed or in which he has ever held a registration, certificate, or credential;

2. Be of good moral character;

3. Not have committed any act that would constitute a violation of § 54.1-2706 of the Code of Virginia; and

4. Attest to having read and understand and to remain current with the laws and the regulations governing dental practice in Virginia.

18VAC60-20-105. Inactive license or registration.

A. Any dentist or dental hygienist 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. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation. 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 § 54.1-2706 of the Code of Virginia.

C. Any dental assistant II who holds a current, unrestricted registration in Virginia may upon a request on the renewal application and submission of the required fee be issued an inactive registration. The holder of an inactive registration shall not be entitled to perform any act requiring registration to practice as a dental assistant II in Virginia. An inactive registration may be reactivated upon submission of evidence of current certification from the national credentialing organization recognized by the American Dental Association. The board reserves the right to deny a request for reactivation to any registrant who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

Part V
Unprofessional Conduct

18VAC60-20-170. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code of Virginia:

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services;

2. Performing services for a patient under terms or conditions that are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress;

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use;

4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene;

5. Delegating any service or operation that requires the professional competence of a dentist ~~or~~, dental hygienist, or dental assistant II to any person who is not a dentist ~~or~~, dental hygienist, or dental assistant II as authorized by this chapter;

6. Certifying completion of a dental procedure that has not actually been completed;

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health;

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195; and

9. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program.

Part VI
Direction and Delegation of Duties

18VAC60-20-190. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-20-81, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

~~6. Performing pulp capping procedures;~~

~~7.~~ 6. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F;

~~8.~~ 7. Condensing, contouring or adjusting any final, fixed or removable prosthodontic appliance or restoration in the mouth with the exception of [~~placing.~~] packing [~~,~~] and carving amalgam and [placing and shaping] composite resins by dental assistants II with advanced training as specified in 18VAC60-20-61 B;

~~9.~~ 8. Final positioning and attachment of orthodontic bonds and bands; and

~~10. Taking impressions for master casts to be used for prosthetic restoration of teeth or oral structures;~~

~~11.~~ 9. Final ~~cementation~~ adjustment and fitting of crowns and bridges~~; and~~ in preparation for final cementation.

~~12. Placement of retraction cord.~~

18VAC60-20-200. Utilization of dental hygienists and dental assistants II.

~~No dentist shall have more than two~~ A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction [~~or general supervision~~] at one and the same time, with the exception that a dentist may issue written orders for services to be provided by dental hygienists under general supervision in a free clinic, a public health program, or on a voluntary basis.

18VAC60-20-210. Requirements for direction and general supervision.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining~~, on the basis of his diagnosis,~~ the specific treatment the patient will receive ~~and,~~ which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-20-200. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

~~C. Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and examines the patient during the time services are being provided~~.

~~D.~~ C. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed 10 months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that ~~no~~ a dentist ~~will~~ may not be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

~~E.~~ D. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist,

such direction is necessary to meet the individual needs of the patient.

18VAC60-20-220. Dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction ~~with the dentist being present~~ and may be performed under indirect supervision:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia ~~administered by the dentist~~.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-20-81.

B. The following duties shall only be delegated to dental hygienists and may be delegated by written order in accordance with § 54.1-3408 of the Code of Virginia to be performed under general supervision ~~without~~ when the dentist ~~being~~ may not be present:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed in subsection A of this section and those listed as nondelegable in 18VAC60-20-190.

C. Nothing in this section shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

18VAC60-20-230. Delegation to dental assistants.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction or under general supervision required in 18VAC60-20-210, with the exception of those listed as nondelegable in 18VAC60-20-190 and those which may only be delegated to dental hygienists as listed in 18VAC60-20-220.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.

C. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience, and examinations specified in 18VAC60-20-61:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations;

4. Taking final impressions;

5. Use of a nonepinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, VA 23219

[FORMS (18VAC60-20)

~~Application Requirements for Dentists (rev. 8/08).~~

~~Application for License to Practice Dentistry (rev. 8/08).~~

~~Application Requirements for Restricted Dental Volunteer License/Restricted Dental Hygiene License (rev. 8/08).~~

~~Application for Restricted Volunteer License to Practice Dentistry or Dental Hygiene (rev. 8/08).~~

~~Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs (rev. 5/08).~~

~~Application for Temporary Resident's License (rev. 5/08).~~

~~Form A, Certification of Dental School for Temporary Resident's License (rev. 5/08).~~

~~Form B, Temporary Resident's License (Certification from Dean of Dental School or Director of Accredited Graduate Program) (rev. 5/08).~~

~~Form C, Temporary Resident's License (Certification of Dental Licensure) (rev. 5/08).~~

~~Form D, Temporary Resident's License (Chronology) (rev. 5/08).~~

~~Form A, Certification of Dental/Dental Hygiene School (rev. 8/08).~~

~~Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (rev. 8/08).~~

~~Form B, Chronology (rev. 8/08).~~

~~Form C, Certification of Dental/Dental Hygiene Boards (rev. 8/08).~~

~~Application Requirements for Dental Hygienists (rev. 1/08).~~

~~Application for Licensure to Practice Dental Hygiene (rev. 1/08).~~

~~Instructions for Reinstatement of License (rev. 4/08).~~

~~Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 4/08).~~

~~Instructions for Application for Reactivation of License (rev. 8/08).~~

~~Application for Reactivation of License (rev. 8/08).~~

~~Application for Certification to Perform Cosmetic Procedures (rev. 8/08).~~

~~Oral and Maxillofacial Surgeon Registration of Practice (rev. 8/08).~~

Application Requirements for Dentists and Application for License to Practice Dentistry (rev. 11/10).

Application Requirements and Application for Restricted Dental Volunteer License/Restricted Dental Hygiene License (rev. 11/10).

Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs and Application for Temporary Resident's License (rev. 2/10).

Application Requirements and Application for Teacher's License or Full-time Faculty License (rev. 11/10).

Application Requirements for Dental Hygienists and Application for Licensure to Practice Dental Hygiene (rev. 11/10).

Application for Registration to Practice as a Dental Assistant II (eff. 3/11).

Instructions for Reinstatement of License and Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 2/10).

Instructions for Application for Reactivation of License and Application for Reactivation of License (rev. 2/10).

Application for Certification to Perform Cosmetic Procedures (rev. 2/10).

Oral and Maxillofacial Surgeon Registration of Practice (rev. 2/10).

Oral and Maxillofacial Surgeon Reinstatement of Registration of Practice (rev. 2/10).

Application for Registration for Volunteer Practice (rev. 8/08).

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

VA.R. Doc. No. R09-1526; Filed January 10, 2011, 9:10 a.m.

Extension of Emergency Regulation

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18VAC60-20-10, 18VAC60-20-30; adding 18VAC60-20-332, 18VAC60-20-342, 18VAC60-20-352).**

Statutory Authority: §§ 54.1-2400 and 54.1-2708.3 of the Code of Virginia.

Effective Dates: January 8, 2010, through July 7, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Board of Dentistry requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The Board of Dentistry voted at its meeting on September 17, 2010, to request a six-month extension to ensure that the registration of mobile dental clinics as mandated by the Code of Virginia does not expire. The emergency regulations were published in 26:6 VA.R. 671-677 November 23, 2009 (http://register.dls.virginia.gov/vol26/iss06/v26i06.pdf).

The budget bills (HB1600 and SB950) of the 2009 Acts of Assembly required the Board of Dentistry to adopt emergency regulations for the registration of mobile dental clinics, which became effective January 8, 2010, and expire January 7, 2011. A Notice of Intended Regulatory Action was published simultaneously with comment until December 2, 2009.

On March 12, 2010, the board adopted proposed regulations. In the adoption of proposed regulations, the board adopted essentially the same requirements in effect as the emergency regulations, but clarified certain provisions, corrected an oversight on the renewal deadline, and eliminated several provisions that were unnecessary or could be burdensome.

Proposed regulations were submitted for executive review on March 29, 2010. Department of Planning and Budget approval was given on May 13, 2010, and the Secretary's approval was given on July 20, 2010. The proposed regulations were approved by the Governor's office on December 9, 2010, and published in the Virginia Register of

Regulations on January 3, 2011 (http://register.dls.virginia.gov/vol27/iss09/v27i09.pdf).

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through July 7, 2011.

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

VA.R. Doc. No. R10-1945; Filed January 5, 2011, 12:52 p.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-490).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 2, 2011.

Effective Date: March 17, 2011.

Agency Contact: Caroline Juran, RPh, Acting Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations.

Section 54.1-3307 of the Code of Virginia provides the specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy including regulations pertaining to the safety and integrity of drugs.

Purpose: The petitioner who requested elimination of the requirement for nurses to sign for medications loaded into automated dispensing devices noted the requirement takes nurses away from patient care duties, which is clinically irresponsible as the nursing shortage continues. Hospital pharmacies utilize activity reports to verify that medications were actually loaded into the devices, and those reports provide a reliable source of accountability. Allowing nurses to stay focused on patient care without the distraction of other duties is essential to protect the health and safety of patients in hospitals.

Rationale for Using Fast-Track Process: This action is in response to a petition for rulemaking initially published in April 2009. In response to the petition, there were 31 comments in favor of eliminating the signing requirements; there were no comments in opposition. There were no comments on the Notice of Intended Regulatory Action during the 30-day comment period from October 26, 2009, to November 25, 2009. The members of the board unanimously agreed that the requirement could be eliminated because the log for the automated dispensing system establishes an adequate safeguard and acted to eliminate the requirement in subsection B of 18VAC110-20-490.

Since all comments have been supportive of the action and the board members have determined that there is no controversy and no public safety issue, the action is being submitted under the fast-track rulemaking process.

Substance: The fast-track action amends 18VAC110-20-490 to eliminate the requirement for a nurse or other person authorized to administer drugs to sign the delivery record of an automated dispensing device and allow a hospital to utilize the activity reports from the device as a check on medications loaded into the machine.

Issues: The advantage to the public is the elimination of a task that currently requires the attention of nurses on the floor in a hospital and takes them away from a focus on patient care. There is no value added to the signing task, and public safety will not be compromised by elimination of the task. There are no disadvantages to the public. Hospital pharmacies utilize activity reports to verify that drugs were actually loaded into the dispensing device; those reports are more reliable and provide needed accountability.

There are no advantages or disadvantage to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy proposes to no longer require that, at the time of loading automated drug dispensing devices in hospitals, the delivery record for all Schedule II through V drugs be signed by a nurse or other person authorized to administer drugs from that specific device.

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

Estimated Economic Impact. Pursuant to §§ 54.1-3301, 54.1-3401, and 54.1-3434.02 of the Code of Virginia and under specified conditions, hospitals may use automated devices for the dispensing and administration of drugs. One of the conditions under the current regulations is as follows: "At the time of loading, the delivery record for all Schedule II through V drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy." The Board proposes to eliminate this condition. According to the Department of Health Professions, hospital pharmacies utilize activity reports to verify that medications were actually loaded into

the devices and those reports provide a reliable source of accountability. Further, the time that nurses currently spend signing these records could be more productively used by providing direct care to patients. Thus the proposal to eliminate the nurse signature requirement should provide a net benefit.

Businesses and Entities Affected. The proposed elimination of the nurse signature requirement affects hospital pharmacies and nurses whose work currently involves interactions with hospital pharmacies, as well as hospital patients.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed elimination of the nurse signature requirement is unlikely to significantly affect total employment, but will allow nurses to use their time more productively.

Effects on the Use and Value of Private Property. The proposed elimination of the nurse signature requirement will allow nurses to use their time more productively at private hospitals (as well as at public hospitals).

Small Businesses: Costs and Other Effects. The proposed amendments do not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not significantly affect small businesses.

Real Estate Development Costs. The proposed amendments do not significantly affect real estate development costs.

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget on fast-track regulations to eliminate a requirement for nurses in hospitals to sign the delivery record of an automated dispensing device.

Summary:

In response to a petition for rulemaking, the Board of Pharmacy has amended its regulations pertaining to automated devices in hospitals for dispensing and administration of drugs to use the activity reports rather than having a nurse or other licensed person sign for loading and delivery of the drugs to the hospital floor.

18VAC110-20-490. Automated devices for dispensing and administration of drugs.

A hospital may use automated devices for the dispensing and administration of drugs pursuant to § 54.1-3301 of the Code of Virginia and §§ ~~54.3401~~ 54.1-3401 and 54.1-3434.02 of the Drug Control Act and in accordance with 18VAC110-20-270, 18VAC110-20-420, or 18VAC110-20-460 as applicable. The following conditions shall apply:

1. Prior to removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device which shall include the date; drug name, dosage form, and strength; quantity; hospital unit and a unique identifier for the specific device receiving the drug; initials of the person loading the automated dispensing device; and initials of the pharmacist checking the drugs to be removed from the pharmacy and the delivery record for accuracy.

~~2. At the time of loading, the delivery record for all Schedule II through V drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy.~~

~~3.~~ 2. At the time of loading any Schedule II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the pharmacist in charge, who shall be responsible for reconciliation of the discrepancy or properly reporting of a loss.

~~4.~~ 3. Automated dispensing devices in hospitals shall be capable of producing a hard-copy record of distribution which shall show patient name, drug name and strength, dose withdrawn, dose to be administered, date and time of withdrawal from the device, and identity of person withdrawing the drug.

~~5.~~ 4. The PIC or his designee shall conduct at least a monthly audit to review distribution and administration of Schedule II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of Schedule II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.

b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

c. The audit shall include a review of a sample of administration records from each device per month for possible diversion by fraudulent charting. A sample shall include all Schedule II-V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.

e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.

f. The hard-copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

~~6.~~ 5. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.

~~7.~~ 6. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes.

~~8.~~ 7. Personnel allowed access to an automated dispensing device shall have a specific access code which records the identity of the person accessing the device.

~~9.~~ 8. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual.

~~10.~~ 9. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the hospital except:

a. Manual Schedule VI distribution records may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic records are retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

b. Distribution and delivery records and required signatures may be generated or maintained electronically provided:

(1) The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.

(2) The records are maintained in a read-only format that cannot be altered after the information is recorded.

(3) The system used is capable of producing a hard-copy printout of the records upon request.

c. Schedule II-V distribution and delivery records may only be stored offsite or electronically as described in subdivisions ~~10~~ 9 a and b of this section if authorized by DEA or in federal law or regulation.

d. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained at an off-site location or electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format that does not allow alteration of the records; and provided a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

VA.R. Doc. No. R10-2180; Filed January 10, 2011, 9:11 a.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-40, 18VAC140-20-45, 18VAC140-20-50; adding 18VAC140-20-49).**

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

Effective Date: March 2, 2011.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

This regulatory action specifies the educational requirements necessary to qualify a candidate to sit for the licensed clinical social work examination in Virginia. The amendments incorporate language currently adopted as Guidance Document 140-6, effective April 17, 2009. The clinical course requirements are specified by general categories, the minimum number of field placement/practicum hours, and the accreditation standard for masters level clinical programs. No changes were made to the final regulation since publication of the proposed regulation.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part II
Requirements for Licensure

18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.

Every applicant for examination for licensure as a licensed clinical social worker shall:

1. Meet the education requirements prescribed in 18VAC140-20-49 and experience requirements prescribed in 18VAC140-20-50.

2. Submit in one package to the board office:

a. A completed notarized application;

b. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;

c. The application fee prescribed in 18VAC140-20-30;

d. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant; and

e. Documentation of applicant's out-of-state licensure where applicable.

18VAC140-20-45. Requirements for licensure by endorsement.

Every applicant for licensure by endorsement shall submit in one package:

1. A completed application and the application fee prescribed in 18VAC140-20-30.

2. Documentation of social work licensure in good standing obtained by standards substantially equivalent to those outlined in 18VAC140-20-49 and 18VAC140-20-50 ~~and~~ for a licensed clinical social worker or 18VAC140-20-60 for a licensed social worker, as verified by the out-of-state licensing agency on a board-approved form.

3. Verification of a passing score as established by the board on a board-approved national exam.

4. Official transcript or transcripts in the school's original sealed envelope.

5. Verification of active practice in another jurisdiction for 36 out of the past 60 months.

6. Certification that the applicant is not the respondent in any pending or unresolved board action in another jurisdiction or in a malpractice claim.

18VAC140-20-49. Educational requirements for a licensed clinical social worker.

A. The applicant shall be a graduate of a Master or Doctor of Social Work Program in a clinical course of study. An applicant with a nonclinical concentration shall complete additional graduate level academic course work and field placement/practicum to meet all requirements for a clinical course of study.

B. The minimum course requirements for a clinical course of study shall include graduate level courses consisting of:

1. Twelve credit hours of explanatory theory;

2. Twelve credit hours of practice theory;

3. Three credit hours of psychopathology including assessment, diagnosis, and treatment;

4. Three credit hours of social work practice research; and

5. Coursework in diversity issues, social justice, culture, and at-risk populations.

C. The requirement for a supervised field placement/practicum in clinical social work services shall be a minimum of 600 hours, which shall be integrated with clinical course of study coursework and supervised by a person who is a licensed clinical social worker or who holds a master's or doctor's degree in social work and has a minimum of three years of experience in clinical social work services

after earning the graduate degree. An applicant who has otherwise met the requirements for a clinical course of study but who did not have a minimum of 600 hours in a supervised field placement/practicum in clinical social work services may meet the requirement by obtaining an equivalent number of hours of supervised practice in clinical social work services in addition to the experience required in 18VAC140-20-50.

D. Graduates of a bachelor of social work program who earn advanced standing in the masters program shall meet all minimum course requirements for a clinical course of study, except advanced standing students may count up to six hours of explanatory theory and up to six hours of practice theory completed during the bachelor degree program towards meeting the requirements.

E. A master of social work program shall (i) include foundation course work common for all social work students, (ii) include advanced course work for student specialization, and (iii) be accredited by the Council on Social Work Education. A doctor of social work program shall at a minimum: (i) meet all requirements for the advanced course requirements for a clinical course of study, and (ii) be accredited by the appropriate regional academic accrediting body (e.g., Southern Association of Colleges and Schools).

18VAC140-20-50. ~~Education and experience~~ Experience requirements for a licensed clinical social worker.

~~A. Education. The applicant shall hold a minimum of a master's degree from an accredited school of social work. Graduates of foreign institutions shall establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council of Social Work Education.~~

~~1. The degree program shall have included a graduate clinical course of study; or~~

~~2. The applicant shall provide documentation of having completed specialized experience, course work or training acceptable to the board as equivalent to a clinical course of study.~~

~~B.~~ A. Supervised experience. Supervised experience in all settings obtained in Virginia without prior written board approval will not be accepted toward licensure. Supervision begun before November 26, 2008, that met the requirements of this section in effect prior to that date will be accepted until November 26, 2012.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision:

a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and

b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability or geography.

a. Experience shall be acquired in no less than two nor more than four years.

b. Supervisees shall average no less than 15 hours per week in face-to-face client contact for a minimum of 1,380 hours. The remaining hours may be spent in ancillary duties and activities supporting the delivery of clinical services.

3. An individual who does not complete the supervision requirement after four years of supervised experience shall submit evidence to the board showing why the training should be allowed to continue.

~~C.~~ B. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least three years of postlicensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a member of his immediate family or provide supervision for anyone with whom he has a dual relationship.

~~D.~~ C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision; and

7. Maintain documentation, for five years postsupervision, of which clients were the subject of supervision.

~~E.~~ D. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

NOTICE: The forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, VA 23229.

[FORMS (18VAC140-20)

~~Registration of Supervision Post Graduate Degree Supervised Experience (rev. 8/07).~~

Instructions and Application for Registration of Supervision Post-Graduate Degree Supervised Experience for LCSW (rev. 10/10).

Social Worker Licensure Application (rev. 8/07).

~~Clinical Social Worker Licensure Application (rev. 8/07).~~

Clinical Social Worker Licensure Application (rev. 8/08).

Verification of Clinical Supervision (rev. 8/07).

Verification of Casework Management and Supportive Services (rev. 8/07).

Out of State Licensure Verification (rev. 8/07).

Licensure Verification of Out-of-State Supervisor (rev. 8/07).

Form for Reporting Social Work Attendance at Formal Staffing (rev. 8/07).

Form for Reporting Social Work Independent Study (rev. 8/07).

General Information for Licensure by Examination as a Licensed Social Worker, with Application Instructions (rev. 8/07).

General Information for Licensure by Endorsement as a Licensed Social Worker, with Application Instructions (rev. 8/07).

General Information for Licensure by Examination as a Clinical Social Worker, with Application Instructions (rev. 8/07).

General Information for Licensure by Endorsement as a Clinical Social Worker, with Application Instructions (rev. 8/07).

~~Registration of Supervision Instructions (rev. 8/07).~~

Instructions for Registration of Supervision for LSW (rev. 9/09).

Application for Registration of Supervision - Post-Bachelor's Degree Supervised Experience for LSW (rev. 9/09).

~~Clinical Social Worker Reinstatement Application (rev. 8/07).~~

~~Social Work Reinstatement Application (rev. 8/07).~~

~~Clinical Social Worker Licensure Application - Reinstatement Following Disciplinary Action (rev. 8/07) .~~

Clinical Social Worker Reinstatement Application (rev. 4/08).

Social Work Reinstatement Application (rev. 4/08).

Clinical Social Worker Licensure Application - Reinstatement Following Disciplinary Action (rev. 4/08).

Continuing Education Summary Form (rev. 8/07).]

VA.R. Doc. No. R08-1192; Filed January 10, 2011, 9:10 a.m.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Fast-Track Regulation

Title of Regulation: **18VAC155-20. Waste Management Facility Operators Regulations (amending 18VAC155-20-40, 18VAC155-20-140).**

Statutory Authority: § 54.1-2211 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 2, 2011.

Effective Date: April 1, 2011.

Agency Contact: David E. Dick, Executive Director, Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email wastemgt@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia authorizes the board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the board.

Section 54.1-2211 A of the Code of Virginia states that, "The board shall promulgate regulations and standards for the training and licensing of waste management facility operators."

Purpose: The amendments are needed to keep the board's regulations consistent with the Code of Virginia. The goal of the proposed language is to cite the proper references to the Code of Virginia that give the board and the department its authority. The language also updates the board's regulations so as to be consistent with its licensing requirements when making references to training. The clarification changes will offer a clearer understanding of the regulation by the public.

Rationale for Using Fast-Track Process: The fast track process is being used to make amendments to the board's regulation language for clarity, not to make any substantive changes to existing regulations. The change to the language of the examination fee reflects the current procedure in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia) just as the change in the language to eliminate the bad check fee reflects the current procedure to comply with § 2.2-614.1 C of the Code of Virginia. The changes to the improper regulation references will correct those references to make them applicable to the various license types for which the training applies.

Substance: No new substantive provisions or changes are being introduced. The changes are merely updates to the existing language, which keeps the substance of the regulations unaltered.

Issues: The advantage to the public is updating the language of the regulations to offer a clearer understanding of the authority from which they are derived.

The primary advantage to the Commonwealth is the consistency of a successful licensure program within its department that offers greater clarity to its regulants.

The proposed changes will result in the consistency of the regulatory language with the current Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Waste Management Facility Operators (Board) proposes to amend its regulations to remove the $25 fee on returned checks and clarify that the fee for taking the licensure examination is paid to the third party vendor that administers the exam.

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

Estimated Economic Impact. Current regulations set a returned check fee of $25 and an examination fee of $150 that is subject to further charges by an outside vendor. Since returned check charges are now set by the Code of Virginia (§ 2.2-614.1 C), and since the current examination fee is $250 which is paid directly to the vendor who administers the exam, the Board proposes to amend regulatory language that covers these two fees. Specifically, the Board proposes to remove the fee for returned checks from these regulations entirely and amend the language that deals with licensure examination so that mention of a specific dollar amount is removed and so that it is clear that this fee is paid directly to the vendor. No entity is likely to incur any costs on account of these changes. Regulated entities, and other parties who may read these regulations, will benefit from the proposed changes because they remove obsolete language that may cause confusion.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that there are currently 1,199 licensed Waste Management Facility Operators in the Commonwealth. All of these individuals, as well as any individuals who may wish to be licensed by the Board in the future, will be affected by these proposed regulations.

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

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

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

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

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

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department concurs with the economic impact analysis provided by the Department of Planning and Budget.

Summary:

The amendments (i) remove the fee for dishonored checks, which is covered in § 2.2-614.1 C of the Code of Virginia and (ii) clarify that the fee for taking the licensure examination is charged by the vendor pursuant to contracts negotiated under the Virginia Public Procurement Act.

18VAC155-20-40. Fees.

A. All fees are nonrefundable and shall not be prorated.

B. An application shall not be deemed complete and shall not be processed without the required fee.

1. The application fee for licensure shall be $75.

2. The fee for renewal of licensure shall be $50.

3. The fee for late renewal of licensure shall be $75.

4. The fee for reinstatement of licensure shall be $125.

5. The ~~fee for taking the examination or reexamination for licensure shall be $150. This~~ examination fee is ~~subject to fees~~ charged to the ~~department~~ applicant by an outside vendor competitively negotiated and contracted for in compliance with the Virginia Public Procurement Act (§ ~~11-35~~ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the ~~candidate~~ applicant in accordance with this contract.

6. The application fee for training course approval shall be $125.

~~7. The fee for paying any of the above fees with a check or other instrument not honored by the bank or other financial institution upon which it is drawn shall be $25.~~

C. All checks shall be made payable to the Treasurer of Virginia.

D. Receipt and deposit of fees submitted with applications do not indicate licensure.

18VAC155-20-140. Examinations.

A. Initial examination.

1. An individual may not take the board-approved examination until all training requirements have been completed and are verified to the board unless ~~exempt~~ qualifying under 18VAC155-20-120 B ~~5~~ 6.

2. All applicants approved for the examination by the board will be notified in writing with a request for the examination fee defined in 18VAC155-20-40 B 5. The applicant will be scheduled for the next available examination upon receipt of the examination fee.

3. The examination fee will be required at least 30 days before the scheduled date of the examination.

4. All applicants shall achieve a passing score on the examination as determined by the board.

5. An individual unable to take an examination at the time scheduled shall notify the board prior to the date of the examination; such an individual shall be rescheduled for the next examination. Failure to notify the board may require the submittal of a new examination fee.

B. Reexamination.

1. An individual may retake the board-approved examination as many times as necessary to pass except those who have been waived from training requirements.

2. If the applicant has been waived from training under 18VAC155-20-120 B ~~5~~ 6 and fails, the applicant may retake the examination once. After failing twice, the applicant shall complete the required training before retaking the examination.

3. Reexamination shall require the submission of the reexamination fee as defined in 18VAC155-20-40 B 5.

VA.R. Doc. No. R11-2268; Filed January 6, 2011, 1:18 p.m.

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TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

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: **20VAC5-415. Rules Governing Telecommunications Relay Service (repealing 20VAC5-415-10, 20VAC5-415-20).**

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

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

Public Comment Deadline: February 28, 2011.

Agency Contact: Robert Gillespie, Associate General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9780, FAX (804) 371-9211, or email robert.gillespie@scc.virginia.gov.

Summary:

Effective January 1, 2007, the statutory authority over the collection or disbursement of funds related to the functioning of the Virginia telecommunications relay service was transferred to other state agencies. Because of the repeal of the statutory authority and the successful transition of all telecommunications relay service operations to other agencies, the SCC is proposing the repeal of this chapter.

AT RICHMOND, JANUARY 5, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC-2010-00069

Ex Parte: In the Matter of Revoking Rules Governing Telecommunications Relay Service, 20VAC5-415-10 et seq.

ORDER FOR NOTICE AND COMMENT

Effective January 1, 2007, Virginia Code §§ 56-484.4 - 484.6 were repealed by operation of 2006 Acts of Assembly, ch. 780. Since that date, the State Corporation Commission ("Commission") has not exercised any authority over the collection or disbursement of funds related to the functioning of the Virginia telecommunications relay service. Those functions, by statute, were transferred to the Department for the Deaf and Hard-of-Hearing, the Virginia Information Technologies Agency, and the Virginia Tax Commissioner.

Because of the repeal of the statutory authority and the successful transition of all telecommunications relay service operations, there appears to be no need to retain the Commission's Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, et seq.

NOW THE COMMISSION, having considered the repeal of statutory authority and the successful transition of all telecommunications relay service funding and operations to other agencies, finds that interested parties should be permitted to comment on the need to retain any portion of the Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, et seq.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC-2010-00069.

(2) The Commission's Division of Information Resources shall forward the proposed revocation of Rules Governing Telecommunications Relay Service Quality (Chapter 415), Appendix A herein, to the Registrar of Virginia for publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make a downloadable version of the proposed Rules Governing Telecommunications Relay Service, Appendix A, available for access by the public at the Commission's website, http://www.scc.virginia.gov/case. The Clerk of the Commission shall make a copy of the proposed revocation of Rules Governing Telecommunications Relay Service available for public inspection and provide a copy, free of charge, in response to any written request for one.

(4) Interested persons wishing to submit written comments regarding the proposed revocation of Rules Governing Telecommunications Relay Service shall file such written

comments with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, on or before February 28, 2011. Interested persons desiring to submit comments electronically may do so by following instructions found on the Commission's website: http://www.scc.virginia.gov/case.

(5) On or before March 18, 2011, the Commission Staff may file a Response in the event that there are any comments that are filed with the Commission that suggest retaining any part of the Rules.

(6) This matter is continued for further orders of the Commission.

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

VA.R. Doc. No. R11-2709; Filed January 5, 2011, 2:15 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Titles of Regulations: **22VAC40-130. Minimum Standards for Licensed Private Child Placing Agencies (repealing 22VAC40-130-10 through 22VAC40-130-550).**

22VAC40-131. Standards for Licensed Child-Placing Agencies (adding 22VAC40-131-10 through 22VAC40-131-610).

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Hearing Information:

February 17, 2011 - 11 a.m. - Virginia Department of Social Services, 801 East Main Street, 2nd Floor Conference Room, Richmond, VA

Public Comment Deadline: April 1, 2011.

Agency Contact: Joni S. Baldwin, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7162, FAX (804) 726-7132, TTY (800) 828-1120, or email joni.baldwin@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia requires the State Board of Social Services (board) to adopt regulations necessary or desirable to carry out the provisions of Title 63.2 of the Code of Virginia. Section 63.2-1734 of the Code of Virginia specifically authorizes the board to adopt regulatory provisions to ensure that activities, services, and facilities provided by licensees are conducive to the welfare of the children under custody or control of the licensee.

Purpose: The purpose of the regulatory action is to protect children under the age of 18 for whom home-placements are pending or home-placements have been made in approved foster care homes, treatment foster care homes, short-term foster care homes, and adoptive-homes until the adoption is finalized by the court.

The proposed new chapter establishes requirements and criteria for the Department of Social Services (DSS) to evaluate licensed private child-placing agencies to ensure that activities, services, and facilities provided by licensees are conducive to the welfare of the children under their custody or control. It also provides clear criteria for licensees to approve, evaluate, and re-approve family home providers.

There have been three separate failed attempts to adopt a new replacement regulation for 22VAC40-130 since it was promulgated in August of 1989. Since that time there have been many changes in federal and state law and practice - including the Virginias Children's Services System Transformation - that have not been incorporated in the current regulation. Repeal of the existing regulation and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language to provide consistency and clarity. This clarity and consistency will improve both compliance with the regulation and enforcement. It will also allow for inclusion of requirements conducive to the greater protection of the health, safety, and welfare of children in care.

Substance: Substantive revisions in the new regulation include: (i) aligning requirements for licensee approval of, provision of services to, and monitoring of foster care homes, adoptive homes, and independent living arrangements with the Code of Virginia; (ii) adding definitions consistent with the Code of Virginia and other social services regulations; (iii) updating sponsor-types with legal entities recognized by the State Corporation Commission and including information required as part of the application for approval process; (iv) requiring the licensee to develop and implement written operational policies and procedures to include prohibition of corporal punishment and measures to ensure protections for children in placements; (v) adding a requirement for developing and implementing a program evaluation and improvement plan; (vi) making home-study components, provider approval, and home monitoring requirements consistent for provider home-types and consistent with other social services regulations; (vii) making home environment assessment components consistent with other social services regulations; (viii) adding requirements for provider training and development consistent with other social services

regulations; (ix) requiring custodial agencies to enroll children in school; (x) requiring the licensee to report serious incidents, injuries, or accidents that happen to the child; (xi) requiring visitation and continuing contact with the child consistent with other social services regulations; (xii) incorporating requirements of the Department of Medical Assistance Services for treatment foster care; (xiii) adding requirements for developing and implementing recordkeeping practices and record storage for all types of files; (ix) adding a requirement for encouraging and training providers in positive behavior support techniques to protect and keep the child safe while helping the child learn positive behaviors; (xv) adding requirements for independent living arrangements consistent with the Code of Virginia and other social services regulations and policy; and (xvi) adding applicable requirements of the Code of Virginia and Hague Adoption Convention for adoption and intercountry adoption.

Issues: This regulatory action will create consistency between providers approved by licensed child-placing agencies and local departments of social services. This action step is required by federal regulations, identified in the federal Child and Family Services Review, and included in DSS' Performance Improvement Plan. The comprehensive new regulation addresses changes that have taken place in child-placing federal and state law and practice since 1989, including Virginia's Children's Services System Transformation.

The intent of the comprehensive new regulation is to protect the health, safety, and welfare of children by strengthening and clarifying requirements for private licensed child-placing agencies and the providers who are approved by them. The new regulation includes an organization recommended by members of the regulation revision committee - a committee formed and utilized under DSS' public participation guidelines - and whose membership included private and public child-placing stakeholders and stakeholders from several public agencies. The comprehensive new regulation will assist licensees with regulatory compliance because the new regulation will be more user-friendly than the current regulation.

This regulatory action poses no disadvantages to the pubic or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The State Board of Social Services (Board) proposes to repeal 22VAC40-130 (Minimum Standards for Licensed Private Child Placing Agencies) which now govern the parts of the adoption process, as well the disposition of children in foster care and children who are at risk of becoming part of the foster care system, not directly handled by Local Departments of Social Services (LDSS). The Board proposes to replace 22VAC40-130 with 22VAC40-131 (Standards for Licensed Child-Placing Agencies); the new regulations will harmonize regulations for private placing agencies with those that govern the public provision of permanency services through LDSS. Although most of the provisions in the new regulations are not different in effect from those in current regulations, the Board is proposing several substantive changes.

The Board proposes to:

1. Specify in regulation how many treatment foster care cases may be handled at one time by a caseworker,

2. Allow executive directors (executive directors of social services) to have a doctorate or masters degree in any subject but require them to have five years experience rather than the currently required three,

3. Specify topics that must be covered in training for foster parents,

4. Increase the time allowed after a foster care placement for the child placing agency to complete a full written assessment from 30 days to 45 days, and

5. Change bedroom requirements so that children over the age of two may not share a bed and children over the age of three may not share a bedroom with a child of the opposite gender.

Result of Analysis. The benefits exceed the costs for most proposed regulatory changes. The costs likely exceed the benefits for at least one proposed regulatory change. There is insufficient data to ascertain whether benefits exceed costs for at least one other change. Detailed analysis of costs and benefits can be found in the next section.

Estimated Economic Impact. Current regulations have rules for how many children a caseworker may generally oversee but do not specifically address how many treatment foster care cases that involve high needs children a caseworker can handle. Board staff reports that, currently, Board policy allows caseworkers to oversee 12 treatment foster care cases at any one time; the Board proposes to move this restriction into regulation. As this caseload restriction is already current practice for agencies that provide treatment foster care, no regulated entity is likely to incur costs on account of moving the policy into regulation. Regulated entities, as well as other interested parties, will benefit from the added clarity of having this rule included in the same place as other staffing rules for child-placing agencies.

Current regulations require that executive directors of social services for child-placing agencies have a doctorate or masters of social work and three years experience. The Board proposes to change this requirement so that individuals hired for this position may have a doctorate or masters in any area plus five years experience. Allowing individuals to have any doctorate or masters will tend to widen the pool of individuals who would be eligible to apply for this position while

requiring two more years of experience will tend to narrow the pool of eligible individuals. There is no information that would indicate which effect would be larger.

Board staff provided information about several studies that indicated social workers who had either a bachelor's degree or a master's degree in social work were more likely to be prepared for the rigors of their job and were more likely to stay in the social work field longer. Since the Board is proposing to move away from requiring a degree in social work (for the executive director position) these studies are likely of limited value in supporting the proposed regulatory language. These studies notwithstanding, there are likely skills and information learned while attaining a degree in a field other than social work that would be useful for this position.

In general, however, the public, private placing agencies and individuals who have an interest in doing the work of an executive director of social services will all likely benefit if the Board sets requirements for this position only at a level that they can show is necessary to maintain the safety and wellbeing of children placed through these agencies. The public would likely benefit from this because the Board would not be creating artificial scarcity in the pool of qualified applicants that would, in turn, likely drive up the costs of their services (that the public pays for through their taxes). The agencies would likely benefit from the costs of these services, that they have to contract for, not being driven up. Individuals who would be interested in applying for a position as an executive director of social services will certainly benefit from not being unnecessarily precluded from making such application. The Board has not provided any evidence that outcomes for children who are in foster care are worse when the director of the agency that places them has fewer than five years of experience. All affected entities would likely benefit if the Board were to reconsider increasing the years of experience required for this position.

Current regulations require that private placing agencies ensure that foster parents have appropriate training but do not specify what should be included in that training. The Board proposes to add to the regulations a list of topics that must be covered in foster parent training. Board staff reports that most agencies are likely already covering all the topics that would be required and, so, would be unlikely to incur any additional costs for training. Some small agencies, however, are likely not currently covering all of the proposed topics in their training and will likely incur costs for the additional training that would be required. Board staff does not have exact estimates of how many more hours of training would be needed for agencies that are not currently meeting the proposed requirement but does report that such training would cost approximately $31 per hour.

Current regulations allow private placing agencies 30 days, after placing a child in a foster home, to complete a written assessment of that child. Since placing agencies must get information from LDSS who, in turn, must have time to gather that information, 30 days has sometimes proven an inadequate time period to complete this assessment. The Board proposes to extend the deadline for completion of the written assessment to 45 days after a child is placed. Child-placing agencies will likely benefit from having the extra time to complete all assessments in the time frame required by the Board.

Current regulations require that foster homes maintain "separate beds for each foster child except that two siblings of the same sex may share a double bed." The Board proposes to require that children over the age of two have separate beds and that children over the age of three not share bedrooms with a child of the opposite gender. Board staff reports that these changes are proposed to harmonize these regulations with LDSS Permanency Regulations and because the Department of Social Services is concerned that children who have been sexually abused themselves have a greater likelihood of inappropriate sexual behavior with other children at a very young age. Foster homes that currently allow same sex siblings over two years of age to share a bed or who have children of opposite genders over the age of three sleeping in the same bedroom will incur costs for buying more beds and/or for allocating more bedrooms to the children in their care. In 2005, Board staff estimated that foster families would incur cumulative costs of approximately $1,400 per year for new beds but did not provide estimates of how much it would cost foster families to accommodate requirements for separate bedrooms. If foster parents cannot accommodate the new bed space requirements, some children may have to move away from otherwise ideal placements. This provision may also make it harder to place sibling groups in the same home. Board staff reports that, in such cases, agencies can apply for variances that would allow foster families to have non-compliant bedroom accommodations.

Businesses and Entities Affected. The proposed regulations will affect 77 private child-placing agencies as well as the children who are placed by these agencies.

Localities Particularly Affected. All 120 local Departments of Social Services will be affected by these new regulations.

Projected Impact on Employment. These proposed regulations are unlikely to have a significant impact on total employment in the Commonwealth. The proposed credential requirements for executive directors will likely, however, preclude some individuals, who would otherwise be interested, from applying and being hired to do that job.

Effects on the Use and Value of Private Property. The use and value of private property should not be affected by the proposed regulations.

Small Businesses: Costs and Other Effects. Most of the 77 child-placing agencies that are affected by these proposed regulations are small businesses. Some affected small business agencies will likely incur greater training costs under the proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is likely no alternate method for making sure that foster parents are trained in the areas that the Board thinks are important that would also further minimize costs.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This proposed regulatory action repeals the existing regulation, 22VAC40-130, and establishes a comprehensive new regulation, 22VAC40-131, for licensed private child-placing agencies. The comprehensive new regulation is intended to: (i) improve clarity; (ii) reflect current federal and state law; (iii) align home approvals, supervision, monitoring practices, and responsibilities of private child-placing agencies with public child-placing agencies; (iv) remove intrusive and burdensome language; and (v) provide greater protection for children in care. The proposed new regulation will create consistency between providers approved by licensed child-placing agencies and local departments of social services, as required by federal regulations, identified in the federal Child and Family Services Review, and included in the Department of Social Services' Performance Improvement Plan.

Major components of the new regulation include incorporating changes for consistency with 22VAC40-211, Resource, Foster and Adoptive Family Home Approval Standards, including: (i) definitions; (ii) home provider training mandates; (iii) home study requirements, streamlining the provider approval process, and documentation protocols; (iv) safety of the providers' home environment; and (v) background check requirements.

Although most of the provisions in the new regulations are not different in effect from those in current regulations, the board is proposing several substantive changes as follows:

1. Specify how many treatment foster care cases may be handled at one time by a caseworker,

2. Allow executive directors of social services to have a doctorate or master's degree in any subject but require them to have five years experience rather than the currently required three,

3. Specify topics that must be covered in training for foster parents,

4. Increase the time allowed after a foster care placement for the child-placing agency to complete a full written assessment from 30 days to 45 days, and

6. Change bedroom requirements so that children over the age of two may not share a bed and children over the age of three may not share a bedroom with a child of the opposite gender.

CHAPTER 131
STANDARDS FOR LICENSED CHILD-PLACING AGENCIES

Part I
General Provisions

22VAC40-131-10. Definitions.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive parent" means any person selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult" means any person 18 years of age or older.

"Annual" means within 13 months of the previous event or occurrence.

"Applicant" means an individual or couple applying to be approved as a resource, foster, adoptive, treatment foster, or short-term foster family home; or independent living arrangement provider.

"Background check" means a sworn statement or affirmation disclosing whether the individual has a criminal conviction, is the subject of any pending criminal charges within or outside the Commonwealth of Virginia and is the subject of a founded complaint of abuse or neglect within or outside the Commonwealth; criminal history record information; child abuse and neglect central registry search; and any other requirement of 22VAC-40-191, Background Checks for Child-Welfare Agencies, and §§ 63.2-1721 and 63.2-901.1 of the Code of Virginia.

"Behavior support" means those principles and methods employed by a provider to help a child or youth achieve positive behavior and to address and correct a child's or youth's inappropriate behavior in a constructive and safe manner in accordance with goals of the child's or youth's service or treatment plan and the safety of the child or youth and others.

"Birth parent" means the biological parent of a child and, for the purposes of adoptive placement, means parents by previous adoption.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) a parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) a person responsible by virtue of their position of conferred authority; and (iv) adult persons residing in the home with the child.

"Career and technical education" means organized sequential educational activities and courses that provide individuals with academic and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions.

"Case management" means an activity that assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to his needs. Case management activities are provided in treatment foster care.

"Casework" means provision of direct services or treatment with an individual or several individuals, and intervention in the situation on the client's behalf.

"Casework staff" means an individual hired to perform casework services who has at least a baccalaureate degree with relevant experience required in this chapter.

"Child" means any natural person under 18 years of age.

"Child-placing activities" means the activities involved in the placement of children in foster or adoptive family homes; and children or youth in children's residential facilities or independent living arrangements. The following activities and actions are integral components of a Virginia-licensed child-placing program and when performed in Virginia, these components are regulated under this chapter:

1. The provision of counseling to biological parents including assisting parents to formulate a plan for the care and/or placement of their child;

2. The acceptance of a child's custody for placement purposes;

3. Assessing a child's service and placement needs;

4. Performing home studies;

5. Selecting and approving applicants for resource, foster, treatment foster, or short-term foster care and adoption placements; and approving independent living placements and services;

6. Matching a child with an approved family or licensed children's residential facility;

7. Making a placement of a child in a resource, foster, treatment foster, or short-term foster care home; an independent living arrangement; or children's residential facility selected for that child;

8. Casework and supervision of children in foster care, adoption and independent living, including counseling the child, the biological, adoptive parents, or other persons; and consultation with foster parents and agencies holding custody of the child; and

9. Providing documentation to finalize adoptions and providing post-placement adoption and supervision services or making referrals to appropriate resources for such services.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia; or a local board that places children in foster or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth of Virginia or any locality acting within the scope of their authority as such, who serve as or

maintain a child-placing agency, shall not be required to be licensed.

"Child's family" means the birth or adoptive parents, legal guardians, or family to whom the child may return.

"Commissioner" means the Commissioner of the Department of Social Services, his designee, or his authorized representative.

"Complaint" means an accusation that a facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the body through (i) actions such as, but not limited to, striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

"Dual approval process" means a process that includes a home-study, mutual selection, interviews, training, and background checks completed on all applicants to be considered for approval as a resource, foster, or adoptive family home provider.

"Emergency placement" means the placement of a child where the local department of social services placing the child has within the past 72 hours removed the child from his home or previous placement due to abuse or neglect or other emergency.

"Employee", "staff," or "staff person" means a person working for the licensee who is compensated or has a financial interest in the business of the licensee, regardless of role, service, age, function, or duration of employment with the licensee. Employee, staff, or staff person also includes persons hired through a contract to provide services for the licensee.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where the legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including but not limited to independent living services, for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 of the Code of Virginia or in need of services as defined in § 16.1-228 of the Code of Virginia and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services and the parents or guardians where legal custody remains with the parents or guardians, or (iii) has been committed or entrusted to a local board of social services or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children committed or entrusted to a child-placing agency.

"Independent living arrangement" means the placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also include services and activities provide to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, money management skills development, access to essential documents, and other appropriate services to help children or youth and persons prepare for self-sufficiency.

"In-service training" means the on-going instruction received by providers after they complete their pre-service training.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" means a uniform law enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands that establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Licensee" means the individual, corporation, partnership, association, limited liability company, trust, business trust, public entity, or any other legal entity recognized by the Virginia State Corporation Commission, to whom the department issues a license and who is legally responsible for compliance with the regulations and statutory requirements related to the child-placing agency.

"Licensing representative" means an agent authorized by the commissioner to carry out the responsibilities and duties

specified in Subtitle IV (§§ 63.2-1700 et seq. and 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Mental abuse" means that which occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

"Mutual selection" means a method within the dual approval process that encourages collaboration by and between both (i) the applicant applying for approval as a resource, foster, adoptive, treatment foster, or short-term foster home provider; or independent living arrangement and (ii) the child-placing agency who is processing the application. It allows both parties the ability to gather information necessary to make an informed decision about whether the applicant has a continued interest in and would be ready to accept a child into his home if it is determined that he meets all criteria to be an approved home provider. The child-placing agency makes the final determination regarding approval or disapproval of the applicant.

"Parent" means the birth or adoptive parent of a child.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanent entrustment agreement" means an agreement that provides for the termination of all parental rights and responsibilities with respect to the child to be placed for adoption.

"Permanent foster care placement" means the place in which a child has been placed pursuant to the provisions of §§ 63.2-900, 63.2-903, and 63.2-908 of the Code of Virginia with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517 of the Code of Virginia. A permanent foster care placement may be a place of residence of any natural persons deemed appropriate to meet a child's needs on a long-term basis.

"Physical abuse" means abuse that occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means; or creates a substantial risk of death, disfigurement, or impairment of bodily functions.

"Physical neglect" means the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.2-100 of the Code of Virginia.

"Physical restraint" means use of a physical intervention or "hands-on" hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Placing agency" means the child-placing agency that placed the child with the licensee.

"Pre-service training" means the instruction received by providers during the initial approval process.

"Provider" means an individual approved as a resource, foster, adoptive, treatment foster, or short-term foster parent or family.

"Records" means the written information assembled in a file relating to the child-placing agency; staff; volunteers; child; child's family; and resource, foster, adoptive, treatment foster, and short-term foster family home providers.

"Resource parent" means an approved provider who is committed to support reunification and who is prepared to adopt the child if the child and family do not reunify.

"Seclusion" means the involuntary placement of a child alone in a locked room or secured area from which he is physically prevented from leaving.

"Serious incident reports" means a written report detailing the child's accidents or injuries that require medical attention beyond minor first aid care.

"Service plan" means a written document that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia.

"Sexual abuse" means any act of sexual exploitation or any sexual act upon a child in violation of the law that is committed or allowed to be committed by the child's parents or other persons responsible for the care of the child pursuant to § 63.2-100 of the Code of Virginia.

"Short-term foster care" means a licensee-offered service that is designed to provide crisis or alternate planned-support relief for up to 30 consecutive calendar days to resource, foster, adoptive, or treatment foster family home providers; or biological families through substitute care placement arrangements for children. The substitute-care placement environments used shall be limited to provider home environments that have been approved.

"Special needs" means (i) a physical, mental, or emotional condition existing prior to adoption; (ii) hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability; or (iii) individual circumstances of the child related to age, racial, or ethnic background or close relationship with one or more siblings. A child with special needs is any child for whom it has been determined unlikely that he will be adopted within a reasonable period of time due to one or more of the factors described in clause (i), (ii), or (iii) of this definition and the child is in the custody of a local board or licensed child-placing agency. A special needs child includes children who have factors described in clause (i) and (ii) of this definition present at the time of adoption but not diagnosed until after entry of the final order of adoption and no more than one year has elapsed.

"State Board" means the State Board of Social Services.

"Treatment" is the coordinated provision of services and use of professionally developed and supervised interventions designed to produce a planned outcome in a person's behavior, attitude, emotional functioning, or general condition.

"Treatment foster care" is a community-based program where services are designed to address the special needs of children and families. Services to children are delivered primarily by treatment foster parents who are trained, supervised, and supported by child-placing agency staff. Treatment is primarily foster family based, and is planned and delivered by a treatment team. Treatment foster care focuses on a continuity of services, is goal directed and results oriented, and emphasizes permanency planning for the child in care.

"Treatment foster parent" means a provider, approved by the licensed or certified child-placing agency, who is trained to provide treatment foster care services.

"Treatment team" means the group that provides mutual support; evaluates treatment; and designs, implements, and revises the treatment and service plan. Treatment team members are persons directly involved with the child and shall, unless otherwise indicated, consist of the child; professional child-placing agency staff; other professionals; the child's family members, where appropriate; the licensee; and the treatment foster parents.

"Youth" means persons between the ages of 16 and 18 who are in foster care and persons between the ages of 18 to 21 who are former foster care children and are transitioning from foster care to self-sufficiency.

22VAC40-131-20. Scope and applicability.

This regulation shall apply to child-placing agencies as defined in § 63.2-100 of the Code of Virginia and in 22VAC40-131. It shall specifically apply to the following:

1. Licensed child-placing agencies that provide foster care services as stipulated in this chapter. Specific sections also apply to or impact the foster parents approved by them;

2. Licensed child-placing agencies that provide adoption services as stipulated in this chapter. Specific sections also apply to or impact the adoptive applicants;

3. Licensed child-placing agencies that provide interstate or intercountry services as stipulated in this chapter;

4. Licensed child-placing agencies that provide independent living arrangements as stipulated in this chapter;

5. Licensed child-placing agencies that provide treatment foster care case management services as stipulated in this chapter. Specific sections also apply to or impact the treatment foster parents approved by them; and

6. Local departments of social services certified by the department to provide treatment foster care case management services as stipulated in this chapter. Specific sections apply to or impact the treatment foster parents approved by them.

Part II
Organization and Administration

22VAC40-131-30. Sponsorship.

Each licensed child-placing agency shall have a clearly identified sponsor. The sponsor may be an individual, corporation, partnership, association, limited liability company, trust, business trust, or any other legal entity recognized by the Virginia State Corporation Commission.

1. An individual sponsoring a child-placing agency shall serve as the licensee and shall have the legal and operational responsibility for the child-placing agency. The individual shall have knowledge and experience in the programs and services the child-placing agency offers.

2. A partnership sponsoring a child-placing agency shall serve as the licensee for the child-placing agency. The partners shall have a written partnership statement of agreement clearly delineating the responsibilities of each partner in the operation and maintenance of the licensed child-placing agency. When a partner is responsible for any of the operational responsibilities, he shall have knowledge of and experience in the programs and services offered by the child-placing agency.

3. An association sponsoring a child-placing agency shall serve as the licensee for the child-placing agency. The association shall have a governing board that shall maintain the legal and operational responsibility for the licensed child-placing agency. The association shall have:

a. At least one member serving on the board who has knowledge of and experience in the programs and

services offered by the licensed child-placing agency; and

b. A written constitution or bylaws that delineate responsibilities for the operation and maintenance of the licensed child-placing agency.

When not one of the members of the board of directors possesses the required knowledge and experience in the programs and services offered by the licensed child-placing agency, the board of directors shall appoint a person who does meet those required qualifications and shall delegate in writing to that person the authority, responsibility, and duty of operations for the child-placing agency; and

4. A corporation sponsoring a child-placing agency shall serve as the licensee for the child-placing agency. The corporation shall have a governing board that shall maintain the legal and operational responsibility for the licensed child-placing agency. The corporation shall have:

a. At least one member serving on the board who has knowledge of and experience in the programs and services offered by the licensed child-placing agency;

b. A certificate of incorporation issued by the Virginia State Corporation Commission or, for corporations formed under the laws of a jurisdiction other than Virginia, a certificate of authority to transact business in the Commonwealth; and

c. Articles of incorporation that specify that at least one purpose of the corporation is to operate a licensed child-placing agency.

When not one of the members of the board of directors possesses the required knowledge and experience in the programs and services offered by the child-placing agency, the board of directors shall appoint a person who does meet those required qualifications and shall delegate in writing to that person the authority, responsibility, and duty of operations for the child-placing agency.

5. A limited liability company sponsoring a child-placing agency shall serve as the licensee for the child-placing agency. The limited liability company shall have a list of the names and addresses of each member of the company. The members shall maintain the legal and operational responsibility for the licensed child-placing agency. The limited liability company shall have:

a. At least one member serving on the board who has knowledge of and experience in the programs and services offered by the child-placing agency;

b. A certificate of organization issued by the Virginia State Corporation Commission or, for limited liability companies formed under the laws of a jurisdiction other than Virginia, a certificate of registration to transact business in the Commonwealth; and

c. Articles of organization that specify that at least one purpose of the limited liability company is to operate a licensed child-placing agency.

When not one of the members possesses the required knowledge and experience in the programs and services offered by the child-placing agency, the limited liability company members shall appoint a person who does meet those required qualifications and shall delegate in writing to that person the authority, responsibility, and duty of operations for the licensed child-placing agency.

6. A business trust sponsoring a child-placing agency shall serve as the licensee for the child-placing agency. The business trust shall have a list of the names and addresses of each trustee and beneficial owners of the trust. The trustee shall maintain the legal and operational responsibility for the licensed child-placing agency and the trustee must have knowledge and experience in the programs and services the child-placing agency offers. The business trust shall have articles of trust that specify at least one purpose of the trust is to operate a licensed child-placing agency.

22VAC40-131-40. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed child-placing agencies and terms of the current license issued by the department; and with relevant federal, state, or local laws and relevant regulations.

B. The licensee shall comply with its own policies and procedures.

C. The licensee shall give evidence of financial responsibility.

D. The licensee shall be of good character and reputation as defined in 22VAC40-80-10.

E. The licensee shall meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

F. The licensee shall meet the requirements specified in 22VAC40-80, General Procedures and Information for Licensure.

G. The licensee shall develop and maintain an operating budget sufficient to ensure adequate funds in all aspects of operation.

H. The licensee shall ensure that the child-placing agency makes and maintains such records and other information as required by this chapter. The licensee shall submit, or make available for inspection to the department's representative, records, reports, and other information as necessary to assist

the department in determining the licensee's compliance with this chapter and applicable law.

I. The licensee shall allow the department's representative to interview the licensee's employees and individuals under its custody, control, direction, or supervision.

J. The licensee shall at all times allow the department's representative reasonable opportunities to conduct announced and unannounced inspections of the licensee's approved homes.

K. The licensee shall:

1. Correct any areas of noncompliance found during inspections;

2. Take necessary actions to prevent reoccurrence of noncompliance; and

3. Make and implement necessary revisions to its policies and procedures.

L. The licensee shall not disseminate, or cause directly or indirectly to be disseminated, statements regarding services that are untrue, deceptive, or misleading.

M. The licensee shall ensure that information, brochures, and materials distributed or available to the public contain accurate and updated information.

N. The licensee shall maintain ultimate responsibility for the health, safety, and well-being of children under its custody, control, and direction and shall ensure that an on-call licensee representative is available 24 hours a day 7 days each week to receive contacts from foster parents, children, and other staff of placement settings in which children have been placed by the licensee. The licensee shall provide interventions and follow-up services, as necessary.

22VAC40-131-50. Office settings and conditions.

A. The licensee shall maintain an office within the Commonwealth of Virginia from which the child-placing activities are conducted.

B. The licensee shall ensure that the office from where child-placing activities are conducted has equipment, supplies, and adequate space for:

1. The safekeeping of records;

2. Protection of confidential information;

3. Affording privacy during interviews and conferences; and

4. Allowing families and children the use of rooms for visitation.

22VAC40-131-60. Posting of the license.

The licensee shall post the most recently issued license to operate in each licensed Virginia office location where child-placing activities are performed, including branch office locations. The license shall be posted near the entrance of each office location.

22VAC40-131-70. Conflict of interest.

A. The governing board of the licensee shall not have a board member who is:

1. An applicant for adoption services; or

2. A recipient of adoption services.

B. No biological parent of a child currently placed by the licensee shall serve as a member of the licensee's governing board.

C. No provider applicant shall serve as a member of the licensee's governing board.

D. A member of the licensee's governing board who is also a foster parent for the licensee shall not vote on issues related to foster care policy and procedure.

E. The licensee shall not provide foster care services to its child-placing agency staff members.

F. The licensee shall not accept an application for adoption from or provide adoption services to any of its staff or governing board members.

22VAC40-131-80. Licensed capacity and maximum caseload numbers.

A. The licensee shall include in the child-placing agency's caseload and capacity count all children to whom supervision is provided. The supervised children may be placed directly by the licensee or through arrangement or negotiation with another licensed child-placing agency in one of the following settings:

1. A resource home;

2. A foster home;

3. An adoptive home prior to the final order of adoption;

4. A treatment foster home;

5. A short-term foster home;

6. An independent living arrangement; or

7. Licensed children's residential facility.

B. The total approved caseload numbers served by the licensee at any given time shall not exceed the following:

1. Except for licensees that provide treatment foster care, the maximum caseload restrictions shall apply:

a. A full-time caseworker shall serve no more than 25 children at any one time;

b. Trainees:

(1) A beginning trainee shall serve no more than 10 children at any one time until such time that he has reached his first year anniversary with the licensee; and

(2) A one year experienced trainee shall serve no more than 15 children at any one time until such time that he has reached his second year anniversary with the licensee.

c. The caseload of a less than full-time caseworker shall be proportional to the time spent providing casework services to the licensee.

2. For treatment foster care, the total caseload shall be the sum of the following:

a. A full time caseworker shall have a maximum caseload of 12 children. However, the caseload shall be adjusted downward if:

(1) The caseworker's job responsibilities exceed those listed in caseworker's job description; or

(2) The difficulty of the children served requires more intensive supervision and training of the treatment foster parents.

b. The caseload of a less than full-time caseworker shall be proportional to the time spent providing casework services to the licensee.

c. Trainees:

(1) A beginning trainee shall serve no more than six children at any one time until such time that he has reached his first year anniversary with the licensee;

(2) A one year experienced trainee shall serve no more than nine children at any one time until such time that he has reached his second year anniversary with the licensee.

d. Student Interns: There shall be a maximum of three children in a caseload for a student intern, if any student intern works with the licensee.

C. For licensees that serve both foster care and treatment foster care populations, the licensee shall first consider caseload downward adjustment criteria as specified in 22VAC40-131-90 B 2 a (1) and (2) and, if the criteria does not apply to the caseworker's caseload under consideration then, the licensee shall ensure that the caseworker serving the mixed populations provide services to a maximum of 15 total children; and no more than 10 of those 15 children are served in treatment foster care.

D. The licensee shall include the following children in the capacity count:

1. A child in the custody of the licensee;

2. A child for whom an interlocutory order has been entered and still awaits a final order of adoption to be entered; and

3. A child not in the licensee's custody whose placement is supervised by the licensee.

22VAC40-131-90. Policy and procedures.

A. The licensee shall develop and implement written policy and procedures governing the plans for active and closed cases. The plan shall address the following:

1. Procedures the licensee will follow should the licensee cease operations, including:

a. Disposition of children in placement at the time of cessation, including procedures for assisting placing agencies in placing children; and

b. Notification to the placing agency, legal guardian, and the department of the licensee's closing; and

2. Disposing and storing active and closed case files, both written and electronic, on the children and providers. The disposition and storage schedule shall be consistent with requirements for local governments contained in the Library of Virginia's Record Retention and Disposition Schedule General Schedule No. 15 - County and Municipal Governments Social Services Records (May 2010).

B. The licensee shall develop and implement written admission policies and procedures for child-placing activities in each program provided by the licensee. The policies and procedures shall include:

1. A description of intake and admission processes and requirements;

2. Decision-making procedures for acceptance, matching, placement, and discharge from care; and

3. A statement that children with disabilities will be accepted for admission if the needs of the child can be reasonably accommodated.

C. The licensee shall develop and implement policies and procedures governing the licensee's responsibility to monitor the administration of medications by foster parents to ensure that foster parents:

1. Properly administer medication as prescribed to children placed in their home;

2. Have knowledge of intended and adverse side effects of medication prescribed;

3. Have knowledge about and take necessary actions when placed children experience adverse reactions to medication including notifying the licensee when such occurs; and

4. Have knowledge of methods for proper, safe, and secure storage; retention; and disposal of medications.

D. The licensee shall develop and implement written policies and procedures for:

1. Prohibiting corporal punishment, chemical and mechanical restraints, and seclusion;

2. Ensuring that children are not subjected to physical, mental, or sexual abuse; verbal abuse or remarks that belittle or ridicule the child or his family; physical neglect or denied essential program or treatment services, meals, clothing, bedding, sleep, or personal care products; or any humiliating, degrading, or abusive actions;

3. Investigating, responding to, and reporting allegations of misconduct toward children, including reporting suspicions of child abuse or neglect to the local department of social services or the Child Abuse and Neglect Hotline;

4. Implementing the child's detailed back-up emergency care plan when the child's placement disrupts; and

5. Assigning designated staff to be available on call to foster parents 24 hours a day, 365 days a year.

E. The licensee shall develop and implement written policies and procedures for management of all records, written and electronic, that shall describe confidentiality, accessibility, security, and retention of records pertaining to the files of children, applicants for home provider, and approved home providers.

F. The licensee shall develop and implement written discharge policies and procedures governing children's planned and emergency discharges from the licensee's program and services.

G. The licensee shall develop and implement written policies and procedures governing foster parent's use of physical restraint. The policies and procedures shall include:

1. A description of all less intrusive behavior support and crisis management techniques approved by the licensee for use by foster parents;

2. A description of methods of restraint approved by the licensee;

3. A description of training required to be completed prior to use of each method of physical restraint;

4. A description of the licensee's method for determining that the foster care parent has the ability to apply the licensee's approved methods of physical restraint and crisis intervention;

5. A statement prohibiting the use of mechanical and chemical restraint for the purpose of behavior support; and

6. A statement prohibiting the use of seclusion of a child in a room or area secured by a door that is locked or held shut or secured by individuals physically blocking the door or using other physical or verbal means to block the door so that the child cannot leave the room or area.

H. The licensee shall develop and implement written policy and procedures to address the following:

1. Acceptable methods of behavior support; and

2. Specific unacceptable methods for behavior control and discipline.

I. The licensee shall have and implement licensee-approved written personnel polices including procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position.

22VAC40-131-100. Program evaluation and improvement.

A. The licensee shall develop and implement a written plan to monitor and evaluate the quality and effectiveness of its program and services on a systematic and on-going basis. If evaluation findings suggest that improvements be made to the licensee's programs and services, the licensee shall implement necessary improvements.

B. The evaluation plan shall describe:

1. Methods for collection, summarization, and analysis of information and data;

2. Who has access to the information used for evaluation and how the information will be used; and

3. Quality indicator factors for assessing the effectiveness of the services provided.

22VAC40-131-110. Received date for materials.

All materials and information received by the licensee shall indicate the date received.

Part III
Personnel

22VAC40-131-120. Access to written personnel policies.

The licensee shall make the child-placing agency's written personnel policies readily accessible to each staff member.

22VAC40-131-130. Job descriptions.

A. There shall be a written job description for each position that includes:

1. Job title;

2. Duties and responsibilities of the incumbent;

3. Job title of the immediate supervisor; and

4. Minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment to the position.

22VAC40-131-140. Staff composition and qualifications.

A. A staff member shall be designated to perform each function described in this chapter.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in this chapter shall meet the qualifications of each position held.

C. Executive director.

1. Each licensee shall appoint an executive director. An entity such as a corporation or company shall not serve as the executive director.

2. Each licensee shall delegate to the executive director the responsibilities for the general administration and day-to-day operation of the child-placing agency including implementation of all child-placing agency programs, policies, procedures, and financial management.

3. The executive director shall have a doctorate or master's degree from an accredited college or university plus five years of experience in a social service agency or program including one year in an administrative, supervisory, or consultative capacity.

D. Program director.

1. The program director shall:

a. Supervise directly or through others all child-placing staff and activities; and

b. Assist the executive director in the formulation and implementation of the agency's policies and programs related to child placing and in the specific program area in which he works.

2. The program director shall have either a doctorate or master's degree in social work from a college or university accredited by the Council on Social Work Education plus three years of experience in providing casework services to children and their families and one year as an administrator or supervisor of casework services.

3. If the program director does not have a doctorate or master's degree in social work, he shall have a doctorate or master's degree in a field related to social work such as, but not limited to, sociology, psychology, special education, or counseling; and at least four years casework service experience with children and families, two of which must be in providing casework services to children and families in a child-placing agency and one year of experience must be as an administrator or supervisor of casework services.

E. Child-placing supervisor.

1. A child-placing agency employing six or more caseworkers shall employ a child-placing supervisor.

2. The supervisor shall be responsible for direct supervision of caseworkers.

3. Each supervisor shall supervise no more than a total of eight caseworkers at any one time.

4. The supervisor shall have:

a. A doctorate or master's degree in social work from a college or university accredited by the Council on Social Work Education plus three years of experience in providing casework services to children and families;

b. A doctorate or master's degree in a field related to social work such as, but not limited to, sociology, psychology, special education, or counseling with at least four years of experience in providing casework services to children and families in a child-placing agency; or

c. A baccalaureate degree in any field plus five years of experience in providing casework services to children and families.

F. Case worker.

1. Responsibilities of the caseworker include:

a. Interviewing children and families;

b. Conducting and writing home studies;

c. Service planning by developing individualized treatment and service plans;

d. Counseling children and families in preparation for placement or discharge;

e. Supervising children in resource, foster, and adoptive homes; and in independent living arrangements;

f. Preparing and maintaining case records;

g. Coordinating services to minimize fragmentation of care, reduce barriers, and link children with appropriate services to ensure comprehensive, continuous access to needed medical, social, educational, and other services appropriate to the needs of the child;

h. Assessing periodically to determine the child's needs for psychosocial, nutritional, medical, and educational services;

i. Coordinating referrals by assisting the child in arranging for appropriate services and ensuring continuity of care for a child in treatment foster care. The case worker shall link the child to services and supports specified in the individualized treatment and service plan. The case worker shall directly assist the child to locate or obtain needed services and resources. The case worker shall coordinate services and service planning with other agencies and providers involved with the child by

arranging, as needed, medical, remedial, and dental services;

j. Monitoring and following up by assessing ongoing progress in each case and ensuring services are delivered. The case worker shall continually evaluate and review each child's plan of care. The case worker shall collaborate with the family assessment and planning teams and other involved parties on reviews and coordination of services to children and their families;

k. Educating and counseling by guiding the child and developing a supportive relationship that promotes the service plan; and

l. Collaborating closely with the family assessment and planning teams and other involved parties in preparation of all case plans.

2. The case worker shall have:

a. A doctorate or master's degree in social work from a college or university accredited by the Council on Social Work Education or a field related to social work such as sociology, psychology, special education, or counseling, with a student placement in casework services to children and families or one year of experience in providing casework services to children and families;

b. A baccalaureate degree in social work or a field related to social work including, but not limited to, sociology, psychology, special education, or counseling and one year of experience in providing casework services to children and families; or

c. A baccalaureate degree in any field plus two years experience in providing casework services to children and families.

G. Case worker trainee. When a child-placing agency employs a casework trainee, all of the following conditions shall be met:

1. The trainee shall have a baccalaureate degree in any field;

2. The program director or a child-placing supervisor shall directly supervise the trainee and develop a written training program listing topics to be covered during the period of time the individual is a trainee; and

3. Placement decisions made by the trainee shall be approved by the supervisor.

H. Students or interns receiving professional training.

1. If the licensee's child-placing agency provides professional training to undergraduate or graduate students or interns, it shall have a written plan for their selection, orientation, training, supervision, assignment, and evaluation.

2. An individual with a doctorate degree or a master's degree in social work from a college or university accredited by the Council on Social Work Education shall supervise students or interns who perform child-placing activities and approve all placement decisions made by the student or intern.

3. The licensee's child-placing agency shall not be wholly dependent upon the use of students or interns receiving professional training to ensure the provision of services.

I. Volunteers.

1. The child-placing agency shall, if it makes use of volunteers, have a written plan for selection, orientation, training, supervision, and assignment.

2. Staff who usually supervise or perform the assigned tasks shall supervise volunteers.

3. When the volunteer is used to perform any staff function or responsibility, the volunteer shall meet the qualifications for the function or responsibility performed.

4. The licensee's child-placing agency shall not be wholly dependent upon the use of volunteers to ensure the provision of services.

J. Consultants. All consultants engaged to provide services to the licensee's child-placing agency or to children and their families served by the child-placing agency shall be professionally qualified according to the requirements of the Code of Virginia governing professions.

22VAC40-131-150. Staff development.

A. Any staff person who has responsibility to work with children and their families or to supervise staff persons who work with children and their families shall participate in orientation and training.

B. Required initial orientation:

1. Prior to assuming the responsibilities of his position in the licensee's child-placing agency and within 30 days of the date of employment, each staff person who has responsibility to work with children and their families or to supervise staff persons who work with children and their families shall receive orientation that includes:

a. The licensee's description of programs and services including population served;

b. The applicable position job descriptions for each position assumed by the individual; and

c. All training topics identified by the licensee including:

(1) Policies and procedures regarding expectations for service delivery;

(2) Practices regarding protection of confidential information;

(3) Documentation protocols;

(4) The Standards for Licensed Child-Placing Agencies (22VAC40-131), child-placing related Virginia statutes, and child-placing related policy and guidance documents and broadcasts issued by the Division of Family Services, Department of Social Services;

(5) Virginia statutes regarding reporting requirements for suspected child abuse and neglect;

(6) Prohibition of corporal punishment;

(7) The licensee's policies regarding discipline and behavior management;

(8) Pre-service training core competencies for resource, foster, and adoptive family home providers; and

(9) The licensee's emergency preparedness and response plan.

2. Child-placing agencies licensed to provide treatment foster care shall provide additional training to each professional staff person who has responsibility to work with children and their families or to supervise staff persons who work with children and their families. The training shall be provided prior to that staff member assuming the responsibilities of his position and within 30 days of the date of his employment. The training shall include:

a. The licensee's treatment philosophy and specific treatment methodologies including the provision of case management services and crisis intervention techniques;

b. The current requirements of the Department of Medical Assistance Services related to the provision of treatment foster care case management services, if the licensee accepts Medicaid reimbursements for case management services;

c. Orientation in effectively working with children who have emotional and behavioral problems and who may have been abused and neglected;

d. Procedures and requirements regarding foster care placements;

e. Services to children and their families;

f. Services to foster parents;

g. Assessment and evaluation of foster homes;

h. Training of foster home parents;

i. Grief and loss issues for children in foster care, including the significance of birth families to children placed in foster care;

j. Orientation to life skill preparedness for children in foster care; and

k. Orientation to permanency planning and goal setting for children in foster care.

3. Agencies licensed to provide adoption services shall provide additional training to each professional staff person. The training shall be provided prior to that staff assuming the responsibilities of his positions in the child-placing agency and within 30 days of the date of his employment. The training shall include:

a. Procedures and requirements regarding adoption placement including intercountry adoptions if the child-placing agency is licensed to provide intercountry adoption services;

b. Services to birth and adoptive parents;

c. Assessment and evaluation of adoptive homes;

d. Services to children, including grief and loss issues;

e. Provision of post adoption services to families and adoptees; and

f. Current requirements of the Hague Adoption Convention, if applicable.

4. Child-placing agencies licensed to provide foster care services shall provide additional training to each staff person who has responsibility to work with children and their families or to supervise staff persons who work with children and their families. The training shall be provided prior to that staff person's assuming the responsibilities of his positions in the child-placing agency and within 30 days of the date of his employment. The training shall include:

a. Procedures and requirements regarding foster care placements;

b. Services to children and their families;

c. Services to foster parents;

d. Assessment and evaluation of foster homes;

e. Training of foster home parents;

f. Grief and loss issues for children in foster care, including the significance of birth families to children placed in foster care;

g. Orientation to life skill preparedness for children in foster care; and

h. Orientation to permanency planning and setting goals for children in foster care.

C. Professional staff shall participate in the child-placing agency's pre-service training for adoptive and foster parents. Each professional staff person shall complete this training within one year of the date of his employment with the child-placing agency.

D. Additional on-going education and training.

1. Annually each professional staff person shall complete training applicable to his job duties and responsibilities.

2. Training shall be based on the needs of the population served to ensure that staff persons have competencies to perform their jobs.

E. All orientation and training completed by a staff person shall be documented in a child-placing agency-managed file.

22VAC40-131-160. Personnel records.

A. Separate up-to-date written or electronic personnel records shall be maintained for each staff person, student/intern, and volunteer for whom background checks are required by Virginia and federal law. Content of personnel records for volunteers and students/interns may be limited to documentation of compliance with requirements of background checks.

B. The records of each staff person shall include:

1. A completed employment application form or other written material providing the individual's name, address, and phone number;

2. Educational background; copies of educational degrees and credentials; and relevant work experience, providing dates, places of employment, and details substantiating qualifications required by this chapter;

3. At least two written references, notations of oral references, or record of interviews with references;

4. Copies of professional licensure when licensure is required by law;

5. Annual performance evaluations;

6. Date of employment for each position held with the licensee;

7. Date of separation for each position held with the licensee;

8. Documentation of compliance with requirements of Virginia and federal laws regarding background checks;

9. Documentation of all training required by these standards; and

10. A current job description.

C. Personnel records shall be retained in their entirety for at least two years after separation from employment, contractual service, student/intern, or volunteer service.

Part IV
Program Statement

22VAC40-131-170. Program statement and description.

A. The licensee shall maintain a current written program statement for child-placing activities that shall include a description of:

1. The purpose of each program provided by the licensee including, as applicable, foster care services; short term foster care services; treatment foster care services; independent living arrangements; independent living services; and all categories of adoption services, including domestic, intercountry, and parental placement;

2. The population to be served in each program provided by the licensee including, as applicable, foster care services; short-term foster care services; treatment foster care services; independent living arrangements; independent living services; and all categories of adoption services, including domestic, intercountry, and parental placement;

3. Services provided to:

a. Adult adopted persons, if the licensee is licensed to provide adoption search services;

b. Children and families served by the licensee, and including, as applicable, birth families, foster families, and adoptive families;

c. Children placed in independent living arrangements and, if the licensee provides services to the families of those placed children, a description of the services provided to the families; and

d. Persons 18 years of age to 21 years of age who receive independent living services.

4. Preadoption and post adoption services provided to children, birth families, and adoptive families prior to the final order of adoption, if the child-placing agency is licensed to provide adoption services;

5. Preadmission eligibility requirements for children to be served by each program provided by the licensee;

6. Procedures for conducting the home study and the decision-making process for approval and selection of families to receive children;

7. Procedures for placement of children and discharge of child from care or services;

8. Intercountry services and identification of the licensee's roles and responsibilities regarding the provision of services, if the licensee is licensed to provide intercountry adoption services;

9. Parental placement adoption services and identification of the licensee's roles and responsibilities regarding the

provision of services, if the licensee is licensed to provide parental placement adoption services;

10. Orientation and training the licensee provides to families;

11. Policy related to the fees for activities and services provided by the licensee; and

12. Procedures for accepting emergency and short-term foster care placements. If such services are not provided by the licensee, the program statement shall identify that the licensee does not accept these placements.

B. The licensee shall prohibit acts of discrimination based on race, color, gender, national origin, age, religion, political beliefs, sexual orientation, disability, or family status to:

1. Delay or deny a child's placement; or

2. Deny an individual the opportunity to apply to become a foster or adoptive parent.

C. The licensee shall give a copy of either (i) the full program statement and description or (ii) a summary of the statement and description to agencies and individuals who inquire about the services provided by the licensee.

D. When changes and updates to the program statement and description are made, the licensee shall provide a copy of the updated statement to the department.

Part V
Provider Homes

22VAC40-131-180. Home study requirement.

A. The licensee shall require that all persons applying to be a resource, foster, adoptive, treatment foster care, or short-term foster care family home provider submit to the licensee a complete application containing elements required by this regulation and in accordance with requirements prescribed by the department.

B. Upon receipt of a provider application, the licensee shall review the application for completeness and notify the applicant of the status of the application.

C. Upon the licensee's determination that the provider application is complete, the licensee shall begin the process of gathering and assessing information for use in the final decision related to whether the applicant and home meets all required elements for approval.

D. The licensee shall conduct a minimum of three face-to-face interviews on three separate days with each applicant.

E. At least one of the face-to-face interviews shall be conducted in the home of the applicant and, if there are two applicants, at least one face-to-face interview shall be conducted with both applicants present.

F. At least one face-to-face interview shall be conducted with all individuals who reside in the home of the applicant.

G. The licensee shall obtain and document a minimum of three references on each applicant from persons who have knowledge of the applicant's character, his applicable experience with children, and his experience in caretaking of others. At least one reference shall be from a nonrelative.

H. The licensee shall obtain from the applicant information regarding previous applications submitted to another public or private child-placing agency and whether as a result of the previous applications, he was approved by another public or private child-placing agency as a provider.

I. The licensee shall obtain from the applicant a signed authorization allowing the previous child-placing agency to release information to the licensee about previous applications, his child-caring performance as an approved provider, and current status as a provider. The signed authorization and information received shall be filed and maintained in the applicant's file.

J. The home study conducted by the licensee shall be documented in the file of the applicant and shall include the following components:

1. All department-required information including:

a. Sworn disclosure statement or affirmation, results of background checks in compliance with applicable state and federal laws;

b. Tuberculosis screenings in compliance with requirements of the Virginia Department of Health for the applicant and all other household members who come into contact with the children as described in 22VAC40-131-290 K; and

c. Driving records obtained from the Department of Motor Vehicles for the applicant and all adults who are expected to transport children;

2. A combination of narrative documentation and other data collection formats, including:

a. Dated signatures of:

(1) The individual who completed the home study; and

(2) The licensee's executive director or his designee.

b. Demographic information including:

(1) Age of applicant;

(2) Marital history and status, including verifications of provider couple's marriages and divorces; and

(3) Family composition and history.

c. Financial information including:

(1) Employment history of the applicant;

(2) Assets and resources of applicant; and

(3) Debts and obligations of applicant.

This financial information requirement shall not apply to individuals applying solely to provide short-term foster care.

d. A list of the names and roles of each individual involved in completing the home study.

e. Narrative documentation shall include dates and a summary of content information from interviews, references, observations, and other available information. The collective information shall be used to assess the applicant and document that the applicant:

(1) Is knowledgeable about care necessary for children;

(2) Is physically and mentally capable of providing the necessary care for children;

(3) Has an understanding of the importance of establishing and enforcing rules to encourage desired behavior and discourage undesired behavior;

(4) Understands he is prohibited from using any form of corporal punishment on the child and also prohibited from giving permission to others to use any form of corporal punishment on the child;

(5) Is able to articulate a reasonable process for managing emergencies and ensuring the adequate care, safety, and protection of children;

(6) Expresses attitudes that demonstrate the capacity to love and nurture a child or youth born to someone else;

(7) Expresses appropriate motivation for reasons to foster or adopt;

(8) Shows stability in all household relationships;

(9) Has the financial resources to provide for current and on-going household needs and maintenance of the family; and

(10) Has in-force vehicle liability insurance, if he will transport children.

f. Documentation that the home complies with the standards for the home as required by 22VAC40-131-190.

g. A confidentiality statement signed and dated by the applicant.

K. The results of background checks received by the licensee shall be maintained in the respective applicant's file.

L. The licensee shall not further disseminate results of background investigation information unless permitted to do so in accordance with state and federal laws.

M. Prior to making a decision on the applicant, the licensee shall consider all information received about an applicant.

N. The licensee shall document an addendum to the home study when any significant change or circumstance impacts the conditions of the original approval. Unless such change or circumstance affects the safety or well-being of the children placed in the home, the original approval period for the provider shall remain in effect.

O. A home study conducted for the purpose of parental placement or placement of a child by the licensee shall remain valid for a period of 36 months from the approval date of the study. For adoption cases, before finalization of an adoption in which more than 18 months have passed since the completion date of the study, the licensee may obtain additional state criminal background checks on the applicants and all other adults living in the home of the applicant.

22VAC40-131-190. Home environment.

A. The home shall provide sufficient appropriate space and furnishings for each child receiving care in the home including:

1. Storage space to keep clothing and other personal belongings;

2. Accessible basin and toilet facilities;

3. Bed furniture equipped with clean, safe, and comfortable sleeping furnishings;

4. Sleeping space on the first floor of the home for a child unable to use stairs unassisted, other than a child who can be easily and safely carried; and

5. Space for recreational activities.

B. Fans or other cooling systems shall be used when the temperature of inside areas occupied by children in care exceeds 80° F.

C. The temperature in all inside areas occupied by children in care shall be maintained no lower that 65° F.

D. Rooms and study space used by children in care shall have adequate and sufficient lighting for activities and safety.

E. The provider and children in care shall have access to a working telephone in the home.

F. Multiple children in care who share a bedroom shall have adequate space including closet and storage space. Bedrooms shall have adequate square footage for each child in care to have personal space.

G. Children in care over the age of two years shall not share a bed.

H. Children in care over the age of two shall not share a bedroom with an adult unless the child's needs, disabilities, or other specified conditions warrant the sharing of bedroom

space and the licensee has approved a specific plan to allow the sharing of the bedroom with the adult.

I. No child in care shall share a bed with an adult.

J. A child in care over the age of three years shall not sleep in the same bedroom with children of the opposite gender.

K. Children in care under the age of seven or children in care with significant and documented cognitive or physical disabilities shall not use the top bunk of bunk beds.

L. The bedrooms of children in care shall not be used as passageways and shall have doors for privacy.

M. The home shall be clean, in good repair, and free of hazards to the health and safety of children in care.

N. The grounds around the home shall be safe, properly maintained, free of litter and debris, and present no hazard to the safety of children in care.

O. The provider shall have a written emergency preparedness and response plan developed that addresses:

1. How to shelter in place, when the emergency situation requires for sheltering in place;

2. How to evacuate, if evacuation is necessary;

3. Prompt notification to the licensee of location and contact information when evacuation becomes necessary;

4. Where the provider plans to relocate when the emergency warrants a large scale community evacuation;

5. How the provider plans to maintain the safety and meet the needs of the child at all times during an emergency;

6. Procedures to ensure that the plan is reviewed with each placed child; and

7. Plans to rehearse the plan with each child at least one time every six months.

P. Approved providers and independent living arrangement settings shall arrange for responsible adults to be available to serve in the caretaker's role in case of emergencies. Any substitute caretaker arrangements necessary for a planned or long-term absence of the provider shall require the licensee's prior approval.

Q. All homes shall have at least one operable smoke detector.

R. Possession of any weapons, including firearms, in the home or independent living arrangement shall comply with federal and state laws and local ordinances.

1. Any firearms and other weapons shall be unloaded and stored with the weapon's safety mechanisms activated in a locked closet or cabinet.

2. Ammunition shall be stored in a locked location separate from the weapon.

3. The key or combination to the locked closet and cabinet shall at all times be maintained out of reach of all children in the home.

S. The applicant shall maintain documentation that household pets receive tests, inoculations, and licenses as required by law.

T. The applicant shall ensure that household pets are safe to be around children and that the pets present no health hazard to children in the home.

U. The applicant shall keep cleaning supplies and other toxic substances stored away from food and, as appropriate, out of reach of children and locked.

V. Except for medications that require refrigeration, all medications, prescription and nonprescription, shall be stored separately from food in a locked area out of reach of children. The applicant shall implement safety provisions for the storage of refrigerated medications.

W. The home shall have readily available basic first aid supplies for use in injuries and accidents.

22VAC40-131-200. Initial approval or disapproval of home.

A. Prior to the placement of a child in a home or living arrangement, the licensee shall:

1. Document that the applicants are at least 18 years of age;

2. Complete and document all required components of the home study;

3. Consider all information gathered when assessing the applicant's capabilities to care for children;

4. Determine that the home and provider meet the requirements to be approved;

5. Ensure that approved providers have received necessary training for the types of children they will receive; and

6. Make available to the provider information necessary for the provider to make an informed decision as to whether a particular child is appropriate for them.

B. When the licensee determines that the prospective provider and the home meet the requirements for approval, the licensee shall document the type of approval. Nothing in this chapter shall prohibit the provider from being approved to serve multiple roles as a resource, foster, adoptive, treatment foster, short-term foster, or independent living arrangement parent unless the provider desires not to serve as a resource parent. If the provider chooses, the licensee shall allow the provider to be approved as a foster parent, adoptive parent, or short-term foster parent. Providers approved as treatment foster care parents shall have successfully completed specific and additional treatment foster care training as required by this chapter.

C. The licensee shall recommend approval or disapproval based on careful assessment of the requirements for providers specified in this chapter including information received through the home study process, the applicants' participation in the home study process, and in any orientation and pre-service training.

D. The decision to approve or disapprove the applicant shall be made in consultation with the child-placing supervisor, and the date of the decision shall be recorded in the applicants' record.

E. Within seven business days of the decision of approval or disapproval of an applicant, the license shall notify the applicant in writing of the decision.

F. If home approval is recommended, the licensee shall document:

1. The age and gender of children who can be placed in the home; and

2. The basis for the approval recommendation.

G. Following approval of an applicant, the licensee shall issue a certificate of approval to the provider and maintain a copy of the certificate in the provider's file. The certificate shall address each of the following:

1. Type of family home approval (resource, foster, adoptive, treatment foster care, short-term foster care, independent living arrangement, or a combination of types);

2. Issuance and expiration dates for the approval;

3. Gender, age, and number of children recommended for placement in the home; and

4. The signatures and titles of the individuals approving the home.

H. Following approval of an applicant, the licensee shall provide the following services and requirements:

1. The licensee shall provide orientation and on-going training for each provider.

2. The licensee shall supply the provider with written procedures for handling emergencies during and outside the child-placing agency's regular office hours.

22VAC40-131-210. Provider training and development.

A. The licensee shall ensure that pre-service training is provided for resource, foster, treatment foster, short-term foster, and adoptive family home providers. This training shall address but not be limited to the following core competencies:

1. Factors that contribute to neglect, emotional maltreatment, physical abuse, and sexual abuse, and the effects thereof;

2. Conditions and experiences that may cause developmental delays and affect attachment;

3. Stages of normal human growth and development;

4. Concept of permanence for children and selection of the permanency goal;

5. Reunification as the primary child welfare goal, and the process and experience of reunification;

6. Importance of visits and other contacts in strengthening relationships between the child and his birth family, including his siblings;

7. Legal and social processes and implications of adoption;

8. Support of older youth's transition to independent living;

9. The professional team's role in supporting the transition to permanency and preventing unplanned placement disruptions;

10. Relationship between child welfare laws, the local department's mandates, and how the local department carries out its mandates;

11. Purpose of service planning;

12. Impact of multiple placements on a child's development;

13. Types of and response to loss, and the factors that influence the experience of separation, loss, and placement;

14. Cultural, spiritual, social, and economic similarities and differences between a child's primary family and foster or adoptive family;

15. Preparing a child for family visits and helping him manage his feelings in response to family contacts;

16. Developmentally appropriate, effective, and nonphysical disciplinary techniques;

17. Promoting a child's sense of identity, history, culture, and values;

18. Respecting a child's connection to his birth family, previous foster families or adoptive families;

19. Being nonjudgmental in caring for the child, working with his family, and collaborating with other members of the team;

20. Roles, rights, and responsibilities of foster parents and adoptive parents; and

21. Maintaining a home and community environment that promotes safety and well-being.

B. As a condition of initial approval and renewals of approvals the licensee shall require each home provider to

complete all required training. Training shall be relevant to the needs of children and families.

C. Receipt of training shall be documented in the home provider's file.

D. Each home provider shall receive additional training annually and at other times if determined to be necessary by the licensee.

E. The training shall be relevant to the needs of the children and families and may be structured to include multiple types of training modalities.

F. The licensee shall explain confidentiality requirements to home providers.

G. The licensee shall require home providers to keep confidential all information regarding the child, his family, and the circumstances that resulted in the child coming into care.

22VAC40-131-220.Training and development for providers of short-term foster care.

A. The licensee shall ensure that pre-service training is provided for short-term foster care providers. This training shall address but not be limited to the following core competencies:

1. Factors that contribute to neglect, emotional maltreatment, physical abuse, and sexual abuse, and the effects thereof;

2. Conditions and experiences that may cause developmental delays and affect attachment;

3. Reunification as the primary child welfare goal, and the process and experience of reunification;

4. Importance of visits and other contacts in strengthening relationships between the child and his birth family, including his siblings;

5. The professional team's role in supporting the transition to permanency and preventing unplanned placement disruptions;

6. Impact of multiple placements on a child's development;

7. Cultural, spiritual, social, and economic similarities and differences between a child's primary family and foster or adoptive family;

8. Preparing a child for family visits and helping him manage his feelings in response to family contacts;

9. Developmentally appropriate, effective, and nonphysical disciplinary techniques;

10. Maintaining a home and community environment that promotes safety and well-being;

11. Promoting a child's sense of identity, history, culture, and values;

12. Respecting a child's connection to his birth family, previous foster families or adoptive families; and

13. Being nonjudgmental in caring for the child, working with his family, and collaborating with other members of the team.

B. As a condition of initial approval and continued approvals the licensee shall require each home provider to complete all required training. Training shall be relevant to the needs of children and families.

C. Receipt of training shall be documented in the home provider's file.

D. Each home provider shall receive additional training annually and at other times if determined to be necessary by the licensee.

E. The licensee shall explain confidentiality requirements to home providers.

F. The licensee shall require home providers to keep confidential all information regarding the child, his family, and the circumstances that resulted in the child coming into care.

22VAC40-131-230. Monitoring and re-evaluation of provider homes.

A. When the licensee has placed a child in the approved provider's home, the licensee's representative shall visit the home as often as necessary but at least every 90 days to monitor the performance of the provider. These visits may coincide with the monthly visits to the child.

B. When an approved provider's home does not have any children placed in the home the licensee shall:

1. Monitor the home at least one time every 90 days by:

a. Visiting the approved provider in the home; or

b. Making direct telephone contact with the approved provider; and

2. If more than six months have elapsed since the last home visit date and the licensee is considering placing a child in the home, the licensee shall prior to placement of a child in the home make at least one monitoring home visit to evaluate and verify that the home remains in compliance with the requirements of this chapter.

C. Prior to the end of each 36-month approval period, the licensee shall re-evaluate the provider and assess all evaluation elements required for the initial home approval.

D. The licensee shall conduct the re-evaluation in the home of the approved provider with all providers present for the re-evaluation.

E. The re-evaluation process for approving a home shall include:

1. Interviewing the provider in his home at least once;

2. Reviewing the information the licensee used to make the last approval decision;

3. Completing all required background checks in accordance with applicable federal and state laws and regulations;

4. Obtaining the results of a new tuberculosis screening and documenting the absence of tuberculosis in a communicable form for the applicant and other household members who come in contact with children;

5. Obtaining new signed agreements from the provider covering elements required for maintaining confidentiality of information and prohibition of the use of corporal punishment, including the prohibition of allowing others to use corporal punishment;

6. Considering and reassessing all new information received since the last home approval decision, including assessing in-service training completed by the provider;

7. Deciding the approval status of the provider; and

8. Providing an addendum to the home study to include any other information that has changed since the prior approval and the decision related to whether the provider is re-approved. The addendum shall contain all elements requirements by this chapter, be documented by a combination of narrative and other data collection formats, and contain the dated signatures of the individual completing the addendum and the licensee's director or his designee.

F. The licensee shall document the following for each re-evaluation conducted:

1. For each child placed since the last evaluation, a brief description of the child's adjustment to the family and the home;

2. The results of an evaluation of the providers' performance to include his:

a. Ability to relate to children;

b. Ability to help children reach their goals;

c. Skills in working with particular types of problems;

d. Ability to establish and maintain a consistent and stable environment for each child and including in this evaluation, the identification and resolution of problems or significant changes that occurred in the family since the last evaluation; and

e. Ability to work with the licensee and birth parents in meeting the needs of the child.

3. A description of the relationship between the child and each family member, including the names of the family members and, if any foster child or youth has been removed from the home, a description of the reasons the child was removed; and

4. The licensee's recommendations regarding continued use of the home, further training needs of the home provider and the age, gender, and number of children that the home can successfully handle.

G. Any approval, disapproval, suspension, or revocation of the provider shall be made in consultation with the child-placing supervisor or in a staff meeting, and the date of the decision shall be recorded in the provider's record.

H. For approved homes, the licensee shall document (i) the age and gender of children who can be placed in the home and (ii) the basis for the approval recommendation, and issue an approval certificate containing all elements required by this chapter.

I. If the re-evaluation process or home-monitoring activities result in the licensee's decision to suspend approval of a provider, the licensee shall:

1. Immediately remove the children from the home;

2. Send written notification to the provider of such decision no later than one week following the date the decision was made;

3. Place no children in the home until such time that the provider:

a. Resolves all issues that led to suspension; and

b. Demonstrates compliance with all requirements of this chapter.

4. Document in an addendum to the provider's home study:

a. Circumstances and issues that led to the suspension;

b. Actions taken by the licensee as a result becoming aware of the circumstances and issues;

c. Actions taken by the provider to address each circumstance and issue; and

d. The licensee's response and disposition of whether the home warranted removal from suspension.

5. Reinstate, if warranted, and designate in writing the approval of the provider for the remainder of the original 36-month approval time frame.

J. If the re-evaluation process or home-monitoring activities result in the licensee's decision to revoke approval of a provider, the licensee shall:

1. Immediately remove placed children from the home and not place any children in the home;

2. Send written notification to the provider of such decision no later than one week following the date the decision was made; and

3. Document in the home provider's file:

a. The reasons for revoking the approval of the provider; and

b. Verification that actions required by 22VAC40-131-230 J 1, 2, and 3 were taken by the licensee.

K. The licensee shall maintain documentation in the provider's file of:

1. Each visit and contact made with the provider;

2. Each visit made to the home of the provider;

3. All activities, decisions made, and correspondence sent or received regarding re-evaluation process;

4. Home study addenda or updates;

5. The approval certificate issued to the approved provider; and

6. Documentation pertaining to suspension or revocation actions as required by this chapter.

22VAC40-131-240. Capacity of provider home.

A. The number of children in an approved resource, foster, or short-term foster care home shall not exceed eight. An exception to the eight capacity may be made only when an approved home can accept the placement of a sibling group. The approved home shall have the appropriate space and furnishings for each child in care as required by 22VAC40-131-190.

B. The number of children placed in an approved treatment foster care home shall not exceed two without written justification approved by a child-placing supervisor. The justification shall be written and approved prior to the placement of additional children and it shall (i) contain the name of approving supervisor, his title, the date of approval; and (ii) address the impact that the additional placement may have on the other children currently in the home.

C. The licensee shall consider the following elements when determining the capacity for a provider home:

1. The physical accommodations of the home;

2. The capabilities and skills of the applicant to manage the number of children;

3. The needs and special requirements of the child;

4. Whether the child's best interest requires placement in a certain type of home;

5. Whether any individuals in the home, including the applicant's children, require special attention or services of the applicant that interfere with the applicant's ability to ensure the safety of all children in the home; and

6. Whether the foster care provider is also a day care provider.

Part VI
Children's Services

22VAC40-131-250. Intake, acceptance, and placement.

A. Prior to any placement of a child in foster care, short-term foster care, or treatment foster care the licensee shall secure written authority to make the placement. The written authority for placement shall be maintained in the child's file. The written authority to make placements includes one of the following:

1. A court order, issued by any court of competent jurisdiction, that commits the child to the care of the licensee;

2. A permanent entrustment by the parent or parents or other person having legal custody of the child;

3. A temporary entrustment by the parent or parents or other person having legal custody of the child;

4. A placement agreement from a licensed or authorized child-placing agency having legal custody of the child;

5. A placement agreement signed by the local department of social services having jurisdiction when a noncustodial agreement has been signed between a parent or legal guardian and the local department or another public agency; or

6. A parental agreement whereby for the purpose of placement in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements, the child's parents or guardians have entrusted the child to the local social services agency.

C. Prior to any placement of a child in an independent living arrangement, the licensee shall secure written authority to make the placement. The written authority to place includes one of the following:

1. A court order, issued by any court of competent jurisdiction, that commits the child to the care of the licensee;

2. A permanent entrustment by the parent or parents or other person having legal custody of the child;

3. A temporary entrustment by the parent or parents or other person having legal custody of the child;

4. A placement agreement from an child-placing agency or person having legal custody of the child; or

5. A placement agreement signed by the local department of social services having jurisdiction when a noncustodial

agreement has been signed between a parent or legal guardian and the local department or another public agency.

D. Prior to the provision of independent living services to any person who was in foster care on his 18th birthday and has not yet reached 21 years of age, the licensee shall enter into a written contractual agreement with the persons 18 years of age to 21 years of age and such contractual agreement shall specify the terms and conditions of the person's receipt of independent living services.

E. Prior to placement of a child for adoption, the licensee shall secure written authority to make the placement. The written authority shall be in the form of one of the following:

1. An order issued by a court of competent jurisdiction documenting the termination of parental rights and responsibilities of each parent;

2. A notarized entrustment agreement signed by both parents or other person having legal custody of the child; or

3. An order issued by a court of competent jurisdiction approving the transfer of the child's custody from one agency to another.

F. The licensee shall petition the court for approval of a temporary entrustment agreement.

1. For a temporary entrustment written for less than 90 days, the licensee shall file the petition with the court within a reasonable period of time and not to exceed 89 days after the execution of the agreement if the child is not returned to his home within that 90-day period.

2. For a temporary entrustment written for 90 days or longer or for an unspecified period of time, the licensee shall file the petition with the court within a reasonable period of time and not to exceed 30 days after execution of the agreement if the agreement does not provide for termination of all parental rights with respect to the child.

G. A licensee certified by the Department of Education as a school for children with disabilities shall for the purpose of placement of the child in its special education program enter into a placement agreement, signed by the parent or other person having legal custody of the child. The placement agreement shall meet the requirements of this section. The licensee is not required to take custody of the child placed in its special education program.

H. Prior to accepting a child for placement in a foster care home, treatment foster care home, short-term foster care home, or an independent living arrangement, the licensee shall gather, review, and document the following information in the child's file:

1. The reason the placement is requested, and if the child coming into placement is less than one year old, a brief report on his living situation unless this placement directly follows his discharge from the hospital;

2. A list of services requested by the placing agency, parent, or other individual having legal custody of the child;

3. Current information on the child's:

a. Health:

(1) For a newborn child coming into foster care directly following hospital discharge, the discharge summary shall be accepted as the admission examination; or

(2) For a child under one year old, the admission examination shall consist of a hospital summary and a physician-signed report of interim care no older than 30 days that documents the absence of abnormalities or if abnormalities are present, the report shall contain an explanation of abnormalities observed;

b. Behavior in the home or other previous living situation;

c. Current school grade level, as appropriate;

d. Day care or nursery school, as appropriate;

e. Adjustment to school, day care, or nursery school;

f. Current medication, prescription and nonprescription, including the names, dosages, and instructions for all medication being taken by the child, and reasons for taking each medication;

g. Emotional and psychological needs and problems of the child, if any, including information concerning professional treatment needed or received to meet the needs or problems;

h. Strengths, skills, interests, and talents;

i. Permanency planning goal including the date of planned achievement; and

j. Emergency contact supports including the names, addresses, and telephone numbers for designated emergency contacts, parents, if appropriate, or other person having legal custody of the child, and the agency placing the child with the licensee.

4. For treatment foster care placements, a list of the strengths and needs of the child's birth family;

5. The dates and names of persons involved in making preplacement visits;

6. The dates and names of persons involved in staffing the child's case;

7. The reason the child was accepted for placement; and

8. The date the acceptance decision was made.

I. The licensee shall review and consider all information collected on the child prior to recommending the type of home best suited to the child. The recommendation and rationale shall be documented in the child's file.

J. The licensee shall consider the following when making the decision whether to place a child in a foster home, treatment foster care home, or short-term foster care home:

1. The prospective foster family's specific skills, abilities, and attitudes necessary to (i) effectively work with the child; (ii) ensure implementation of the child's service plan; and (iii) provide effective behavior support techniques, crisis intervention, crisis stabilization, and supportive counseling;

2. The prospective foster family's ability to meet the needs and preferences of the child;

3. The prospective foster family's willingness to access resources required to meet the needs of the child; and

4. The prospective foster family's willingness and ability to work with the child's family.

K. Prior to placement of a child in a family home, the licensee shall assist the prospective foster family with making an informed decision as to whether that particular child is appropriate for them.

L. The licensee shall document in the child's file the reasons a particular home was selected for the child, including the matching factors considered for the selection decision.

M. Except when the placement of the child is an emergency placement, the licensee shall interview the child and his parent or legal guardian prior to the child's placement. If, for valid reasons, the interview was not completed prior to placement, the licensee shall document in the child's file the reasons why the interview was not completed within the required time frame.

N. Except when the placement of the child is an emergency placement, the licensee shall prepare the child for placement and arrange a preplacement visit for the child in the prospective home. If a preplacement visit did not take place prior to the child's placement, the reasons why it did not occur shall be documented in the child's file.

O. A summary of the preplacement interview and results of the preplacement visit shall be documented in the child's file.

P. Within 30 days of the placement of the child in a foster care home, treatment foster care home, short-term foster care home, or an independent living arrangement, or prior to the completion of the adoptive placement agreement, the licensee shall place in the file of the child a written assessment that contains all required elements specified in 22VAC40-131-250 H.

Q. The licensee shall place siblings together in the same foster home whenever possible unless placement together is clearly not in the best interest of each child.

R. When the licensee accepts a child for placement from another child-placing agency that retains custody of the child, the licensee shall, before placing the child:

1. Sign the placement agreement as the recipient of the child; and

2. Ensure that the placement agreement has been signed by the representatives from each child-placing agency who has the authority to commit the child-placing agency to the provisions contained in the agreement.

S. When the licensee accepts a child for placement from a parent or other individual having legal custody of the child, the licensee shall:

1. Obtain an entrustment agreement and follow the requirements as set forth in §§ 63.2-903 and 63.2-1817 of the Code of Virginia;

2. Explain the licensee's foster care program;

3. Collect information for the intake assessment and social history and document the information obtained under each respective heading;

4. Provide the parent or other individual having legal custody of the child or youth with information about the licensee's services;

5. Provide an explanation of the service planning process and the licensee's case work responsibilities;

6. Discuss with the parent or other individual having legal custody of the child:

a. Long-term and short term goals for the child, including estimated dates of accomplishment for each goal;

b. Objectives for each goal;

c. Responsibilities of all parties for accomplishing the goals and objectives for the child;

d. Involvement in service planning for the child;

e. Plans for visitation with the child; and

f. Plans for financial support for the child; and

7. Document in the child's file the reactions of the parents or other persons to each topic discussed with them.

T. The licensee shall cooperate with the placing agency and custodian to ensure that the placing agency and custodian have access to the child at all times.

U. The licensee shall develop a system of support for foster parents and assign designated staff to be on call to foster parents on a 24-hour, seven day a week basis.

22VAC40-131-260. Social history.

A. The licensee shall complete a social history on each child within 45 days of the date of the child's placement except:

1. When the child is placed in a short-term foster care placement, the initial social history shall be completed within 30 days of the date of the child's placement and if subsequent short term placements of the child are made, the licensee shall review and update the initial social history; and

2. For adoption, the licensee shall complete the social history prior to the signing of the adoptive placement agreement.

B. The social history shall be documented in the record of each child and shall include the following:

1. Date the history was completed;

2. Reasons for the placement and the permanency planning goal of the child's placement;

3. For foster care, treatment foster care, and independent living placements, identify the services needed to reach the child's permanency goal;

4. Information on the child's family's structure, relationships, and involvement with the child;

5. Child's previous placement history, including dates and names of previous caretakers, if any;

6. Child's developmental, educational, and medical history. The information, if available, shall include names and addresses of providers of medical treatment and copies of available reports or documentation of the licensee's attempts to obtain the information;

7. Child's history as a victim of abuse and neglect, including history of prenatal neglect or substance abuse by mother, if applicable;

8. Education and occupation of the child's parents, siblings, aunts, uncles, and grandparents;

9. Medical and psychiatric history of the child's parents, siblings, aunts, uncles, and grandparents as it relates to the suitability of the child for placement;

10. Emotional or psychological problems the child has experienced within the last 13 months, including strengths and needs of the child, assessments, and professional treatment received, if applicable;

11. Background information from other sources such as court reports and previous social histories, if any; and

12. For treatment foster care, current service or treatment plan from other treatment providers and discharge summaries from previous placements, if any.

C. For a child less than one year of age placed in foster care prior to adoption, the licensee shall in addition to the elements specified in subsection B of this section include the following in the child's social history:

1. Physical appearance of the child and of both parents if available;

2. Child's parent's nationality, race, and religion;

3. Description of the child's birth parents personality, lifestyle, and childhood;

4. Identification of individuals in the family who know about the birth parents' plan;

5. Identification of the relatives who have been contacted for possible foster care placement;

6. Description of the type of adoptive family with whom the birth parents would like to have their child placed;

7. Expected length of the child's placement in a foster care home; and

8. Description of the recommendation of adoptive home that best meets the needs of the child or an explanation as to why the licensee has not yet made that determination.

D. If information on any item required by this section was not completed or obtained, the reason shall be documented under the appropriate section of the child's social history.

E. For a child less than one year of age placed in foster care prior to adoption, the licensee shall review the child's social history with the selected adoptive parents.

22VAC40-131-270. Interstate placements.

A. The licensee shall comply with the provisions of the Virginia Interstate Compact on the Placement of Children (Chapters 10 (§ 63.2-1000 et seq.) and 11 (§ 63.2-1100 et seq.) of Title 63.2 of the Code of Virginia) for all children who will cross state lines, either out of Virginia to another state or from another state into Virginia, for placement in resource, foster care, adoptive, treatment foster care, and independent living arrangements.

B. Before a Virginia resident child is placed outside Virginia, the licensee shall obtain written prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services. Approval shall be maintained in the child's file.

C. Before a child who is not a Virginia resident is placed in Virginia, the licensee receiving the child shall obtain written prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services. Approval shall be maintained in the child's file.

D. Prior to the licensee supervising the placement of an out-of-state child, the licensee shall obtain from the placing

agency documentation that the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services approved the placement of the child. The documentation shall be maintained the child's file.

E. A licensee who conducts an adoptive home study before any particular child is identified for placement shall:

1. Inform the potential adoptive parents that prior to any out-of-state child being placed in Virginia, the provisions of the Virginia Interstate Compact on the Placement of Children (Chapters 10 (§ 63.2-1000 et seq.) and 11 (§ 63.2-1100 et seq.) of Title 63.2 of the Code of Virginia) shall be followed; and

2. Document in the home study that the potential parents were so informed of the requirements of the Virginia Interstate Compact on the Placement of Children (Chapters 10 (§ 63.2-1000 et seq.) and 11 (§ 63.2-1100 et seq.) of Title 63.2 of the Code of Virginia).

F. The licensee shall maintain in the child's file documentation that copies of all serious incident reports regarding any child placed through interstate compact were sent to the administrator of the Virginia Interstate Compact on the Placement of Children.

G. When the licensee is working with another child-placing agency in placing a child, the licensee shall enter into a written interagency agreement with the other child-placing agency that identifies the period of supervision to be provided to the child and delineates the responsibilities of both agencies until the adoption is finalized or the placement is terminated. A copy of the agreement shall be maintained in the child's file.

H. The licensee that provides supervision for the placement of a child in the custody of an out-of-state agency shall conduct visits in accordance with Virginia law and as specified in the written interagency agreement. All supervision activities shall be documented in the child's file.

I. The licensee shall send a copy of each report of supervision to the office of the administrator of the Virginia Interstate Compact on the Placement of Children and to the agency that sent the child.

J. The licensee shall complete home studies in accordance with home study requirements specified in this regulation.

K. The licensee shall complete updated home study information in accordance with requirements of Virginia Interstate Compact on the Placement of Children (§ 63.2-1000 of the Code of Virginia) when the licensee accepts a case of a child who has moved into Virginia from another state or United States territory.

L. The licensee shall provide a copy of the updated home study information to the office of the administrator of the Virginia Interstate Compact on the Placement of Children office.

22VAC40-131-280. Foster home agreements.

A. The licensee shall have a written foster home agreement with the family for each child in foster care, treatment foster care, and short-term foster care.

B. The foster home agreement shall be signed by all necessary parties on or before the date the child is placed in the home.

C. The foster home agreement shall include the following elements:

1. The code of ethics and mutual responsibilities for all parties to the agreement in language and format approved by the State Board;

2. Financial responsibilities of each party, including payment for foster care and payment for other expenses;

3. Services each party agrees to provide for the child, the child's family, and foster family;

4. Provisions for receiving consent for routine and emergency medical, mental health, and dental care for the child;

5. Arrangements for the provision of medical, mental health, and dental care;

6. Provisions for handling emergencies during and outside the licensee's regular office hours;

7. Arrangements for the provision of clothing for the child;

8. Arrangements for visits by parents;

9. A statement of agreement that corporal punishment is prohibited. The agreement shall also prohibit the family from granting permission for others to use corporal punishment on the child;

10. Permission for out-of-state travel;

11. Permission, if necessary, for the child to participate in any fund-raising activities;

12. A statement of understanding that the licensee maintains responsibility to protect the best interests of the child and that the licensee has the right to remove the child from the family home when removal is determined to be in the best interests of the child; and

13. A statement that the approved provider agrees:

a. To provide meals and snacks appropriate to the child's daily nutritional needs including a special diet if prescribed by a licensed health care provider or in accordance with religions or ethnic requirements or other special needs;

b. That if he provides transportation to the child he shall, on the vehicle used for transportation of the child, maintain:

(1) A valid license to drive in Virginia;

(2) Automobile liability insurance as required by Virginia law;

(3) Valid vehicle registration; and

(4) Valid Virginia-required inspection sticker;

c. To transport the child in accordance with Virginia laws for safe transport, including use of functioning child restraint devices in accordance with requirements of Virginia law;

d. As necessary, to seek and secure services from licensed professionals to meet the medical, dental, and mental health needs of the child; and

e. That he understands he has the right, at all times, to receive support and assistance of the licensee in relation to the child's care in the home.

D. The licensee shall ensure any changes made in the terms of the agreement are amended in the agreement, dated, signed, or initialed by all parties to the agreement.

22VAC40-131-290. Medical, dental, and psychiatric examinations and care.

A. Each child shall have a medical examination conducted by or under the direction of a licensed physician no earlier than 90 days prior to placement, except in the following situations:

1. An emergency-placed child shall have up to 60 days following placement to receive a medical examination if a written medical examination report providing evidence that he received a medical examination no earlier than 90 days prior to placement is not available;

2. The child is a newborn then the hospital discharge summary shall serve as the medical examination; or

3. The child has been in continuous placement of a public or private child-placing agency and the licensee has obtained copies of (i) a medical examination report that is no more than 13 months old and (ii) a report of all medical treatment provided to the child from the date of the medical examination to the date of admission of the child to the licensee's program.

B. The licensee shall follow the examining physician's recommendations regarding the frequency and type of medical examinations or treatment; however, there shall be no more than 13 months between medical examinations received by the child.

C. The medical examination report on each child shall include the following:

1. Date of examination;

2. Signature and title of examiner;

3. Current physical condition;

4. Growth and development;

5. Visual acuity;

6. Auditory acuity;

7. Nutritional status;

8. Evidence of freedom from communicable disease, including tuberculosis;

9. Allergies, including food and medication allergies;

10. Chronic conditions;

11. Handicapping conditions or disabilities; and

12. A copy of the record of immunizations the child has received since his last examination.

D. The licensee shall file a copy of the medical examination report in the child's file.

E. Each child over three years of age shall have a dental examination.

1. The dental examination shall have been completed within 13 months prior to the time of placement or if no previous dental examination has been conducted, the child shall have an exam within 60 days following the date of placement.

2. The written report of examination shall contain the signature of a licensed dentist or his designee.

3. The licensee shall file a copy of the dental examination report in the child's file.

F. The licensee shall arrange for the child to receive any routine and recommended medical, dental, mental health, psychological, and psychiatric follow-up care and treatment. Documentation regarding the arrangements for and child's receipt of care shall be maintained in the child's file.

G. The licensee shall arrange for the child to receive necessary medical, dental, mental health, psychological, and psychiatric care and treatment resulting from injuries, illness, emergencies, or other conditions that occur in between examinations or appointments. Documentation regarding the arrangements for and child's receipt of care shall be maintained in the child's file.

H. If the licensee serves as legal custodian for the child and in that capacity decides not to follow the physician's recommendation for medical, dental, or psychiatric care or treatment, the licensee shall document in the child's file the rationale upon which the decision was made, including a detailed description of how the licensee considered the best interests of the child in making the decision.

I. The licensee shall document in the file of each child a listing of all medication prescribed for the child.

J. The licensee shall document in the file of each child the medication intended effects and adverse reactions the child or youth has experienced. The licensee shall ensure that the intended effects and adverse reactions experienced by the child or youth are reported to the prescribing physician.

K. The provider applicant and all other household members who come into contact with children shall submit to tuberculosis screening or tests and provide documentation on the appropriate report of tuberculosis form published by the Virginia Department of Health (Report of Tuberculosis Screening Clearance Letter for Negative Screen (Form 1), Report of Tuberculosis Screening Report of TST/X-ray Results (Form 2), or TB Risk Assessment (TB 512)) or a form consistent with it.

1. The screening or test results shall include a statement that the individual is free from communicable tuberculosis and including the type of screening administered, date of screening, and results of the screening. If any screening or test shows positive results for communicable tuberculosis or if no screening or test has been completed on the individual, a written explanation shall be obtained from the physician, his designee, or representative of the local health department.

2. The screening or test results shall contain the screening or test date and the results shall be no older than 13 months at the time of home approval by the licensee.

3. If an individual comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms of three weeks or more duration, he shall obtain tuberculosis screening and follow the recommendations of the physician, his designee, or representative of the local health department. The licensee shall require the individual to submit documentation regarding communicable status.

L. The provider applicant and each resident of the household who will be in a caretaking role for children placed in the home shall submit the results of a medical examination administered and signed by a licensed physician, his designee, or an official of a local health department.

1. The examination results shall include written examiner comments that address the applicant's or caretaker's mental and physical condition in relation to his ability to take care of a child. If concerns are noted, additional reports from specialists shall be obtained.

2. The examination results shall contain a date of examination and be no older than 13 months at the time of home approval by the licensee.

M. The medical examination shall be updated if the licensee or department has concerns about the physical or mental health of any member of the placement family. If the examination reveals that the child's safety or health is in jeopardy, the licensee shall plan for the immediate removal of any children or youth placed in the home.

22VAC40-131-300. School enrollment.

A. For each school-aged child in its custody, the licensee shall be responsible for ensuring that the child is enrolled in school. Within 72 hours of the date of the child's foster care placement, the licensee shall notify the relevant school division's principal and superintendent, or designee, of the child's placement and status of the parental rights of the child's.

B. The child's file maintained by the licensee shall contain documentation of the licensee's contact with school authorities.

22VAC40-131-310. Clothing and spending money for children.

A. The licensee shall ensure that each child in care has his own supply of season-suitable clothing in good condition for indoor and outdoor wear.

B. The licensee shall ensure that each school-age child has a spending money allowance.

22VAC40-131-320. Reports and policies to protect children.

A. The licensee shall keep records and make reports as required by the department.

B. The licensee shall take the following actions in cases of suspected child abuse and neglect:

1. Immediately notify:

a. The child protective services unit of the appropriate local department of social services or the department's 24-hour child abuse and neglect hotline;

b. The custodial agency worker or supervisor; and

c. The department's licensing representative;

2. Cooperate with the local department during its investigation of the complaint;

3. Review each complaint to determine if the licensee's policies and procedures were followed by the licensee's staff and approved provider;

4. Within 90 days of the licensee's receipt of the complaint, make a report to the department's licensing representative addressing the following:

a. Internal policy review findings and actions taken as a result of findings; and

b. The child protective services disposition, if child protective services accepted the case for investigation,

and a report of actions taken as a result of child protective services investigation findings; and

5. Maintain an accessible copy of the internal policy review report.

C. The licensee shall submit a written report of circumstances pertaining to the death of a child to the department's licensing representative within seven days of the child's death.

D. The licensee shall make the following notifications pertaining to the death of a child in care:

1. Immediately notify the child's parents or legal guardian of the incident and document such notification in the file of the child; and

2. Notify the department's office of licensing of the child's death immediately but no later than the end of the next business day following the child's death.

E. The licensee shall report any serious incident, accident, or injury to the child to the placing agency, parent, or legal guardian, and to the department's licensing representative within 24 hours following the incident, accident, or injury.

F. For each serious incident, accident, or injury to the child, the licensee shall place a written report in the child's file to document:

1. The date and time the incident, accident, or injury occurred;

2. A brief description of the incident, accident, or injury;

3. Action taken as a result of the incident, accident, or injury;

4. The name of the licensee's staff person who completed the written report;

5. The name of the licensee's staff person who notified (i) the placing agency and (ii) parent or legal guardian of the incident, accident, or injury;

6. The time each notification was made; and

7. The name of the person the staff person contacted and made the notification to.

22VAC40-131-330. Visitation and continuing contact with children.

A. In accordance with instructions from the court and placing agency, the licensee shall arrange for and encourage contact and visitation between the foster child, his family, and others specified in the child's individualized service plan and, as applicable, the child's treatment plan.

B. The licensee shall develop and implement a plan to address visitation or communication between siblings when siblings entrusted to the care of the licensee are placed in separate foster homes. The plan shall:

1. Address the wishes of the child;

2. Specify the frequency of visits or communication;

3. Identify the party responsible for encouraging visits or communication; and

4. Specify any other requirement or restriction the licensee will impose for visits or communication, including restrictions necessary to ensure that the child's best interests are represented.

C. For individuals who are 18 years of age and older and still receiving foster care services, the licensee shall make monthly contact with the individual and make at least one face-to-face contact every 90 days.

D. The licensee shall be responsible for ensuring that required contacts have been made with children whom the licensee has placed outside of the Commonwealth of Virginia. Any documentation provided regarding monitoring visits made by an out-of-state child placing agency shall be maintained in the child's file.

E. The licensee shall have at least one face-to-face contact with the foster child every 30 days.

F. More than one half of the contacts the licensee makes with a child in any calendar year shall be conducted in the child's placement setting.

G. The licensee shall contact the child placed in treatment foster care as follows:

1. A face-to-face contact with the child no less than twice each month. There shall be at least seven days between face-to-face contacts unless contraindicated by the child's service or treatment plan.

2. The frequency for determining additional contacts with the child shall be based on his treatment and service plan and occur as often as necessary to ensure the child is receiving safe and effective services;

3. At least one of the face-to-face contacts made during a calendar month shall take place in the foster home to assess the relationship between the child and the foster parents and the contact shall include the child and at least one treatment foster parent;

4. The contacts shall assess the child's progress, provide training and guidance to the foster parents, monitor service delivery, and allow the child to communicate concerns; and

5. Children who are capable of participating in an interview shall be interviewed privately at least one time each month.

H. Unless specifically prohibited by a court of competent jurisdiction or the agency holding legal custody of the child, the licensee shall:

1. Allow the child to have regular contact with his family as specified in the child's treatment and service plan;

2. Work to support and enhance child-family relationships; and

3. Work directly with families toward reunification as specified in the child's treatment and service plan.

I. The licensee shall ensure that each child is provided treatment, services, and care in a nurturing home setting with attention given to health, safety, and welfare of the child.

J. The licensee shall document a written description of each contact made with the child and the documentation shall be signed by the staff person who made the contact, dated, and maintained in the child's file.

K. If the licensee determines a permanent move from one foster home to another is warranted, the licensee shall:

1. Consult with the placing agency and, if applicable, the child's legal guardian prior to the child's move, unless the move is due to an emergency situation or issues pertaining to child abuse or neglect; and

2. Ensure that the move is in the best interests of the child.

L. If the licensee is unable to consult with the placing agency prior to the child's move from one foster home to another, the licensee shall document all attempts made to make the required contact. The licensee shall ensure that contact is made as soon as possible and no later than 72 hours following the move when the move took place on a weekend or holiday.

22VAC40-131-340. Service plans.

A. The licensee shall develop and implement an individualized service plan for every child accepted for care and service.

B. For children in treatment foster care, the licensee shall:

1. Within 14 days of a child's placement, develop and implement individualized, measurable objectives and strategies describing services to be provided to the child, his placement family, and his birth family during the first 45 days of placement; and

2. Within 45 days of a child's placement, develop and implement an individualized service plan and an individualized comprehensive treatment plan.

C. In the case of a short-term foster care placement of a child, the licensee shall develop and implement the service plan within 72 hours of the child's placement and the short-term placement plan shall include a description of the child's needs and services to be provided to the child during the duration of his short term placement.

D. When the licensee has received legal custody of the child, the licensee shall within 60 days of receipt of such custody file a copy of the service plan with the appropriate court unless:

1. The court grants an extension of time not to exceed 60 days;

2. The court designates another agency to file the service plan; or

3. The child is returned to his prior family or placed in an adoptive home.

E. The licensee shall include the following elements in the child's individualized service plan:

1. A comprehensive assessment of the child's emotional, social, behavioral, educational, nutritional, developmental, medical, psychiatric, and dental needs;

2. The nature of the placement to be provided to the child;

3. Goals and objectives to meet the child's needs that include:

a. For children or youth 14 years of age and older, specific independent living services to be provided to assist the child in meeting his goals; and

b. For children in treatment foster care, goals and objectives to address specific problem behaviors, skills to be addressed, and criteria for achievement;

4. Anticipated target dates, including month, day, and year, for accomplishment of each identified goal and objective, and for treatment foster care the target date for the child's discharge from the program;

5. Strategies, services, and activities designed to meet the goals and objectives, including:

a. A description of how the licensee plans to work with related community resources, including the child's primary care physician, to provide continuity of care to the child;

b. The services and other supports to be offered to the child's parents and other prior custodians;

c. A description of the participation and conduct sought from the parent and prior custodians;

d. Visitation between the child, his parents, prior custodians, and siblings;

e. For children 14 years of age and older, specific independent living services to be provided to assist the child in meeting his goals; and

f. For treatment foster care, methods of intervention and therapies designed to meet the child's goals and objectives;

6. Discharge goals, objectives, and services to be provided for their achievement and where appropriate, plans for reunification of the child with his family; and

7. As appropriate for youth 16 years of age and older, a description of programs and services to assist the youth in his transition from foster care to independent living.

F. The child's record shall contain documentation showing the involvement of the following parties, unless clearly inappropriate, in developing the child's individualized service plan, child's treatment plan as appropriate, and quarterly progress reports; and in updating the service plan and treatment plan as necessary:

1. The birth parents of the child unless parental rights have been terminated; or unless the birth parents who maintain parental rights of the child have not been located;

2. Custodial agency;

3. Foster parents or treatment foster parents where appropriate;

4. The child, if the involvement is consistent with the best interests of the child; and

5. Licensee staff.

G. The licensee shall document in the file of the child the reasons why each party was not involved if any of the parties do not participate in the development of the child's individualized service plan, treatment plan as appropriate, or quarterly progress reviews and updating the service plan and treatment plan.

H. For service plans, court reviews, dispositional hearings, and permanency planning, the licensee who has custody shall follow the requirements set forth in §§ 63.2-906 B, 16.1-281, 16.1-282, and 16.1-282.1 of the Code of Virginia, the Board of Social Services-approved policies and promulgated regulations, and guidance documents issued by the department.

I. Each service plan shall contain the date the plan was written; the signature of the individual who developed the plan; and, for treatment foster care treatment plans, the identity of all treatment team members who participated in the development of the plan.

J. The licensee shall provide training, support, and guidance to families in implementing the service plan for the child.

K. The licensee shall provide a copy of the child's service plan and any updates, treatment plan and updates as appropriate, and quarterly progress reports to the custodial placing agency and, as applicable, to the birth parents, foster parents, and treatment foster parents as long as confidential identifying information about the parents is not disclosed.

L. Obtain from the custodial child-placing agency a copy of the child's service plan sent to the court. The service plan shall be placed in the child's file. In the event the licensee is not able to obtain the plan, the licensee shall document in the child's file the efforts made to obtain the plan.

M. The service plans developed by the licensee shall be compatible with the goals in the plan sent to the court.

22VAC40-131-350. Quarterly progress summaries.

A. The licensee shall review the progress of each child in care. The first review of progress and report shall occur no later than 90 days from the date of the child's placement and subsequent progress reviews shall be conducted every 90 days thereafter.

B. The licensee shall document the progress review in a written summary report that addresses the following elements:

1. Progress the child has made toward reaching each goal and objective on his service plan and documenting progress the child has made in alleviating his specific problem behaviors, if any;

2. Description of goals and objectives the child has met during the evaluation quarter, goals and objectives that continue to be worked on in the next quarter, and new goals and objectives to be added for next quarter;

3. Description of criteria for achievement and target dates for each goal and objective;

4. Description of any changes that need to be made in the service and treatment plans, including changes in methods of intervention and strategies designed to help the child meet his goals;

5. Decision as to whether each projected date of accomplishment continues to be realistic or needs to change;

6. Description of services, therapies, and activities provided to and secured for the child during the quarter, including services provided towards the discharge goals;

7. Description of any new needs of the child; services, activities, or therapies identified to meet the child's needs and address behaviors; addition of new goals and objectives; and target dates for accomplishment;

8. Summary of contacts made between the child and his family, where appropriate;

9. Participation of the birth and foster parents in the services offered to them and the child;

10. The child's assessment of his progress and description of services needed, where appropriate;

11. List of medications used by the child;

12. List of the child's medical needs during this review period, any medical treatment the child received during

this period, any recommendations for further medical treatment, and scheduled appointments;

13. Recommendations for any modifications to the current service plan, including changes in methods of intervention and strategies;

14. Dates of progress covered during this review;

15. A review of the discharge plan, projected discharge date, and, as necessary, updating the information; and

16. Date the progress summary report was written; and the signature and title of the individual who wrote the report.

C. The progress summary reports shall be in the child's file.

D. The licensee shall update service plans as necessary to include modifications made, identification of new needs, and services to meet the new needs.

E. As required in 22VAC40-131-340 F, the licensee shall document the participation of required parties in each review of progress.

F. On the fourth quarter summary report, the licensee shall in addition to the requirements specified in subsection B of this section, evaluate and update the comprehensive treatment and service plan for the upcoming year.

22VAC40-131-360. Discharge from care.

A. Prior to the child's discharge from care, the licensee shall formulate and document recommendations for aftercare services for the child and share those recommendations with the placing agency and parents, where appropriate. If recommendations were not shared with the child's parents, the licensee shall document the reasons in the child's file.

B. Prior to the planned discharge date, each child's file shall contain documentation that the child's discharge was planned and discussed with the placing agency, the child, the child's parents or guardian, and the members of the child's treatment team, if applicable.

C. Children in the legal custody of the local department of social services or private child-placing agency shall not be discharged by the licensee until the licensee has consulted with and notified the legal custodians of the plans for discharge. The licensee shall document in the child's file the names of the persons consulted and to whom notifications were provided, each date of occurrence, and a summary of each discussion.

D. Children shall be discharged only to the agency, parent, or guardian holding legal custody of the child. Youth 18 years of age and older shall be discharged to their own responsibility unless a court of competent jurisdiction has appointed a legal guardian to represent the youth.

E. No later than 30 days after the date of discharge, the licensee shall develop and place a comprehensive discharge summary in the child's file. The summary shall address:

1. Date of discharge;

2. Reason or reasons for discharge;

3. Name of the individual with whom the child was placed or to whom he was discharged;

4. Description of services provided to the child;

5. Summary of the child's progress toward meeting his goals and objectives, and as applicable for youth placed in independent living arrangements, the progress toward achieving life skills goals; and

6. Written recommendations for aftercare services including the nature, recommended frequency, and duration of services to be provided to the child and the child's family.

F. Upon the child's discharge from care, the licensee who holds custody of the child shall ensure that the parents or child-placing agency receiving the child for placement are provided with a copy of the child's birth certificate, medical records, and school records.

22VAC40-131-370. Case record requirements.

A. The licensee shall maintain a separate organized case file for each child, the child's birth parents, and each approved home provider and in addition for adoption cases, a separate organized file for the adoptive family. The case file may be electronic.

B. Each use of electronic records, files, or signatures shall comply with the provisions of the Uniform Electronic Transactions Act, §§ 59.1-479 through 59.1-497 of the Code of Virginia.

C. In addition to the requirements in the Uniform Electronic Transaction Act, the use of electronic signatures shall be deemed to constitute a signature and have the same effect as a written signature on a document as long as the licensee:

1. Develops, implements, and maintains specific policies and procedures for the use of electronic signatures;

2. Ensures that each electronic signature identifies the individual signing the document by name and title;

3. Assures that the documentation cannot be altered after signature has been affixed;

4. Assures that access to the code or key sequence is limited;

5. Assures that all users have signed statements that they alone have access to and use the key or computer password for their signature and will not share their key or password with others; and

6. Provides for nonrepudiation that is strong and substantial to make it difficult for either party to claim that the electronic representation is not valid.

D. All entries in each case file shall be legibly written in ink, contain the signature of the individual performing the service, the date the entry was made and, if the licensee operates more than one office in Virginia, the entry shall identify the office that provided the service. Unless otherwise specified in state or federal law, multiple dated entries made on the same page by the same author may be authenticated by the author's initials behind each entry as long as the author signs his name at the bottom of the page of entries.

E. All correspondence and information received by or produced by the licensee shall be treated as confidential information and shall be maintained as part of the case file.

F. Each case file shall be kept up to date and in a uniform organized manner.

G. All services and treatments provided to the child or his family shall be documented chronologically in the respective file.

H. When not in use, active and closed files shall be maintained in:

1. A location that allows the department's licensing representative complete access to the files within a reasonable and short period of time following the representative's request to review files;

2. An area accessible to staff;

3. An area protected from unauthorized access, fire, flood, and uncontrolled climate control; or

4. A locked, metal file cabinet or other metal compartment if the files are stored on site at the licensee's licensed location.

I. Whether stored on site or off site, the licensee shall demonstrate that the file storage system has the protections in place required by subdivisions H 3 and 4 of this section for unauthorized access, fire, flood, and climate control.

J. The case files shall be retained as follows:

1. Upon entry of a final order of adoption or other final disposition of a matter involving the placement of a child for adoption, the licensee shall forward all reports and collateral information in connection with the case to the commissioner;

2. The licensee who holds custody of the child shall retain a copy of the child's subsidy record as long as the child receives a subsidy;

3. If a minor child has been reunited with his birth family, case files shall be retained until one year after his 21st birthday;

4. When the foster care case is closed for services, the case file, whether written or electronic, shall be maintained in accordance with the Library of Virginia's Record Retention and Disposition Schedule General Schedule No. 15 - County and Municipal Governments Social Services Records (May 2010); and

5. When the licensee ceases operations, it shall immediately submit written information to the department about the location for retention of all files.

K. A person 18 years of age and older who was not adopted and was a child for whom all parental rights and responsibilities were terminated shall not have access to any information from the licensee with respect to the identity of the birth family unless all requirements established in § 63.2-105 B of the Code of Virginia have been met.

L. The licensee shall follow all provisions of §§ 63.2-1246 and 63.2-1247 of the Code of Virginia in regard to disclosure of information pertaining to finalized adoptions.

M. The licensee shall maintain documentation in the file of the home provider for all initial approvals and subsequent approvals. Each file shall include:

1. Application in a format required by the department;

2. Documentation of the approval process;

3. Completed home study and supporting documentation, including approval decision;

4. Required reference letters received by the licensee;

5. Driving record checks;

6. Dates of receipt of background checks and driving record checks;

7. Summary of results of background checks;

8. Copy of the approval certificate issued to the provider;

9. Documentation of completed orientation and training received by the approved provider;

10. Required medical information, including results of tuberculosis screening;

11. Results of observations and findings from monitoring visits to the home;

12. A face sheet listing the names and dates of birth of all members of the household and the relationship of each member to the provider;

13. A narrative account of the preparation of the family for each child placed in the home;

14. A list of children's names, birth dates, dates of placement in the home and, if applicable, removal dates and reasons for removal;

15. Copies of all signed agreements;

16. When applicable, the date and reason for home closure;

17. Copy of the signed prohibition on corporal punishment;

18. Written updates and addenda to the home study and re-evaluations of the home provider and home; and

19. Any other correspondence or information pertaining to the home including a narrative of any concerns the licensee has about the status of the home; record of all complaints involving the foster parents; the licensee's investigation report and findings; and, if appropriate, the findings of child protective services and law enforcement.

N. The licensee shall maintain documentation in each child's file. Each file shall include:

1. A face sheet completed within five working days of the date of the child's placement. The face sheet shall address the child's name, date of birth, place of birth, gender, race, social security number, and Medicaid number, if known; and for adoption cases, the face sheet shall also contain the child's height, weight, hair color, eye color, and identifying marks;

2. Names, addresses, telephone numbers, and marital status of the child's birth parents;

3. Names and addresses of the child's siblings, if available;

4. Names, addresses, and telephone numbers of the person or agency holding legal custody of the child;

5. Names, addresses, and telephone numbers of persons to be contacted in an emergency;

6. Services provided to the child;

7. A copy of the entrustment agreement or the placement agreement between the placing agency and the licensee;

8. Other information pertaining to a child in foster care, treatment foster care, short-term foster care, and independent living arrangements as required by this chapter;

9. For adoption cases, the child's file shall also contain:

a. The legal documents required for adoption if the licensee holds custody of the child;

b. A record in the narrative dictation of the child's and family's preparation for the placement; and

c. Other information required by this chapter; and

10. An original birth certificate for the child whenever possible and when the licensee holds custody of the child.

O. If services are provided to the child's birth family, the licensee shall maintain a file on each child's birth parents. The file may be separate from the child's file or combined and maintained in the child's file. The file shall include:

1. An up-to-date face sheet documenting:

a. Names, addresses, telephone numbers, and marital status of each parent;

b. Names of known members of the birth family;

c. Current whereabouts, addresses, and telephone numbers, when available, of each known member of the birth family; and

d. A cross reference to the file of the child unless the birth family's information is maintained in the child's file.

2. A chronological narrative or summary of contacts the licensee has made with the family. This information shall include visits of the parents with the child and the child's visits, or attempts to visit, with the parents;

3. A summary of services provided to the family; and

4. Other information relating to the birth parents as required by this chapter.

P. The licensee shall maintain a file on each adoptive family. The file shall include:

1. The completed application;

2. A copy of any written information given to the adoptive parents concerning the child, including the agreed upon plan of discipline;

3. Summaries of supervisory visits and closing summary;

4. The home study and related documents;

5. Documentation of orientation and training completed;

6. Narrative account of the child-placing agency's preparation of the family for the placement of the child;

7. Fees charged and agreement between the licensee and the applicant;

8. Documentation of any complaints or investigations conducted by child protective services; and

9. Other information relating to adoptive parents as required by this chapter.

Q. Narrative case notes shall be current within 30 days, documented in the file of the child or youth in chronological order, signed and dated by the individual making the entry, and address elements required by this chapter including:

1. Treatment and services provided;

2. All contacts related to the child;

3. Visitation between the child and his family;

4. Other significant events, if any; and

5. Other documentation required by this chapter.

R. The licensee shall maintain documentation in provider and child files as required by this chapter and including:

1. Completing documentation within specified time frames; and

2. Placing documentation in the appropriate file within 30 days unless otherwise specified by this chapter.

22VAC40-131-380. Behavior support and crisis intervention.

A. Licensees shall train and encourage foster parents to use positive behavioral support techniques that emphasize principals and methods to help a child achieve desired behavior and correct inappropriate behavior in a constructive and safe manner.

B. Licensees that prohibit the use of physical restraint shall develop a written policy prohibiting the use. The licensee shall document that foster care parents have been informed of the prohibition.

C. Licensees that permit the use of physical restraint shall require that:

1. Other methods of crisis intervention and behavior support are used prior to the use of physical restraint;

2. Physical restraint is limited to that which is minimally necessary to protect the child or others from injury;

3. The use of physical restraint is used as a part of a planned therapeutic intervention defined in the child's service or treatment plan or both;

4. Only designated professional staff and foster parents trained in licensee-approved less intrusive interventions and physical restraint techniques implement the interventions and techniques; and

5. Foster care parents complete and submit a report to the licensee documenting each use of physical restraint implemented with a child. Each report shall be made within a timeframe established by the licensee, documented on a format required by the licensee, and address the following elements:

a. The reason for the restraint;

b. A description of all other behavior support techniques attempted prior to the use of psychical restraint;

c. A description of the physical hold used during the restraint;

d. The duration of the physical restraint;

e. The outcome or child's response to the physical restraint; and

f. Any known injuries occurring as a result of the restraint including any injuries reported by the child.

Part VII
Additional Requirements for Specific Programs

Article I
Permanent Foster Care

22VAC40-131-390. Applicability.

In addition to applicability requirements specified by 22VAC40-131-20, programs licensed to provide permanent foster care services shall also comply with the requirements of this article.

22VAC40-131-400. Childen placed in permanent foster care.

A. For a child placed in a permanent foster care placement, the licensee shall comply with the provisions of § 63.2-908 of the Code of Virginia.

B. The licensee shall have the authority to place a child in a permanent foster care placement under the following conditions:

1. Pursuant to a court order;

2. Legal custody of the child is retained by the licensee;

3. The placement is appropriate to meet the needs of the child; and

4. A written permanent foster care agreement signed by the licensee and the foster care parent documents the understanding and expectation the child will remain in the placement:

a. Until he reaches 18 years of age unless the court modifies the order or the child is removed from the foster home pursuant to §§ 16.1-251 or 63.2-1517 of the Code of Virginia; or

b. If he is between the ages of 18 and 21; participates in an educational, treatment or training program approved pursuant to regulations of the State Board; and his permanent foster care placement is a requisite to funds being provided for his care.

C. The child placed in a permanent foster care placement shall have available to him and receive, as needed, the same services as a child who is not placed in permanent foster care would receive.

D. The licensee shall follow the standards of this chapter for approving, monitoring, and re-evaluating foster care homes.

Article 2
Short-Term Foster Care

22VAC40-131-410. Applicability.

In addition to applicability requirements specified by 22VAC40-131-20, programs licensed to provide short-term foster care services shall also comply with the requirements of this article.

22VAC40-131-420. Children placed in short-term foster care.

A. The licensee shall allow foster parents access to alternate planned and crisis foster care for their foster children.

B. Foster children in need of alternate planned or crisis foster care services shall only be placed in a home that has:

1. Been approved by a Virginia child-placing agency as a provider for the receiving of placed children; and

2. Received training as required by this chapter.

C. The licensee shall inform the provider of the child's treatment and service plan at the time of placement of the child.

D. The licensee shall oversee and provide support and supervision as necessary to the provider in the home provider's implementation of the child's treatment and service plan.

Article 3
Independent Living Arrangements

22VAC40-131-430. Applicability.

In addition to applicability requirements specified by 22VAC40-131-20, programs licensed to provide independent living arrangements shall also comply with the requirements of this article.

22VAC40-131-440. Youth placed in independent living arrangements.

A. The licensee shall meet all requirements and follow procedures as set forth in this chapter and in the Code of Virginia related to the placement of children, including all applicable interstate compacts.

B. The licensee shall develop and implement written policies and procedures that address the independent living arrangement program to include a description of:

1. Criteria for evaluating potential independent living arrangement settings and on-going evaluation of approved settings;

2. Protocols for approving an independent living arrangement setting and identifying the types of settings the licensee will approve;

3. Criteria for admission;

4. Procedures for intake and admission;

5. Criteria for successful discharge from the program including procedures to ensure the youth will be discharged to his legal guardian if he is under 18 years of age at the time of discharge;

6. Conditions under which a youth may be discharged before completing the program, including criteria and protocols for implementing emergency discharge of the youth from the independent living arrangement program;

7. Criteria and protocols to terminate approval as necessary in an independent living arrangement setting;

8. The licensee's detailed plan for determining and maintaining the supervision and visitation plan for youths placed in independent living arrangement settings;

9. Types of services the licensee will provide and secure to meet the needs of the youth during his placement;

10. The licensee's role in:

a. Ensuring that each youth is enrolled in educational, vocational education and training, or career and technical education services appropriate to meet his needs.

b. Monitoring each youth's educational progress as often as necessary;

c. Assisting the youth in obtaining routine and emergency medical and dental care;

d. Evaluating the youth's need for financial assistance, initially during intake then one time monthly and as needed by the youth;

e Providing the resources to meet the youth's basic needs for shelter, food, and clothing;

f. Providing assistance to the youth in locating, securing, and maintaining employment;

g. Providing life skill training to meet the needs of the youth; and

h. Providing or securing a crisis response system accessible to the youth 24 hours a day and providing training to the youth on accessing and using of the system; and

11. Orientation and training provided for each youth admitted to the independent living arrangement program. The procedures shall define the licensee's program to teach the youth to:

a. Identify potential hazards in his living, school, work, and play communities; and

b. Develop and implement an emergency preparedness and response plan that promotes safety in his environments.

C. Prior to accepting a youth for an independent living arrangement and prior to making an arrangement for the youth, the licensee shall meet face to face with the youth at least one time and as often as necessary to evaluate the youth's readiness for such an arrangement. Elements to be considered in the evaluation shall include:

1. Age of the youth;

2. Youth's readiness for placement in an independent living arrangement setting without daily substitute parental supervision;

3. Youth's demonstration of maturity and emotional stability in his current placement or living environment to include that he:

a. Consistently maintains behavioral stability conforming to acceptable societal norms and he does not demonstrate behaviors dangerous to himself or other persons;

b. Is not involved in high risk behaviors such as delinquent or criminal activities or substance use and abuse;

c. Has participated in designing service plan goals and objectives; and

d. Has participated in meeting service plan goals and objectives including those for transition and self-sufficiency;

4. Results of the life skills assessment completed within the last 90 days and whether those results indicate the youth would benefit from placement in an independent living arrangement setting;

5. The youth's current enrollment or immediate plans to enroll in an educational or career or technical educational program; and

6. The youth's current employment situation.

D. At the time of admission, the licensee shall provide to each youth and, as applicable, his guardian, an orientation to the independent living arrangement program. The orientation shall address the following:

1. Goals and objectives of the independent living arrangement;

2. Information about the programs and services provided by the licensee or through the independent living arrangement program;

3. Responsibilities and expectations of all parties designated in the agreement between the youth and the child-placing agency;

4. Emergency preparedness as required by subdivision B 11 a and b of this section;

5. Transition planning;

6. Elements for successful discharge;

7. Reasons early discharge may occur; and

8. Tour of the independent living arrangement setting selected for the youth if the environment is selected at the time of admission. If selected after admission, a tour shall be provided prior to placement of the youth.

E. At the time of admission to the independent living arrangement, the licensee shall discuss the elements of the written agreement for participation in the arrangement with the youth, his guardian, and as appropriate, his family. The written agreement shall contain the following:

1. Purpose of his independent living arrangement, with timeframe for completing the program;

2. A list and description of the licensee's activities to support achievement of the identified purpose of the independent living arrangement;

3. A description of the frequency of supervision provided by the licensee, including the conditions under which responsibility for supervision will be retained by the licensee and the youth's responsibility to accept the level of supervision provided;

4. A list and description of the youth's activities to attain achievement of the identified purpose of the independent living arrangement;

5. Responsibility for financial payments, including method of payment, frequency of payment, and amount of payment;

6. Information pertaining to the physical setting arrangements and requirements that all arrangements must be approved by the licensee unless those arrangements are exempt from licensee approval;

7. Information pertaining to the youth's responsibility to inform the licensee within a specified time frame, but no later than 72 hours, of any major changes in his situation and serious injuries, illness, or need for surgery;

8. A plan to seek emergency assistance from medical professionals and emergency responders; and

9. Conditions under which the youth may be discharged from the program prior to completion of the program.

F. The written participation agreement shall be signed by a representative of the licensee, the youth, and, as appropriate, the legal guardian. The signed agreement shall be maintained in the youth's file and a copy of the agreement provided to the youth, and, as appropriate, to his legal guardian.

G. Prior to making a placement in or arranging for the placement of a youth in an independent living arrangement, the licensee shall determine the suitability of the setting for use as an independent living arrangement by:

1. Conducting an onsite visit of the independent living setting to determine if the setting meets the requirements necessary to protect the interests of each youth; and

2. Determining whether community resources are available and accessible to meet the specified needs of the youth and to assist him in his efforts to achieve self-sufficiency.

H. Within 30 days of the date of admission to the independent living arrangement program, the licensee shall develop an individual service plan for each youth.

I. The individualized service plan for each youth shall describe in measurable terms the:

1. Strengths and needs of the youth identified in the completed life skill assessment;

2. Goals, objectives, and strategies identified by the youth, his guardian, and, if applicable, his parents;

3. Projected involvement of the youth, his guardian, and, if applicable, his parents;

4. Dates of planned accomplishment for each objective;

5. Target date for discharge; and

6. Involvement of the youth, his guardian, and, if applicable, his parents in discharge planning.

J. The individualized service plan shall address:

1. Counseling needs;

2. Education needs;

3. Employment needs;

4. Money management skills development;

5. Specific independent living services to be provided to the youth to assist him in meeting his needs and accomplishing his goals;

6. Social and interpersonal skill development; and

7. A plan for transition from foster care to independent living that includes:

a. A description of the specific life skills to be achieved by the youth, the youth's responsibilities, time frames for achievement of each identified life skill, and a description of the parents' or guardians' responsibilities in assisting the youth, if appropriate, in achieving the identified life skills. If the parents or guardians will not have responsibilities to assist the youth, the reasons shall be stated in the plan;

b. A description of the services and training offered by the licensee to help the youth achieve the identified life skills and a statement of the type and frequency of supervision provided by the licensee; and

c. A description of results of the assessment conducted on the youth's physical and mental health, including medical or dental care received by the youth.

K. The licensee shall conduct a review of each individualized service plan and the progress of each youth toward meeting the goals and objectives of the plan. The review shall take place within 90 days of the admission date and within each 90-day period thereafter and the plan shall be revised and updated as necessary.

L. The child-placing agency shall maintain a written report of each 90-day review that addresses:

1. Youth's progress in the living arrangement and toward meeting the goals and objectives established in his individualized service plan;

2. Involvement of the youth's parents or guardian in assisting him to meet his goals and objectives;

3. Continuing needs of the youth;

4. Youth's progress toward meeting his transition plan;

5. The beginning and ending dates of the review period; and

6. Youth's anticipated discharge date.

M. After placement, the licensee shall maintain supervision over the independent living arrangement by:

1. Conducting a face-to-face visit with the youth at least one time each month and as often as necessary to protect his interests; or

2. Conducting a face-to-face visit with the youth at least one time every 90 days and as often as necessary to protect his interests when the youth resides in a dormitory setting approved by a college or other educational or vocational provider; and

3. Ensuring that over 50% of these face-to-face visits occur in the youth's place of residence within a calendar year.

N. Except housing approved by a college or other educational or vocational providers, the child-placing agency shall visit the independent living arrangement setting annually for the purpose of determining whether the setting should remain an approved setting for the youth. Documentation of the results of the visit and decision regarding approval shall be maintained in the file of the youth.

O. The licensee shall have an appointed case worker on call and available as necessary to make face-to-face contact with the youth and provide services to the youth 24 hours per day, seven days per week.

Article 4
Treatment Foster Care

22VAC40-131-450. Applicability.

In addition to applicability requirements specified by 22VAC40-131-20, programs licensed to provide treatment foster care services shall also comply with the requirements of this article.

22VAC40-131-460. Children placed in treatment foster care.

A. In order to be licensed or certified as a child-placing agency providing treatment foster care services in Virginia, the licensee shall meet the requirements of this chapter.

B. In addition to the program description requirements specified in 22VAC40-131-170, the licensee shall provide a comprehensive description of:

1. The treatment philosophy of the licensee;

2. Specific treatment techniques the licensee plans to use with children and families;

3. Specific behavior management strategies the licensee will allow foster parents to use with placed children; and

4. The staffing pattern that:

a. Provides for the intensity of services required in treatment foster care;

b. Describes the treatment team, treatment plans, and credentials of professional staff responsible for treatment services;

c. Provides for at least one full-time professional staff and part-time staff whose hours are equivalent to a full-time position; and

d. Designates a qualified individual responsible for overseeing the program.

D. The licensee shall have a written plan for back-up emergency care in the event that a child's placement in a family disrupts.

E. The licensee shall provide training, support, and guidance to foster families in implementing the treatment and service plan for the child.

F. In consultation with the custodial agency, the licensee shall provide or arrange for the child to receive recommended or identified clinical services including, but not limited to, psychiatric, psychological, and medication management services.

G. The licensee shall assure that a professional qualified staff person provides leadership to the treatment team that includes:

1. Managing team decision-making regarding the care and treatment of the child or youth and services to the child's family;

2. Providing information and training as needed to treatment team members; and

3. Involving the child, the child's foster family, and the placing agency in treatment team meetings, plans and decisions, and keeping them informed of the child's progress, whenever possible.

H. Treatment team members shall consult with each other on cases at least every 90 days and as often as necessary.

Article 5
Adoption

22VAC40-131-470. Applicability.

In addition to applicability requirements specified by 22VAC40-131-20, programs licensed to provide adoption services shall also comply with the requirements of this article.

22VAC40-131-480. Fees for adoption applications and services.

A. Prior to initiating the home study, the licensee shall make full disclosure of fee charges to adoptive home applicants.

B. Each applicant shall be given a written fee explanation that addresses the following:

1. The amount the applicant must pay and when and how the payments are to be made;

2. How the amount is determined and what services the fees cover; and

3. The refund policy of the licensee.

C. The licensee shall develop a mutually-acceptable written agreement with the adoptive applicants regarding the fees to be paid and the services to be provided.

22VAC40-131-490. Adoption counseling and services for birth parents.

A. Except in the case of intercountry adoption, the licensee who holds custody of a child shall offer counseling services to the birth mother, or if reasonably available, to both birth parents contemplating the placement of their child for adoption. The counseling services shall include a discussion about:

1. The parent's decision to place the child was not made under duress and to ensure the decision to place the child is a firm decision;

2. The impact of such a decision;

3. The reasons for contemplating the decision to place the child for adoption; and

4. Alternatives to adoption including:

a. Services available to assist the family in staying together, if staying together is in the best interests of both the child and family;

b. Foster care for the child; and

c. The child's placement with relatives.

B. Except in the case of intercountry adoption, the licensee shall offer additional counseling sessions as needed by the birth parents.

C. Except in the case of intercountry adoption and prior to accepting a child for adoption placement, the licensee shall provide the birth parents with an explanation of:

1. Adoption services provided;

2. Adoption policies and procedures, including the adoption process; and

3. The rights and responsibilities of all parties in the adoption process.

D. The licensee shall document in the record of the birth mother or child to whom the counseling services were provided if:

1. The licensee did not provide counseling services as required, the reason shall be documented.

2. Counseling was provided to the birth father, such counseling services shall be documented.

E. If the birth mother or both birth parents choose to place the child with the licensee for adoption, the licensee shall secure a termination of parental rights in accordance with §§ 16.1-277.01 and 16.1-278.3 and other relevant sections of the Code of Virginia related to termination of parental rights.

F. When a child's birth parents and the prospective adoptive parents have entered into a written post-adoption contact and communication agreement, the licensee sponsoring the adoption shall:

1. Review the written post-adoption contact and communication agreement; and

2. Provide to the court the licensee's written recommendation indicating whether:

a. The post-adoption contact and communication agreement represents the best interests of the child; and

b. The licensee recommends approval of the agreement.

22VAC40-131-500. Involuntary termination of parental rights.

When it is necessary to petition the court to terminate parental rights, the licensee shall follow the requirements of § 16.1-283 of the Code of Virginia and policy approved by the state board.

22VAC40-131-510. Provisions for adopting children with special needs.

A. The licensee shall ensure that children with special needs, as defined by § 63.2-1300 of the Code of Virginia, who are legally free for adoption are registered with the Adoption Resource Exchange of Virginia within 30 days of termination of parental rights unless an adoptive family has been identified.

B. The licensee shall ensure that prospective adoptive families who will accept children with special needs are registered with the Adoption Resource Exchange of Virginia within 30 days of approval unless a child has been identified for placement with the family.

C. The licensee shall assist and work with the appropriate local department of social services to gather documentation and complete necessary applications for securing adoption subsidy payments for the child.

D. The licensee shall ensure that necessary and appropriate services and treatment are provided to children with special needs, including arranging for necessary services after the final order.

22VAC40-131-520. Selecting an adoptive home.

A. Siblings shall be placed together unless it clearly is not in the best interests of the children. If siblings are not placed together, the reasons for separation shall be documented in the file of each sibling.

B. Relatives and foster parents shall be considered primary adoptive resources when adoption is considered to be in the best interests of the child.

C. The licensee shall consider the following when selecting an adoptive home for a child:

1. The child's concerns about adoption, for children over one year of age;

2. The ages of the adoptive parents in relation to the age of the child; and

3. The child's best interests.

D. When the licensee accepts custody of a child for the purpose of adoption, the licensee shall consider recommendations made by the birth parents, a physician or attorney licensed in the Commonwealth of Virginia, or a clergyman who is familiar with the situation of the proposed adoptive parents or the child. The licensee shall document recommendations made in the file of the child.

E. The licensee shall make selection of a particular prospective adoptive family for a child in accordance with the best interests of the child. The reasons for selecting the specific home for the child shall be documented in the child's file.

F. The licensee shall provide the adoptive parents full known factual information about the child and, excluding identifying information where required by law, known factual information about the child's birth family. The licensee shall provide to the adoptive parents written information about:

1. The child's history, including information about the child's birth, social, cultural, medical, developmental, psychological, and mental health; and

2. Relevant known physical and mental history of the birth parents.

G. The licensee who holds the child's custody shall require the prospective adoptive parents sign and date a written acknowledgement that they have received the full factual information as described in subsection F 1 and 2 of this section. The written signed acknowledgement shall be placed in the adoptive home file.

H. The licensee shall permit the prospective adoptive parents to decide whether they will accept the child.

I. The licensee shall not use the prospective adoptive parent's decision to refuse to take one child into their home as the sole basis for excluding the prospective adoptive parents from consideration for future placement of other children.

22VAC40-131-530. Adoption placement agreement.

A. The licensee who holds custody of a child shall at the time of placement of the child enter into a written agreement for placement with the prospective adoptive family.

B. The placement agreement shall remain in effect until final order of adoption is entered by the court or until the placement ends or disrupts.

C. The adoption placement agreement shall include:

1. The requirements of the foster care agreement specified in 22VAC40-131-280 B and C;

2. A statement that the licensee maintains the legal responsibility to protect the best interests of the child and that the licensee may, with the sanction of the court, remove the child from the prospective adoptive home when removal is determined to be in the best interests of the child;

3. A listing of licensee's responsibilities until the final order of adoption is entered by the court;

4. A listing of the prospective adoptive family's responsibilities the adoptive family will maintain until the final order of adoption is entered by the court; and

5. A statement of services the licensee will provide to the family after the final order is entered, if any services have been agreed upon.

22VAC40-131-540. Placements requiring legal risk agreement.

A. The licensee shall require the prospective adoptive parents to sign and date a written statement acknowledging awareness that the valid entrustment agreement may be revoked by either birth parent until:

1. The placed child has reached the age specified in § 63.2-1223 of the Code of Virginia; and

2. The number of days specified in § 63.2-1223 of the Code of Virginia have elapsed since the execution of the valid entrustment agreement.

B. The written acknowledgement statement signed by the prospective adoptive parents shall be maintained in the child's file.

C. Such a direct placement shall be recognized as a foster home placement and a foster home agreement required by this chapter shall be signed by the licensee and the foster parents.

D. The adoptive placement agreement required by this chapter shall not be signed until the child is legally free for adoption.

22VAC40-131-550. Adoptive placement of children over one year of age; additional provisions.

A. Except in intercountry adoptions, the licensee shall prepare a child for adoptive placement by involving him in adoption planning, considering his individual needs and concerns, and providing information in a manner the child can understand.

B. The licensee shall document in the child's file the services and contacts provided to the child for adoption preparation including:

1. Discussion about the child's feelings about adoption and identification of indicators that he is ready for the adoptive placement;

2. Discussion regarding the reason he cannot be returned to his birth parents;

3. Discussion about relationships with his social worker, foster family, and prospective adoptive parents;

4. Preplacement visits in his prospective adoptive home. The number of visits shall be determined by the needs of the child and the adoptive family;

5. Efforts to obtain photographs of the child from birth through his current age;

6. The licensee's preparation of a life book for the child;

7. Assessment and services related to the child's attachment and issues of attachment;

8. Assessment of the child's needs for contacts with prior caretakers and birth relatives, including siblings; and

9. Preparation of the adoptive family to receive the child, including expected behaviors and the life-long impact of the child's history.

C. If services to prepare the child for placement were not provided, the licensee shall document the reason the child was not prepared in the child's file.

22VAC40-131-560. Parental placement adoption services.

A. Licensees who provide parental placement services shall follow the provisions of §§ 63.2-1230 through 63.2-1240 of the Code of Virginia and policy approved by the state board.

B. In conducting the home study of the prospective adoptive parents, the licensee shall comply with 22VAC40-131-180 and any other requirements specified by the court. The home study shall contain the licensee's recommendation regarding the suitability of the placement.

C. During the home study process, the licensee shall meet at least one time with the birth parents and at least one time with the prospective adoptive parents. The licensee shall obtain the agreement of both parties prior to holding simultaneous meetings.

D. The licensee shall ensure that the birth parents and prospective adoptive parents have exchanged identifying information including full names; addresses; physical, mental, social, and psychological information; and any other information useful in promoting the welfare of the child, unless both parties have agreed in writing to waive the disclosure of full names and addresses.

E. During the meeting with the birth parents, the licensee shall determine that the consent for adoption is informed and not coerced.

F. The licensee shall document in the file that the birth parents are aware of:

1. Alternatives to adoption;

2. Adoption procedures; and

3. Opportunities for placement with other adoptive families.

G. During the meeting with the prospective adoptive parents, the licensee shall determine that the parents' decision to adopt is informed and not coerced and that they intend to file an adoption petition and proceed toward a final order of adoption.

H. The licensee shall document that the prospective adoptive parents have been counseled by a duly authorized child-placing agency about:

1. Alternatives to adoption;

2. Adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights; and

3. Opportunities for adoption of other children.

22VAC40-131-570. Parent-recommended homes for adoptive placements.

When the licensee accepts custody of a child for the purpose of placing the child with adoptive parents recommended by the birth parents or a person other than a licensed child-placing agency or local board, the licensee shall:

1. Provide to the birth parents information about the provisions of parental placement adoption and child-placing agency adoption placements;

2. Allow the informed birth parents to elect which placement provision described in subdivision 1 of this section they desire to apply to their case;

3. Provide the birth parents the opportunity to be represented by independent legal counsel; and

4. Provide the birth parents the opportunity for counseling with a social worker.

22VAC40-131-580. Post-placement responsibility for adoptive home placements.

A. The licensee shall ensure that supervisory visits with the child are made in compliance with § 63.2-1212 of the Code of Virginia and, for children in foster care, in compliance with the requirements of policy approved by the Board of Social Services.

1. If the circuit court has not omitted the probationary period, interlocutory order of adoption, or three-visit requirement pursuant to § 63.2-1210 of the Code of Virginia, the licensee shall visit the child at least three times within a period of six months.

2. At least one visit shall be conducted in the home of the petitioners in the presence of the child and both petitioners unless the petition was filed by a single parent or one of the petitioners no longer resides in the home. If one petitioner no longer resides in the home, the licensee shall contact the absent petitioner to determine his interest in remaining involved in the proceedings.

3. The licensee shall ensure that no less than 90 days elapse between the first and last supervisory visits.

4. In accordance with the provisions of § 63.2-1212 of the Code of Virginia, the licensee shall:

a. Document the findings of supervisory visits and after the last supervisory visit formulate a formal written report that includes:

(1) Health and development of the child, including medical and dental care;

(2) The child's adjustment to the family and the relationship of the child to the parents and siblings;

(3) The child's adjustment to day care or school, the child's behavior and special needs, and resources available to meet those needs;

(4) Impact of adoption on the family functioning and the marriage, including discussion of any stress revealed and changes in work and financial status;

(5) Motivation of the petitioners to proceed with the adoption;

(6) The family's readiness to finalize the adoption;

(7) Documentation that the licensee discussed the procedures for finalization of adoption along with information on obtaining a birth certificate and, if appropriate, information on obtaining naturalization; and

(8) Documentation that the licensee offered to provide or refer the child and family to available resources for services after issuance of the final order of adoption. For children with long-standing mental or physical problems, the licensee shall assist in making arrangements for services after the final order;

b. Submit the written report as required to the circuit court, the counsel of record for the parties, and the commissioner; and

c. Document on the court's copy of the report that the copies were served as specified in subdivision 4 b of this subsection, including the date of delivery or mailing.

B. The licensee retains responsibility for protecting the best interests of the child.

1. The licensee shall maintain contact with the child and prospective adoptive family until the final order of adoption is entered.

2. In addition to the visitations required by § 63.2-1212 of the Code of Virginia, the licensee shall visit the child as often as necessary to meet the needs of the child and family.

3. If conditions warrant, the licensee shall proceed to remove the child in accordance with the provisions of § 63.2-904 C of the Code of Virginia.

4. In addition to the legal responsibilities specified in subdivisions 1, 2, and 3 of this subsection, licensees who hold custody of a child shall maintain legal responsibility for the child until the final order of adoption is entered.

C. Except when the adoption has been finalized in another country, the licensee shall document efforts to ensure that the adoption petition is filed. When there is a delay in filing the petition, the licensee shall make an assessment of the situation and conduct visits with the child and family as often as necessary and at least one time quarterly unless the child is in foster care, then the licensee shall conduct monthly face-to-face contacts as required by this chapter.

22VAC40-131-590. Intercountry placement adoptions.

A. A licensee who provides assistance to families in arranging placements of children from foreign countries and who works directly with agencies or resources in other countries shall comply with the provisions of this section.

B. The licensee shall make available to its staff and to applicants written information about Virginia's pre-adoptive requirements for intercountry placements and assist the family in determining when these requirements are applicable.

C. The licensee shall make available to its staff and to applicants written information about the requirements of the United States Citizenship and Immigration Services.

D. The licensee shall share directly with the adoptive applicants all available medical, developmental, and social history about the child, the birth family, and extended family, including the child's placement history.

E. The licensee shall request that the adoptive applicants share available information about the child with the licensee when the applicants directly receive medical, developmental, social history, and other information learned about the child, the birth family, and extended family, including the child's placement history. The licensee shall document in the child's file that this request was made.

F. Documentation required by this section shall be filed as follows:

1. In the child's file when the licensee has received custody; or

2. In a separate section of the adoptive applicant's file when the adoptive applicants have received guardianship; and

3. In the adoptive applicant's file when a final decree of adoption has been issued.

G. During the home study process, the licensee shall discuss the following items with the applicants:

1. The risks of adopting a child from another country, including coping with changes in laws in the other country, or changes in fees; issues regarding the legal availability of the child; risks involved with lack of medical, developmental, and other background information on the child; and the placement of another child if the child originally described is no longer available;

2. The time frame for referrals of children and fees specific to adopting a child from another country and the children or youth available from specific countries;

3. The applicant's ability to assume responsibility for and meet the care, guidance, and protection needs of a child from a different race or ethnic background;

4. The applicant's feelings and attitude toward sharing facts about the adoption with the child, including how the applicants plan to provide the child with information about his native country and teach the child about the customs of his native country;

5. The applicant's expectations for children whose living circumstances prior to placement included living in an orphanage or institution, to include the expected behaviors of the child, attachment and bonding issues, and the life-long impact of the child's history on his behaviors;

6. The applicant's' ability to provide care for and cope with any issues that may occur related to the child's previous living circumstances;

7. The applicant's understanding of the requirements for post-placement supervision, the importance of supervision in the resolution of any adoption related issues and the applicant's availability to participate in supervision sessions; and

8. The applicant's responsibility for a child when receiving custody or guardianship of a child under the laws of the child's country.

H. If, after completion of the home study for an intercountry adoption, the family decides to pursue an intercountry placement without the assistance of the licensee, the licensee shall document in the applicant's record that the family withdrew from the intercountry program. The licensee shall have no further responsibility to provide services to the applicant and may close the applicant's record.

I. In completing a home study for an intercountry adoption, the licensee shall offer to provide or refer the family for supervision and adoptive family support and preservation services.

J. Prior to any post-placement supervisory visits, the licensee shall make every effort to obtain documentation of a child's legal adoption status, all available medical, developmental, and social history on the child's birth family including the child's placement history. The licensee shall document its efforts to obtain the information in the adoptive parents' file.

K. The licensee shall document in the adoptive parents file that the adoptive parents were:

1. Informed of any known information about the child's legal availability;

2. Encouraged to file an adoption petition;

3. Informed of the need for the adoptive parents to complete the process of the child's naturalization and citizen status through the United States Citizenship and Immigration Service; and

4. Asked to contact the licensee to provide:

a. The date they returned home with the child; and

b. The date the adoption was final in the other country.

L. A licensee that provides adoption services in Hague Adoption Convention cases shall comply with all federal laws regarding convention adoptions, including, the Hague Adoption Convention, the Intercountry Adoption Act of 2000 (Pub. L. No. 106-279 (2000), and the Department of State regulations on intercountry adoption at 22 CFR Part 96.

M. The licensee shall notify the department when the licensee:

1. Obtains accreditation, temporary accreditation or approval under 22 CFR Part 96;

2. Is denied accreditation, temporary accreditation, or approval under 22 CFR Part 96. The licensee shall make available to the department all documents and materials related to the denial; and

3. After being accredited or temporarily accredited or approved, has had the Department of State or any of its designated accrediting entities take an adverse action against the licensee. The licensee shall make available to the department all documents and materials related to the imposed adverse action.

22VAC40-131-600. Interlocutory orders of adoption.

A. If the licensee holds legal custody of the child, the licensee shall file with the court its written consent to an interlocutory order for the proposed adoption.

1. The written consent shall be filed with the petition to the court; and

2. The consent shall be signed under oath and acknowledged before an officer by law to take acknowledgements.

B. Prior to certifying the report of investigation, the licensee shall determine that the requirements set forth in § 63.2-1208 of the Code of Virginia have been met. The licensee shall address each requirement in the investigation report.

C. A notarized statement shall accompany the order stating that the licensee will assume legal responsibility for the child should the placement disrupt prior to the issuance of the final order of adoption.

22VAC40-131-610. Subsequent adoptive placements.

A. When home providers who were approved for adoptive placements request additional adoptive placements, the licensee shall evaluate the home based on the initial home study requirements as specified by 22VAC40-131-180.

B. If the licensee conducted the original home study, the licensee shall conduct two additional visits, one face-to-face interview in the home or office and one face-to-face interview in the home with all current household members living in the home present at the time of the interview.

C. If the original home study was conducted by another child-placing agency:

1. The adoptive applicants shall complete the orientation and training required by 22VAC40-131-210;

2. If the licensee has a copy of the original home study for the applicants, two face-to-face interviews shall be made. If the original home study is not available, a minimum of three face-to-face interviews are required; and

3. The home study shall comply with the requirements this chapter for the initial adoptive home study.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (22VAC40-131)

Record Retention and Disposition Schedule General Schedule No. 15 - County and Municipal Governments Social Services Records, Library of Virginia (eff. 5/10).

Report of Tuberculosis Screening (Clearance Letter for Negative Screen), Virginia Department of Health, Form 1.

Report of Tuberculosis Screening (Report of TST/X-ray Results), Virginia Department of Health, Form 2.

TB Risk Assessment, Virginia Department of Health, Form TB 512 (eff. 2/05).

VA.R. Doc. No. R10-2036; Filed January 10, 2011, 3:37 p.m.

Proposed Regulation

Title of Regulation: **22VAC40-221. Additional Daily Supervision Rate Structure (adding 22VAC40-221-10 through 22VAC40-221-60).**

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

Public Hearing Information:

February 15, 2011 - 6 p.m. - Department of Social Services, Central Regional Office, 1604 Santa Rosa Road, Henrico Room, Richmond, VA

Public Comment Deadline: April 1, 2011.

Agency Contact: Phyl Parrish, Program Manager, Policy and Legislation, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219-2901, telephone (804) 726-7926, FAX (804) 726-7985, TTY (800) 828-1849, or email phyl.parrish@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia requires the State Board of Social Services to adopt regulations necessary or desirable to operate assistance programs in Virginia. According to Administration for Children and Families, 42 USC § 673 and policy announcement ACYF-CB-PA-01-01 require a statewide rate system for a state to draw down Title IV-E funds for foster care maintenance and adoption assistance. Failure to have a statewide rate system may result in the denial of federal funds.

Purpose: This regulatory action will require use of an approved Department of Social Services process to assess a child to determine the additional daily supervision component of the foster care maintenance payment. It will also establish comprehensive standards for local departments of social services (LDSS) to use when providing an additional daily supervision payment.

This regulation is necessary to ensure that Virginia meets federal requirements for seeking federal reimbursement by implementing a statewide rate structure for LDSS to use to determine the additional daily supervision component of the foster care maintenance payment. It will ensure that LDSS are consistent in determining the payment for additional daily supervision based on the assessed needs of the child.

Substance: Section 22VAC40-221-20 mandates that an assessment instrument developed by the Department of Social Services be used to determine the need for additional daily supervision and the appropriate enhanced maintenance payment amount for any child placed in public or private treatment foster homes (TFC). LDSS shall use the assessment instrument for a child in a non-TFC agency approved provider home when the LDSS wants to provide an enhanced maintenance payment for additional daily supervision. The regulation requires the assessment instrument be used for all children in an adoptive placement when the initial adoptive placement agreement is being negotiated. The rate derived from the completed assessment instrument provides information concerning what the child would have received in foster care and is used in negotiating the adoption assistance agreement.

22VAC40-221-30 establishes the requirements for child placing agencies that provide an enhanced maintenance payment to a foster parent. These requirements include (i) providing child specific training if needed, (ii) monthly visits with the foster parents, and (iii) 24-hour on-call support.

22VAC40-221-40 defines the requirements for foster parents receiving an enhanced maintenance payment, including (i) participating in determining training needs, (ii) participating in the development of the child's service plan, and (iii) maintaining documentation of the child's progress.

22VAC40-221-50 provides for a pro-rated enhanced maintenance payment based on a $1600 rate (i) when a child is placed on an emergency basis in a TFC placement, or (ii) in a non-TFC placement where the LDSS intends to make an enhanced maintenance payment and there has not been enough time to administer the assessment instrument. This

section requires that the rate assessment tool be administered within 30 days of the placement.

22VAC40-221-60 addresses the review of the results of the rate assessment tool. The regulation allows a representative of the child five days to request a review The LDSS director has 15 days to conduct an administrative review of the request and may concur with the original assessment or request a new administration of the tool.

Issues: Currently there is no correlation between payments made to foster care parents for additional daily care. This regulation benefits both children in foster care and the Commonwealth by ensuring that children's needs are consistently assessed, foster parents are appropriately reimbursed, and the state is eligible to draw down federal Title IV-E funds for these payments.

This regulatory action may result in a reduction in the rate paid to some foster care parents and an increase for others, as the payment for additional daily supervision will be tied to the assessed needs of the child.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Federal law (ACF, 42 USC § 673 and policy announcement ACYF-CB-PA-01-01) requires that there be a uniform statewide rate system in order for a state to draw down Title IVE funds for foster care maintenance and adoption assistance. Failure to have a statewide rate system may result in the denial of federal funds. Therefore the State Board of Social Services proposes to require through these proposed regulations such a uniform statewide rate system. This regulatory action addresses only maintenance payments for the additional daily supervision needs of the child. It does not address the provision of services funded through the Comprehensive Services Act.

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

Estimated Economic Impact. Failure to comply with the federal requirement to have a uniform statewide rate system in order to draw down Title IV-E funds for foster care maintenance and adoption assistance would potentially eliminate the following amounts of federal dollars for foster care maintenance and adoption assistance: $375,000 in fiscal year 2010, $500,000 in fiscal year 2011, and increasingly larger amounts in subsequent years. Thus the proposal to comply with federal law will be beneficial for foster and adoptive families and the Commonwealth overall.

Since currently payments from placing agencies do not follow a uniform structure, the imposition of a uniform statewide structure would result in some parties receiving lesser payments and others higher payments, as the current structure allows each placement agency to essentially determine their own formula (within limits). This allows foster parents to "forum shop" to secure the highest reimbursement rate. The proposed uniform rate structure would effectively end this practice and assure stability for the children as there would no longer be a benefit for parents to attempt to switch placement agencies.

Businesses and Entities Affected. The proposed amendments affect the state and local departments of social services, the 60 to 70 licensed child placing agencies, and foster and adoptive families.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular Virginia localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed required uniform statewide rate system will eliminate differences in payments from placing agencies to foster families. Some private placing agencies that otherwise would have paid foster families at higher rates may have fewer foster parents come to them when all placing agencies are required to have the same rate structure.

Small Businesses: Costs and Other Effects. The proposed amendments may moderately increase costs for some placing agencies in that they will be required to use the federally required state structure proposed in these regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no clear alternative method that reduces adverse impact while still complying with federal law.

Real Estate Development Costs. The proposed amendments will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for

preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.

Summary:

This regulatory action establishes a structure for an enhanced maintenance payment for children who require increased supervision or support (additional daily supervision) because of identified needs, as is required by the Administration for Children and Families to draw down Title IV-E funds to reimburse Virginia for these payments.

The regulation requires the use of an assessment instrument developed by the Department of Social Services, establishes how and when the instrument will be used, and sets forth the responsibilities of the agency making the payments and parents receiving payments. The regulation also establishes an enhanced maintenance payment process for emergency placements and a process for reviewing the results of the assessment process.

Only maintenance payments for the additional daily supervision needs of the child are addressed in this action. The provision of services funded through the Comprehensive Services Act are not addressed.

CHAPTER 221
ADDITIONAL DAILY SUPERVISION RATE STRUCTURE

22VAC40-221-10. Definitions.

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

"Additional daily supervision" or "ADS" means a child's need for increased supervision and support. ADS is the basis for determining if an enhanced maintenance payment to a foster parent or an adoptive parent entering into an adoption assistance agreement is needed. The need for ADS is also the basis for increased expectations for the child placing agency and the foster parent in meeting the needs of the child.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Adoption assistance agreement" is a written agreement between the local department of social services (LDSS) and the adoptive parent that is binding on both parties and includes maintenance and, when applicable, additional daily supervision, Medicaid, services and nonrecurring fees.

"Adoptive placement" means the placement of a child for the purposes of adoption in a home with a signed adoptive placement agreement.

"ADS emergency placement" means the sudden, unplanned, or unexpected placement of a child who needs immediate care in a foster home and the placement occurs prior to the agency obtaining adequate information regarding the child's needs. ADS emergency placements require the foster parent to provide increased supervision and support to ensure the child's safety.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to § 63.2-900, 63.2-903, or 63.2-1221 of the Code of Virginia.

"CRAFFT" means Community Resource, Adoptive, and Foster Family Training. CRAFFT specialists are available to local departments of social services to provide assistance regarding training for foster families.

"Department" means the State Department of Social Services.

"Enhanced maintenance payment" means the payment made to a foster parent over and above the basic foster care maintenance payment or to an adoptive parent when the initial adoption assistance agreement is negotiated. It is based on the needs of the child for additional daily supervision as identified by the uniform rate assessment tool.

"Foster care maintenance payment" means payments to cover the cost of food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child was enrolled at the time of placement.

"LDSS" means the local department of social services.

"Licensed" means licensed child placing agencies; entities licensed by the Department of Behavioral Health and Developmental Services; licensed behavioral health professionals or behavioral health professionals working under the direct supervision of a licensed behavioral health professional.

"Treatment foster care" or "TFC" means a community-based program where services are designed to address the special needs of children and families. Services to children and youth are delivered primarily by treatment foster parents who are trained, supervised, and supported by agency staff. Treatment is primarily foster family based.

22VAC40-221-20. Administration of the uniform rate assessment tool.

A. A department approved uniform rate assessment tool shall be used to determine the additional daily supervision component of the foster care maintenance payment or the adoption assistance payment. Use of the rate assessment tool shall be applied consistently regardless of the child's maintenance funding source.

1. The LDSS having care and responsibility for the child is responsible to ensure the tool is completed with input from a child-specific team of individuals who are knowledgeable about the child's characteristics.

2. The team shall include the caseworker, foster or adoptive parents, and an individual trained to administer the rate assessment tool. Other individuals with knowledge of the child shall be invited to participate in the meeting or provide input about the child's needs. This shall include family members and the child as appropriate, other significant individuals in the child's social support network, the private child-placing agency staff involved in the care of the child, and other providers.

3. LDSS staff or other public child-serving agency individuals may be trained in accordance with departmental guidance to administer the tool.

4. The child's assigned caseworker, foster or adoptive parents, or private agency staff shall not administer the tool.

5. The rate assessment tool shall be administered according to the following criteria and in accordance with department guidance:

a. If the child is to be placed in a TFC home;

b. If the LDSS chooses to make enhanced maintenance payments for children in non-TFC homes;

c. At the time an adoption assistance agreement is negotiated whether or not an ADS assessment has been previously administered for this child. A re-administration of the tool is not required if the adoption assistance agreement is signed within three months of a prior ADS assessment.

6. The rate assessment tool shall be re-administered:

a. If a child moves to a TFC home in a different TFC agency;

b. When requested and there is evidence of significant behavioral, emotional, or medical changes and two or more weeks of additional support have become necessary to maintain the child in the home;

(1) Once requested, the rate assessment tool must be administered within 14 calendar days.

(2) If the rate assessment tool indicates a need for an increase in ADS, the increase is retroactive to the date of the foster parent's request.

c. No more often than quarterly for any child unless the previously stated criteria apply; and

d. A minimum of once per year.

B. The individual administering the rate assessment tool shall:

1. Consider all input from all sources regarding the characteristics of the child and will rate each item on the tool;

2. Make the final decision as to how to rate a child's characteristics based on the evidence as presented;

3. Issue a final score on the tool within five business days of the meeting; and

4. Share a copy of the scored tool with the foster parents and review the tool with them if requested.

22VAC40-221-30. Child placing agency requirements.

A. The child placing agency that approved the home shall have face-to-face contacts with the foster parents at least monthly. Child placing agencies may contract with licensed providers to conduct the in-home contacts with the foster parent.

B. Child placing agencies shall have an appointed case worker on call and available to make face-to-face contact if necessary to provide services to the child and the foster family 24 hours per day, seven days per week.

1. Child placing agencies may contract with licensed providers to perform this service.

2. Supervisory consultation to the on-call worker shall be available 24 hours per day, seven days per week and may be a service obtained through a contract with a licensed provider.

C. The child placing agency shall monitor and document the contractor's performance if they choose to contract out the activities in subsections A and B of this section in accordance with guidance developed by the department.

D. Additional training shall be provided to the foster parents receiving an enhanced maintenance payment based on the needs of the foster parent and the children in care. Foster parents receiving enhanced maintenance payments shall be consulted on their training needs.

E. The foster care service plans developed for a child for whom enhanced maintenance is paid shall include but not be limited to:

1. Measurable goals, objectives, and strategies for the foster parent and the child placing agency in addressing the identified needs of the child;

2. Provisions for providing training for the foster parents consistent with the identified needs of the child;

3. Provisions for services to prevent placement disruption and maintain a stable placement; and

4. The method developed jointly by the child placing agency and the foster parent to document the child's progress.

F. This section is not applicable in cases where a final order of adoption has been issued.

22VAC40-221-40. Foster home requirements.

A. The requirements for foster parent or parents receiving an ADS payment shall include but not be limited to:

1. Working with the child placing agency to identify and participate in targeted training necessary to meet the support and supervision needs of the child;

2. Actively participate in the development and implementation of the foster care service plan;

3. Agree to accept and participate in services to prevent placement disruption; and

4. Monitor and document the child's progress based on a schedule and in a format developed in consultation with the child placing agency.

B. This section is not applicable in cases once a final order of adoption has been issued.

22VAC40-221-50. ADS emergency placement.

Enhanced maintenance payments for the initial emergency placement of a child shall be based on a per diem not to exceed $1,600 per month.

1. The department may change the maximum per diem for initial emergency placements upon approval from the State Board of Social Services.

2. The enhanced maintenance payment per diem for the initial emergency placement includes the day the uniform rate assessment tool is administered to determine the on-going enhanced maintenance rate.

3. The rate assessment tool shall be administered within 30 calendar days of the initial emergency placement of a child.

22VAC40-221-60. Reviews.

A representative of the child, including the foster parent or guardian ad litem, may request a review of the results of the rate assessment tool by the director of the LDSS that holds custody, if he feels the tool did not correctly identify the needs of the child. The director may not adjust the rate but may request a new assessment.

1. The representative shall have five business days to request a review.

2. The LDSS director or designee has 15 business days to conduct an administrative review of the request and may concur with the original decision or may order a new administration of the tool. The re-administration may occur by phone or videoconferencing.

3. The LDSS has 10 business days to re-administer the tool if requested by the director.

4. If the re-administration of the tool indicates a higher payment rate, that rate shall be retroactive to the date of the foster parent's request.

VA.R. Doc. No. R09-1868; Filed January 10, 2011, 3:57 p.m.

Final Regulation

Title of Regulation: **22VAC40-601. Food Stamp Program (amending 22VAC40-601-10, 22VAC40-601-40; adding 22VAC40-601-50, 22VAC40-601-60).**

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

Effective Date: July 1, 2011.

Agency Contact: Celestine Jackson, Program Consultant, Department of Social Services, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, TTY (800) 828-1120, or email celestine.jackson@dss.virginia.gov.

Summary:

This regulatory action changes the title name and all references in the regulation from "Food Stamp Program" and "food stamps" to "Supplemental Nutrition Assistance Program (SNAP)" and "SNAP benefits."

It creates a new section, 22VAC40-601-50, that mandates applications for SNAP benefits be disposed of within 30 days. If an application cannot be processed by the 30th day because information needed to determine eligibility is lacking due to the fault of the household, the application must be denied. The eligibility worker must reinstate the application and prorate benefits to the date the verification was provided if the applicant provides the information during the next 30 days.

A second new section, 22VAC40-601-60, provides that transitional SNAP benefits to households with children whose state-funded maintenance-of-effort (MOE) program benefits or benefits from a state funded program that does not count toward MOE end in the same manner as federally funded Temporary Assistance for Needy Families (TANF) benefits. The transitional benefits component allows eligibility for SNAP benefits to be determined without considering current circumstances to allow the

recipient to adjust to the loss of the public assistance income source.

There are minor changes from the proposed stage as references to the Food Stamp Act are changed to reference SNAP and references to the governing law reflect the Food and Nutrition Act.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 601
~~FOOD STAMP~~ SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

22VAC40-601-10. Definitions.

The following words and terms when used in these guidelines will have the following meaning unless the context clearly indicates otherwise:

"Access device" means any card, plate, code, account number, or other means of access that can be used alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the [~~Food Stamp Act of 1977~~ Food and Nutrition Act of 2008 (7 USC § 2011 et seq.)], as amended.

"Administrative disqualification hearing" or "ADH" means an impartial review by a hearing officer of a household member's actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation (IPV).

"Authorization to participate" or "ATP" means a document authorizing a household to receive a ~~food stamp~~ SNAP allotment in a specific amount for a specific entitlement period from an authorized food coupon issuance agent.

"Hearing officer" means an impartial representative of the state who receives requests for administrative disqualification hearings or fair hearings. The hearing officer has the authority to conduct and control hearings and to render decisions.

"Intentional program violations" or "IPV" means any action by an individual who intentionally made a false or misleading statement to the local department, either orally or in writing, to obtain benefits to which the household is not entitled; concealed information or withheld facts to obtain benefits to which the household is not entitled; or committed any act that constitutes a violation of the [~~Food Stamp Act~~ Food and Nutrition Act], ~~Food Stamp~~ SNAP regulations, or any state statutes relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons, authorization to participate cards, access devices, or ~~food stamp~~ SNAP benefits.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"SNAP" means Supplemental Nutrition Assistance Program.

22VAC40-601-40. Administrative disqualification hearing.

A. The local department is responsible for investigating any case of alleged intentional program violation and ensuring that appropriate cases are acted upon either through referral for an administrative disqualification hearing or for prosecution by a court of appropriate jurisdiction.

B. In order for a local department to request an ADH, there must be clear and convincing evidence that demonstrates a household member committed or intended to commit an IPV.

C. The local department shall ensure that evidence against the household member alleged to have committed an IPV is reviewed by either an eligibility supervisor or the local department director to certify that the evidence warrants referral for an ADH.

D. Before submitting the referral for an ADH to the state hearing manager, the local department shall send a notice to the person suspected of an IPV that the member may waive the right to a hearing. The person must sign a waiver request and return it to the local department within 10 days from the date the notice was sent to the household member in order to avoid the submission of the ADH referral.

E. If the local department receives a signed waiver, there will not be a hearing but the person will be disqualified for the length of time prescribed by federal policy.

F. The hearing officer will schedule a date for the ADH and provide written notice to the household member suspected of an IPV by certified mail - return receipt requested or first class mail. The notice must be mailed at least 30 days in advance of the date the ADH scheduled. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held. The hearing officer must compare the household's address on the local department referral with other documents associated with the case. A revised notice must be provided to the household member if an error is discovered in the address used for the original notice of the hearing.

G. The requirement to notify the individual about the ADH will be met if there is proof of receipt of the advance notice of the ADH or if there is proof that the person refused to accept the notice.

H. The time and place of the ADH shall be arranged so that the hearing is acceptable to the person suspected of an IPV.

I. The person or representative may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

J. The ADH may be held even if the person or representative subsequently cannot be located or fails to appear without good cause.

K. If the hearing officer finds that a household member committed an IPV but the hearing officer later determines there was good cause for not appearing, including that the notice was sent to an incorrect address, the previous decision will no longer be valid. A new ADH shall be conducted.

L. A pending ADH shall not affect the household or an individual's right to be certified and participate in ~~the Food Stamp Program~~ SNAP.

M. The hearing officer shall:

1. Identify those present for the record.

2. Advise the person or representative that he may refuse to answer questions during the hearing.

3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the local department or the household to request an administrative review of the hearing officer's decision. The hearing officer shall also explain that only the household may seek a change to the hearing officer's decision through a court of appropriate jurisdiction.

4. Consider all relevant issues. Even if the person or representative is not present, the hearing officer must carefully consider the evidence and determine if any IPV was committed based on clear and convincing evidence.

5. Request, receive and make part of the record all evidence determined necessary to render a decision.

6. Regulate the conduct and course of the hearing consistent with the process to ensure an orderly hearing.

N. The person alleged to have committed an IPV and the representative shall be given adequate opportunity to:

1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH.

2. Present the case or have it presented by legal counsel or another person.

3. Bring witnesses.

4. Advance arguments without undue interference.

5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.

6. Submit evidence to establish all pertinent fact and circumstances in the case.

O. The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the hearing record that can be substantiated by supporting evidence and applicable regulations.

P. The hearing officer shall prepare a written report of the substance of the findings, conclusions, decisions, and appropriate recommendations.

Q. The hearing officer shall notify the person of the decision in writing and of the household's right to seek an administrative review or court appeal of the decision.

R. If the hearing officer finds that the individual did commit an IPV, the written decision shall advise that household that disqualification shall occur.

S. The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing decision.

T. Upon receipt of the notice of a decision from the hearing officer that the household member is guilty of an IPV, the local department shall inform the household of the reason for the disqualification and the date the disqualification will take effect.

22VAC40-601-50. Application processing.

Applications for SNAP benefits must be disposed of within 30 days. Applicants have 30 days to provide verification or information needed to determine eligibility of the household. If an application cannot be processed by the 30th day because such information is lacking due to the fault of the household, the application must be denied. If the applicant provides the information during the next 30 days, the eligibility worker must reinstate the application and prorate benefits to the date the last verification was provided.

22VAC40-601-60. Transitional benefits.

Transitional SNAP benefits will apply to households whose state-funded programs or benefits end in the same manner as federally funded public assistance programs. Transitional SNAP benefits will apply only to households with children. The state-funded programs may or may not be counted toward the maintenance-of-effort requirements needed for the Temporary Assistance for Needy Families block grant.

VA.R. Doc. No. R09-1977; Filed January 10, 2011, 3:56 p.m.

Final Regulation

Title of Regulation: **22VAC40-630. Disability Advocacy Project (repealing 22VAC40-630-10 through 22VAC40-630-50).**

Statutory Authority: §§ 63.2-217 and 63.2-803 of the Code of Virginia.

Effective Date: March 2, 2011.

Agency Contact: Mark L. Golden, TANF Program Manager, Department of Social Services, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804)

726-7385, FAX (804) 726-7356, TTY (800) 828-1120, or email mark.golden@dss.virginia.gov.

Summary:

General Relief is a program that provides assistance to individuals who are not eligible for other forms of assistance and is an optional program at the local level. The regulation provides procedures for referring recipients to legal representation during an appeal of a Supplemental Security Income (SSI) disability determination process and providing information on how the appeal may affect their General Relief benefits. This regulation is repealed and its provisions will be included in a new comprehensive General Relief Program regulation (22VAC40-411).

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

VA.R. Doc. No. R08-1278; Filed January 10, 2011, 3:56 p.m.

EXECUTIVE ORDER NUMBER 31 (2010)

Establishing the Independent Bipartisan Advisory Commission on Redistricting

Importance of the Issue

Article II, Section 6 of the Constitution of Virginia requires congressional and state legislative district lines to be redrawn every ten years. It further requires that districts be drawn to create districts of "contiguous and compact territory." The next round of redistricting will take place this year.

Legislative districts must be drawn in a way that maximizes voter participation and awareness and lines should reflect commonsense geographic boundaries and strong communities of interests. Additionally, because redistricting has such an important impact on the citizens of the Commonwealth and their elected representation, the process should take place in a way that welcomes citizen input and fosters a productive public dialogue.

Independent Bipartisan Advisory Commission on Redistricting

In furtherance of my legislative responsibilities under Article V, Section 5 of the Constitution of Virginia and my commitment to the Virginia tradition of good governance, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to § 2.2-134 of the Code of Virginia, I hereby establish the Independent Bipartisan Advisory Commission on Redistricting.

Commission Membership

The Commission shall be composed of eleven citizen members, appointed by the Governor and serving for the remainder of the life of the Commission. Members will be citizens of Virginia who have not held any elected office for at least five years and shall not be a member or employee of the Congress of the United States or of the General Assembly. Membership shall be equally divided by political party affiliation and one chair who is not identifiable with any political party and has not held any public or political party office. The members of the Commission will serve without compensation.

Charge of the Commission

The Commission will facilitate citizen input into the redistricting process. The Commission shall solicit citizen input and provide citizens with access to its processes by holding public meetings as appropriate and creating a website that will allow public comment and interaction.

The Commission may develop a redistricting plan or accept from the public proposed plans for redistricting. The Commission may also analyze plans submitted by colleges and universities or other groups and stakeholders. The Commission shall review any such plans to determine if they meet the criteria set out below. To the extent that the proposed plans comply with the criteria set forth below, the Commission may recommend such model plans to the General Assembly. The Commission shall work independently of the executive and legislative branches, and its report and any recommendations shall be made directly to the President pro tempore of the Senate of Virginia, the Speaker of the Virginia House of Delegates, the Chairmen of the House and Senate Privileges and Elections Committees, and the Governor. To the extent possible, such reports shall be forwarded prior to the start of the reconvened session of the General Assembly in order to allow for full consideration of the reports.

Redistricting Criteria to be Used by the Commission

In developing and evaluating districts, the Commission shall be guided by the following standards:

1. Consistent with Article II, Section 6 of the Constitution of Virginia, all districts shall be composed of contiguous and compact territory and shall be as equal in population as is practicable and in compliance with federal law. No district shall be composed of territories contiguous only at a point.

2. All districts shall be drawn to comply with the Virginia and United States Constitutions, applicable state and federal law, the Voting Rights Act of 1965, as amended, and relevant case law.

3. The population of legislative districts shall be determined solely according to the enumeration established by the 2010 federal census. The population of each district shall be as nearly equal to the population of every other district as practicable.

4. All districts, to the extent practicable, shall respect the boundary lines of existing political subdivisions. The number of counties and cities divided among multiple districts shall be as few as practicable.

5. To the extent possible, districts shall preserve communities of interest.

Support for the Commission

I direct that all executive branch agencies of the Commonwealth provide any appropriate assistance that may be requested by the Commission. Additionally, Christopher Newport University has agreed to provide support to the Commission. An estimated 400 hours of staff time will be required to support the work of the Commission. Upon request of the Commission, the Governor may also request the assistance of the Division of Legislative Services to provide advice or support to the Commission. The Commission may request the assistance of volunteer outside counsel or experts as it shall deem necessary.

Additional support and funding for the Commission may be provided by private donations. To the extent practicable, meetings of the Commission shall be open to the public, but the Commission is not a public body as that term is used in § 2.2-3700 et seq. of the Code of Virginia.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until December 1, 2011, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 10th day of January, 2011.

/s/ Robert F. McDonnell
Governor

AIR POLLUTION CONTROL BOARD

State Implementation Plan Proposed Revision - Public Comment Opportunity

Clean Air Interstate Rule

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia state implementation plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation or a portion thereof to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is the Regulation for Emissions Trading, CAIR Nonattainment Area Requirements, Parts II, III, and IV of 9VAC5 Chapter 140.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: January 31, 2011, to March 3, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of §§ 2.2-4006 A 4 a and 2.2-4006 4 b of the Administrative Process Act because they are necessary to conform to Virginia statutory law and are necessary to conform to an order of the court. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: In essence, the proposed revision will consist of amendments to existing regulation provisions concerning emissions trading in order to implement the requirements of both court and legislative action. On February 25, 2010, a final decision of the Court of Appeals of Virginia vacated the nonattainment provisions in both the NO_x Annual Trading Program (Part II of 9VAC5-140-1061) and the NO_x Ozone Season Trading Program (Part III of 9VAC5-140-2061).

In addition, the 2010 Acts of Assembly amended § 10.1-1328 A 5 of the Code of Virginia in such a way that the nonattainment provisions of the SO_2 Annual Trading Program are no longer consistent with the Code of Virginia and therefore must also be repealed. The major provisions of the proposal are to delete the following provisions:

1. 9VAC5-140-1061 and 9VAC5-140-1062 (9VAC5-140, Part II - NO_x Annual Trading Program).

2. 9VAC5-140-2061 and 9VAC5-140-2062 (9VAC5-140, Part III - NO_x Ozone Season Trading Program).

3. 9VAC5-140-3061 and 9VAC5-140-3062 (9VAC5-140, Part IV – SO_2 Annual Trading Program).

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans' website (http://www.deq.state.va.us/air/permitting/planotes.html). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,

3) Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

State Implementation Plan Proposed Revision - Public Comment Opportunity

Ambient Air Quality Standards

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia state implementation plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation or a portion thereof to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is as follows: Ambient Air Quality Standards, 9VAC5- Chapter 30 (Rev. A10).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: January 31, 2011, to March 3, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to existing regulation provisions concerning the ambient air quality standard for nitrogen dioxide (NO_2). The major provisions of the proposal are summarized as follows: Chapter 30 contains the national ambient air quality standards (NAAQS) for the specific criteria pollutants set out in 40 CFR Part 50. Incorporation of the NAAQS into the state regulations is necessary to provide a legally enforceable means by which the state prepares attainment and maintenance plans, and determines whether a new source will affect the NAAQS. The standard for NO_2 was revised to (i) specify that NO_2 is the indicator for nitrogen oxides (NO_X), (ii) limit the 53 parts per billion standard to the annual primary standard, (iii) add a new primary 1-hour standard, (iv) specify reference methods, and (v) specify how the different standards are attained.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans' website (http://www.deq.state.va.us/air/permitting/planotes.html). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,

3) Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact for public comments, document requests and additional information: Karen G. Sabasteanski, Policy Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

STATE CORPORATION COMMISSION

Revisions to the Commission's Rules of Practice and Procedure

AT RICHMOND, JANUARY 10, 2011

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. CLK-2011-00001

Ex Parte: In the matter concerning revised
State Corporation Commission Rules of
Practice and Procedure

ORDER FOR NOTICE OF PROCEEDING TO CONSIDER REVISIONS TO COMMISSION'S RULES OF PRACTICE AND PROCEDURE

The State Corporation Commission's ("Commission") Rules of Practice and Procedure, at 5VAC5-10-10 et seq. ("Rules"), were last revised in Case No. CLK-2008-00002,[1] in which the Commission focused primarily on changes to Rule 170.[2] The Commission's Rules were also revised in Case No. CLK-2007-00005,[3] in which the Commission incorporated procedures for electronic filing. Prior to Case No. CLK-2007-00005, the Rules were revised in 2001 in Case No. CLK-2000-00311.[4] The Commission has concluded that it is appropriate to revisit Part IV of our Rules to review and consider issues related to discovery in Commission proceedings. The Rules currently provide for some discovery of Staff in adjudicatory proceedings in Rule 280 A. Additionally, the Rules also require Commission Staff to file workpapers supporting its recommendations in actions pursuant to Rule 80 A.

Interested parties are invited to comment upon and suggest modifications or supplements to, or request hearing on, provisions of Part IV of the Rules with regard to whether the Commission Staff should be subject to discovery. Interested parties should address, among other things, whether: (i) Commission Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings; and (ii) whether experts or consultants retained by Commission Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings.

The Commission is also interested in hearing how subjecting Commission Staff to discovery may affect: (i) the Commission's ability to meet statutory deadlines in certain types of proceedings; (ii) available resources and efficiency in handling cases; (iii) the Commission Staff's ability to interact informally with regulated entities and their customers to effect resolution of disputes; (iv) the ability of Commission Staff to work with regulated entities in competitive industries; and (v) the protection of sensitive information provided to Commission Staff by regulated entities.

A copy of the current Rules is attached hereto. Interested parties, in addition to commenting upon or suggesting modifications to Part IV of the Rules, may also request a hearing on the Rules. The Commission's Division of Information Resources is directed to cause the Rules to be published in the Virginia Register of Regulations and to make the Rules available for inspection on the Commission's website.

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. CLK-2011-00001.

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

(3) The Commission's Division of Information Resources shall make a downloadable version of the current Rules available for access by the public at the Commission's website, http://www.scc.virginia.gov/caseinfo.htm. The Clerk of the Commission shall make a copy of the Rules available, free of charge, in response to any written request for one.

(4) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on Part IV of the Rules shall file an original and fifteen (15) copies of such comments, proposals, or requests for hearing with the Clerk of the Commission, State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, on or before March 18, 2011, making reference to Case No. CLK-2011-00001. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website, http://www.scc.virginia.gov/caseinfo.htm.

(5) The Commission Staff may, on or before April 8, 2011, provide a response to any comments or requests for hearing that are received.

(6) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all public utilities providing service within the Commonwealth of Virginia and to representatives of the insurance, banking, and securities industries as shown on the attached appendices and to the individuals and organizations on the service list attached hereto.

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[1] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2008-00002, Final Order (Feb. 24, 2009).

[2] Each Rule discussed herein will be referred to in this short form. The full citation for the Rule is 5VAC5-20-170.

[3] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2007-00005, Final Order (Jan. 15, 2008).

[4] Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2000-00311, Final Order (April 30, 2001).

DEPARTMENT OF ENVIRONMENTAL QUALITY

Announcement of Rescheduled Public Meetings for Initiation of a Water Quality Restoration Study for the James River and Selected Tributaries in Richmond, Hopewell, Petersburg, Colonial Heights, Chesterfield, Henrico, Dinwiddie, Prince George, Charles City, and Surry

Public meetings: Two public meetings will be held on Tuesday, February 1, 2011. An afternoon meeting will be held at 2 p.m. at the East End Library located at 2414 "R" Street, Richmond, VA 23223. An evening meeting will be held at 6 p.m. at the Department of Environmental Quality (DEQ) Central Office (2nd Floor Conference Room) located at 629 Main Street in Richmond VA 23219. Both meetings are open to the public. The original meetings scheduled for this project were cancelled due to weather.

Purpose of notice: The Virginia Department of Environmental Quality is announcing the initiation of a water quality restoration study for the James River and selected tributaries which are impaired due to polychlorinated biphenyls (PCBs).

Meeting description: First public "kick-off" meetings on this study to share ongoing efforts to-date with the public. The meeting will include information regarding PCBs, DEQ monitoring data, how the pollutant will be modeled in the waterways, and ongoing voluntary sampling efforts throughout the watershed by facilities.

Description of study: The following streams are found to exceed the water quality standard for PCBs and are in violation of the "fishing" designated use in the jurisdictions listed in the title of this notice: Appomattox River (to Lake Chesdin Dam), Bailey Creek (to Rt. 360), Bailey Bay, and Chickahominy River (to Walkers Dam). Additionally, the James River is impaired from the fall line to the Hampton Roads Bridge Tunnel. For the purposes of these meetings, the James River from the fall line to the Charles City County and Surry County extents will be discussed. Information regarding the impairments is available on the DEQ website (http://www.deq.virginia.gov/wqa/pdf/2010ir/appendices/ir10_AppendixA_Category5_Factsheets_James.pdf - search factsheet using the term "PCB"). Two studies are being developed concurrently due to the size of the impaired watershed. This set of public meetings will focus on the upper tidal portion of the James River and selected tributaries. A second study is being developed for the lower tidal James River and selected tributaries (1st public meetings were held on Dec. 1). If you would like information on the lower tidal James River PCB study, please contact Jennifer Howell at jennifer.howell@deq.virginia.gov.

The study will report on the sources of PCB contamination and will recommend total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. Public comments will be incorporated into the TMDL development. Following the public notice and review of the final TMDL draft report (to be available at some point in the future), DEQ will submit the TMDL report to the U.S. Environmental Protection Agency (EPA) for approval. The final TMDL report is due to EPA in 2014. Given the extent of the impairments and complexities of the pollutant, DEQ is initiating the TMDL study now in order to allow the time necessary for study development.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will end on March 4, 2011.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email margaret.smigo@deq.virginia.gov.

Enforcement Action for Pilot Travel Centers, L.L.C.

An enforcement action has been proposed for Pilot Travel Centers, L.L.C. regarding violations of 9VAC25-580-240, 9VAC25-580-250 B, subdivision 1 of 9VAC25-580-90, subdivisions 2 and 3 of 9VAC25-580-120, and 9VAC25-580-130 A 2 at a facility in Botetourt County and 9VAC25-580-260 and 9VAC25-580-280 at a facility in Roanoke County. The consent order describes a settlement to resolve violations of the underground storage tank technical standards and correction action requirements. A copy the proposed settlement is available at the DEQ office named below or online at www.deq.virginia.gov. Lee M. Crowell, Esq. will accept comments by email at lee.crowell@deq.virginia.gov, FAX (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, 629 East Main Street, Richmond, VA 23219, from January 31, 2011, to March 2, 2011.

Announcement of a Total Maximum Daily Load study to Restore Water Quality in the Dissolved Oxygen Impaired Waters of the Northwest River

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a public meeting regarding the conclusion of the Northwest River TMDL Study.

Public meeting: Thursday, February 17, 2011, at 6:30 p.m., Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462.

Meeting description: This is the final public meeting for this project. The purpose of this meeting is to discuss the conclusion of the study developed to restore water quality in the Northwest River watershed.

Description of study: Portions of the Northwest River have been identified as impaired in the Clean Water Act § 303(d) list due to violations of the state's water quality standard for dissolved oxygen. The Northwest River watershed is located within the City of Chesapeake and the City of Virginia Beach. Below are descriptions of the impaired segments that were addressed in this study:

Stream Name	Impairments	Area	Upstream Limit	Downstream Limit
Northwest River	Aquatic Life use Impairment due to Dissolved Oxygen	16.37 square miles	From headwaters near Wallaceton at River Mile 22.15	VA/NC state line

During this study, a total maximum daily load (TMDL) was developed for the impaired Northwest River. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the TMDL Report will extend from February 17, 2011, through March 18, 2010. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Announcement of Virginia Coastal and Estuarine Land Conservation Program (CELCP) Funding Opportunity FY 2012

- State Program Name**:** Virginia Coastal Zone Management Program
- Federal Funding Source**:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce
- Application Deadline**:** Applications must be received electronically by March 10, 2011. Email applications to Beth Polak at the Virginia Coastal Zone Management Program: beth.polak@deq.virginia.gov.
- Funding Opportunity Description**:** The purpose of this document is to advise eligible applicants (requirements described below) that the Virginia CZM Program is soliciting coastal and estuarine land conservation (acquisitions or easements) project proposals for competitive funding under the Coastal and Estuarine Land Conservation Program. Funding is contingent upon the availability of FY 2012 federal appropriations. It is anticipated that projects funded under this announcement will have a grant start date between June 1, 2012, and October 1, 2012.

Program Objectives: The Coastal and Estuarine Land Conservation Program (CELCP) was authorized "for the purposes of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses." This announcement solicits proposals for land acquisition projects (fee simple interest or conservation easements) that can be completed within 18 months from the start date of the award (anticipated between June 1, 2012, and

October 1, 2012) and that have the purpose of protecting important coastal and estuarine areas. NOAA may extend the performance period for project grants up to an additional 18 months (for a maximum total performance period of three years) if circumstances warrant and if progress on the project is being demonstrated.

Eligible Projects: In order to be eligible to compete, a project must:

1. Be located in a coastal and estuarine area included within the Coastal Zone boundary, as identified in the Virginia CELCP plan;

2. Match federal CELCP funds with nonfederal funds at a ratio of 1:1;

3. Be held in public ownership by the grant recipient (please note: If the grant recipient is a state agency that does not have authority to hold title to lands, the property may be held by another state agency that has the authority and mission to own and manage land for conservation purposes in a manner consistent with CELCP. If the project includes lands being contributed as in-kind match, the match properties may be held either in public ownership or by a qualified nongovernmental organization);

4. Provide conservation in perpetuity;

5. Provide for public access or other public benefit, as appropriate and consistent with resource protection;

6. Be consistent with Virginia's Coastal Zone Management Program approved under the Coastal Zone Management Act (CZMA);

7. Be acquired from a willing seller; and

8. Complement working waterfront needs, to the extent practicable.

To meet the CELCP's national criteria, projects should:

1. Protect important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses;

2. Give priority to lands that can be effectively managed and protected, have significant ecological value, have a demonstrated need for protection, and have the ability to successfully leverage funds; and

3. Directly advance the goals, objectives, and implementation of the Virginia CELCP plan, which necessarily includes goals and objectives that relate to the coastal management plan or program, NERR management plans approved under the CZMA, national objectives of the CZMA, or a regional or state watershed protection plan for states and territories with approved coastal management plans.

For complete information regarding the VA CELCP application process visit the Virginia Coastal Zone Management Program website at http://www.deq.virginia.gov/coastal/celcp.html or contact Beth Polak, Coastal Planner, Virginia CZM Program at (804) 698-4260 or email beth.polak@deq.virginia.gov.

Enforcement Action for Francis M. Barlow, Jr.

An enforcement action has been proposed for Francis M. Barlow, Jr. for alleged violations in Caroline County associated with the Frog Level Farm 614. The consent order describes a settlement to resolve unpermitted impacts taken to surface waters associated with the clearing, grubbing, and excavation activities conducted on the property. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email, at daniel.burstein@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from February 1, 2011, through March 3, 2011.

DEPARTMENT OF EDUCATION

Extended Public Comment Period: Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools

The Board of Education is seeking additional public comment on the proposed Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools. The proposed guidelines may be viewed at: http://www.doe.virginia.gov/boe/meetings/2011/01_jan/agenda_items/item_j.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.

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 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.

The Board of Education is expected to review the public comment and adopt final guidelines at its meeting on February 17, 2011, in Richmond, Virginia.

Please submit your comments by email, US mail, or FAX by February 12, 2011. Send comments to: Charles Pyle, Director of Communications, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218, email charles.pyle@doe.virginia.gov, FAX (804) 225-2524.

Contact Information: Dr. Margaret N. Roberts, Office of Policy & Communications, P.O. Box 2120, 101 N. 14th Street, 25th Floor, Richmond, VA 23219, (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.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 January 6, 2011, January 7, 2011, and January 10, 2011. 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 One Hundred Three (10)

Virginia Lottery's "Cruise For Cash Sweepstakes" Final Rules for Game Operation (effective nunc pro tunc to January 4, 2011)

Director's Order Number One Hundred Eight (10)

"Winter Chain Promotion" Virginia Lottery Retailer Incentive Program (effective January 10, 2011)

Director's Order Number One Hundred Nine (10)

Virginia Lottery's "Truckin' For Cash Sweepstakes" Final Rules for Game Operation (effective January 4, 2011)

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Ammar's, Inc.

An enforcement action has been proposed for Ammar's, Inc. for violations in Bluefield, Virginia. The special order by consent describes a settlement for violations related to an oil discharge to state waters. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Dallas R. Sizemore will accept comments by email at dallas.sizemore@deq.virginia.gov), FAX (276) 676-4899 or postal mail at Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, VA 24212, from January 31, 2011, to March 2, 2011. The office is located at 355 Deadmore Street, Abingdon, Virginia.

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

DEPARMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: **12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-10).**

12VAC30-110. Eligibility and Appeals (amending 12VAC30-110-1300).

Publication: 27:9 VA.R. 800-804 January 3, 2011.

Correction to "Title of Regulations":

Page 800, Titles of Regulations, 12VAC30-110. Eligibility and Appeals, change "amending" to "repealing" before 12VAC30-110-1300

VA.R. Doc. No. R11-2263, Filed January 5, 2011

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code.**

Publication: 27:2 VA.R. 183-217 September 27, 2010.

Correction to Final Regulation:

Page 209, column 2, 13VAC5-51-150 F, Section 3301.4.1, paragraph 2 beginning "The SMFO shall," line 3, after "blaster," insert "[and pyrotechnician]"

VA.R. Doc. No. R09-1893; Filed January 6, 2011, 3:43 p.m.