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. **28:2 VA.R. 47-141 September 26, 2011,** refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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 2012 through January 2013

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice.**

Statutory Authority: §§ 2.2-4007 and 54.1-2400 of the Code of Virginia.

Name of Petitioner: Nicole M. Cunha.

Nature of Petitioner's Request: Amend regulations to require Virginia dentists to be trained and equipped to manage medical emergencies consistent with the Six Links of Survival as a condition of initial or continuing licensure.

Agency's Plan for Disposition of Request: The petition will be published in the Register of Regulations, posted on the Virginia Regulatory Townhall, and sent to interested parties for comment. At its meeting on March 9, 2012, the board will review the petition and any comments received and determine whether to initiate rulemaking in response.

Public Comment Deadline: February 19, 2012.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R12-16; Filed January 6, 2012, 2:55 p.m.

BOARD OF NURSING

Agency Decision

Title of Regulation: **18VAC 90-20. Regulations Governing the Practice of Nursing.**

Statutory Authority: § 54.1-2400 and 54.1-3005 of the Code of Virginia.

Name of Petitioner: Donna Bond.

Nature of Petitioner's Request: The petitioner requests that regulations and/or statutes be changed to: (i) license clinical nurse specialists (CNS) as an APRN in Virginia; (ii) ensure that CNS practice to the full extent of education, skills, and competencies; (iii) recognize national standards for competencies and behaviors of graduates of CNS programs; (iv) provide a standardized definition of the role and scope of practice for CNS; (v) allow regular monitoring of CNS workforce supply and demand; and (vi) continue to provide title protection for CNS.

The petition requests that the board examine its regulations governing the practice of CNS for consistency and congruence with the National Council of State Boards of Nursing consensus model for Advanced Practice Registered Nurse regulations.

Agency Decision: Petition granted.

Statement of Reason for Decision: The board decided to initiate a regulatory action to review the rules for clinical nurse specialists relating to education, requirements for licensure, and practice.

Agency Contact: Jay P. Douglas, Executive Director, Board of Nursing, 9960 Mayland Drive Suite 300, Richmond, VA 23233, telephone (804) 367-4623, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R11-28, R12-3046; Filed January 2, 2012, 11:57 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of General Services intends to amend **1VAC30-46, Accreditation for Commercial Environmental Laboratories.** The purpose of the proposed action is to set out the requirements to accredit commercial laboratories that analyze environmental samples used to determine compliance with the State Water Control Law, Virginia Waste Management Act, and Virginia Air Pollution Control Laws.

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

Statutory Authority: § 2.2-1105 of the Code of Virginia.

Public Comment Deadline: February 29, 2012.

Agency Contact: Rhonda Bishton, Regulatory Coordinator, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

VA.R. Doc. No. R12-3067; Filed January 6, 2012, 10:08 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Withdrawal of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Soil and Water Conservation Board has WITHDRAWN the Notice of Intended Regulatory Action for **4VAC50-60, Virginia Stormwater Management Regulations,** which was published in 26:9 VA.R. 1186 January 4, 2010. On May 24, 2011, the Virginia Soil and Water Conservation Board approved a motion to withdraw this action.

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

VA.R. Doc. No. R10-2265; Filed December 30, 2011, 1:20 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

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 Corrections intends to consider amending **6VAC15-40, Minimum Standards for Jails and Lockups.** The current regulations do not prescribe any special considerations for restraint of offenders known to be pregnant while under the control of local jails and lockups. The purpose of this proposed action is to specify the type of restraint devices to be used, how the restraint devices may be applied, the circumstances under which the restraints may be used, and reporting requirements for use of restraints on offenders known to be pregnant.

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

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-131 of the Code of Virginia.

Public Comment Deadline: February 29, 2012.

Agency Contact: Jim Bruce, Agency Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 674-3303 ext: 1130, FAX (804) 674-3017, or email james.bruce@vadoc.virginia.gov.

VA.R. Doc. No. R12-3078; Filed January 3, 2012, 11:32 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Withdrawal of Notice 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 has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services,** and **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care,** which was published in 26:23 VA.R. 2668 July 19, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R10-2437; Filed January 13, 2012, 12:14 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulations referenced below have been filed by the Department of Mines, Minerals and Energy. Amended or added forms are not being published, but online users of the Virginia Register of Regulations may view the forms by clicking on the title of the form. The forms are also available through the agency contact listed below or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Titles of Regulations: **4VAC25-31. Reclamation Regulations for Mineral Mining.**

4VAC25-35. Certification Requirements for Mineral Miners.

4VAC25-130. Coal Surface Mining Reclamation Regulations.

Agency Contact: Michael A. Skiffington, Program Support Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, or email mike.skiffington@dmme.virginia.gov.

FORMS (4VAC25-31)

Permit/License Application, DMM-101 (rev. 2/06).

Notice of Application to Mine, DMM-103 (rev. 2/06).

Statement Listing the Names and Addresses of Adjoining Property Owners, DMM-103a (rev. 9/99); included in DMM-103 Notice of Application to Mine.

Bond Release Inspection, DMM-104d (rev. 12/09).

Yearly Progress Report, DMM-105 (rev. 2/06).

Surety Bond, DMM-107 (rev. 4/09).

~~Legend, DMM-109 (rev. 2/06).~~

Legend, DMM-109 (rev. 2/11).

Relinquishment of Mining Permit, DMM-112 (rev. 2/06).

Request for Amendment, DMM-113 (rev. 2/06).

Consolidated Biennial Report of Waivered Counties, Cities, and Towns, DMM-116 (rev. 2/06).

Biennial Waivered Counties, Cities, and Towns, Report of Individual Mining Companies, DMM-117 (rev. 2/06).

Consent for Right of Entry, DMM-120 (rev. 12/99).

Mineral Mining Annual Tonnage Report, DMM-146 (rev. 2/06).

~~Mineral Mining Annual Report for Contractors, DMM-146c (rev. 12/08).~~

Mineral Mining Annual Report for Contractors, DMM-146c (rev. 12/11).

DMM Application Checklist, DMM-148 (rev. 2/06).

Request for Release of Mine Map, DMM-155 (rev. 2/06).

Notice of Operator Intent, DMM-156 (rev. 2/06).

License Renewal/Transfer Application, DMM-157 (rev. 2/06).

Permit Transfer Acceptance, DMM-161 (rev. 2/06).

Permit Renewal Checklist, DMM-163 (rev. 3/06).

Certification of No Change, DMM-164 (rev. 3/06).

Surety Bond Rider, DMM-167 (rev. 2/06).

General Permit for Sand and Gravel Operations Less Than Ten Acres in Size, DMM-168 (eff. 9/03).

Certificate of Deposit, DMM-169 (eff. 2/06).

FORMS (4VAC25-35)

~~Application for Certification Examination, DMM-BMME-1 (rev. 2/06).~~

Application for Certification Examination, DMM-BMME-1 (rev. 7/11).

Verification of Work Experience Form, DMM-BMME-2 (rev. 2/06).

Application for Renewal, DMM-BMME-3 (rev. 2/06).

Verification of Training Completed for General Mineral Miner (GMM) Certification, DMM-BMME-4 (rev. 2/99).

FORMS (4VAC25-130)

~~Anniversary Report Form, DMLR-PT-028 (rev. 3/09).~~

Anniversary Report Form, DMLR-PT-028 (rev. 9/11).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 11/99).

Application for Exemption Determination (Extraction of Coal Incidental to the Extraction Of Other Minerals), DMLR-211 (rev. 3/09).

~~Consent for Right of Entry Exploratory, DMLR-AML-122 (rev. 3/98).~~

~~Consent for Right of Entry-Construction, DMLR-AML-123 (rev. 3/98).~~

Consent for Right of Entry-Exploratory, DMLR-AML-122 (rev. 3/10).

Consent for Right of Entry-Construction, DMLR-AML-123 (rev. 3/10).

Final Inspection – Abandoned Mine Lands – DMLR-AML-171 (rev. 2/07).

License for Performance-Acid Mine Drainage Investigations and Monitoring (Abandoned Mine Land Program), DMLR-AML-175c (11/96).

License for Performance-Acid Mine Drainage Reclamation and Construction (Abandoned Mine Land Program), DMLR-AML-176c (rev. 12/96).

Consent for Right of Entry-Ingress/Egress, DMLR-AML-177 (rev. 3/98).

Public Notice of Intent to Enter to Conduct Reclamation Activities, DMLR-AML-301 (rev. 3/10).

Landowner Contact – Abandoned Mine Land Program, DMLR-AML-302 (rev. 3/10).

Lien Waiver –Real Estate Appraisal – Abandoned Mine Land Program, DMLR-AML-305 (rev. 3/10).

Estates to be Appraised – Abandoned Mine Land Program, DMLR-AML-309 (rev. 3/10).

Lien Waiver – Realty Analysis – Abandoned Mine Land Program, DMLR-AML-311 (rev. 3/10).

Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-03 (rev. 3/09).

Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-04 (rev. 3/09).

Geology and Hydrology Information Part A through E, DMLR-CP-186 (rev. 3/86).

Notice of Temporary Cessation, DMLR-ENF-220 (rev. 3/09).

Lands Unsuitable Petition, DMLR-OA-131 (rev. 12/85).

Chapter 19-Statement for Third Party-Certificate of Deposit, DMLR-PS-093 (rev. 12/85).

Application for Performance Bond Release, DMLR-PT-212 (rev. 3/09)

Example-Waiver (300 Feet from Dwelling), DMLR-PT-223 (rev. 2/96).

Analysis, Premining vs Postmining Productivity Comparison (Hayland/Pasture Land Use), DMLR-PT-012 (rev. 3/09).

Surety Bond, DMLR-PT-013 (rev. 8/07).

Surety Bond-Federal Lands, DMLR-PT-013A (rev. 3/09).

Surety Bond Rider, DMLR-PT-013B (rev. 8/07).

Map Legend, DMLR-PT-017 (rev. 3/09).

Certificate of Deposit, DMLR-PT-026 (rev. 8/07).

Form Letter From Banks Issuing a CD as Performance Bond for Mining on Federal Lands, DMLR-PT-026A (rev. 8/07).

Operator's Seeding Report, DMLR-PT-011 (rev. 3/09).

Request for Relinquishment, DMLR-PT-027 (rev. 6/09).

Water Supply Inventory List, DMLR-PT-030 (rev. 3/09).

Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination System (NPDES), DMLR-PT-034 (rev. 2/99).

~~Request for DMLR Permit Data, DMLR-PT-034info (eff. 11/07).~~

Request for DMLR Permit Data, DMLR-PT-034info (rev. 3/10).

Certification - Application for Permit: Coal Surface Mining and Reclamation Operations, DMLR-PT-034D (rev. 3/09).

~~Coal Exploration Notice, DMLR-PT-051 (rev. 3/09).~~

Coal Exploration Notice, DMLR-PT-051 (rev. 7/10).

Well Construction Data Sheet, DMLR-WCD-034D (rev. 5/04).

Sediment Basin Design Data Sheet, DMLR-PT-086 (rev. 3/09).

Impoundment Construction and Annual Certification, DMLR-PT-092 (rev. 3/09).

Road Construction Certification, DMLR-PT-098 (rev. 3/09).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 3/09).

Rainfall Monitoring Report, DMLR-PT-102 (rev. 8/98).

Pre-Blast Survey, DMLR-PT-104 (rev. 3/09).

Excess Spoil Fills and Refuse Embankments Construction Certification, DMLR-PT-105 (rev. 3/09).

Stage-Area Storage Computations, DMLR-PT-111 (rev. 3/09).

Discharge Monitoring Report, DMLR-PT-119 (rev. 3/09).

Water Monitoring Report-Electronic File/Printout Certification, DMLR-PT-119C (rev. 3/09).

Coal Surface Mining Reclamation Fund Application, DMLR-PT-162 (rev. 3/09).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 3/09).

Coal Surface Mining Reclamation Fund Tax Reporting Form, DMLR-PT-178 (rev. 3/09).

Surface Water Monitoring Report, DMLR-PT-210 (rev. 3/09).

Application For Performance Bond Release, DMLR-PT-212 (rev. 3/09).

Public Notice: Application for Transfer, Assignment, or Sale of Permit Rights under Chapter 19 of Title 45.1 of the Code of Virginia, DMLR-PT-219 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Phase I, DMLR-PT-225 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Phase II, DMLR-PT-226 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Phase III, DMLR-PT-227 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Incremental Bond Reduction, DMLR-PT-228 (rev. 8/09).

Verification of Public Display of Application, DMLR-PT-236 (8/01).

Affidavit (Permit Application Information: Ownership and Control Information and Violation History Information), DMLR-PT-240 (rev. 3/09).

Stream Channel Diversion(s) Certification, DMLR-PT-233 (rev. 3/09).

Quarterly Acid-Base Monitoring Report, DMLR-PT-239 (rev. 3/09).

Affidavit (No Legal Change in a Company's Identity), DMLR-PT-250 (rev. 3/09).

Affidavit (Reclamation Fee Payment), DMLR-PT-244 (rev. 3/09).

Application-National Pollutant Discharge Elimination System (NPDES) Permit-Short Form C, DMLR-PT-128 (rev. 3/09).

National Pollutant Discharge Elimination System (NPDES) Application Instructions, DMLR-PT-128A (rev. 3/09).

Impoundment Inspection Report, DMLR-PT-251 (rev. 3/09).

Surface Water Baseline Data Summary, DMLR-TS-114 (rev. 4/82).

Diversion Design Computation Sheet, DMLR-TS-120 (rev. 12/85).

Sediment Channel Design Data Sheet, DMLR-TS-127 (rev. 12/85).

Virginia Stream Survey, DMLR-TS-217 (rev. 1/87).

Line Transect-Forest Land Count, DMLR-PT-224 (rev. 3/09).

Applicant Violator System (AVS) Ownership & Control Information, DMLR-AML-003 (rev. 4/97).

Application for Coal Exploration Permit and National Pollutant Discharge Elimination System Permit, DMLR-PT-062 (formerly DMLR-PS-062) (rev. 3/09).

Application-National Pollutant Discharge Elimination System Application Instructions, DMLR-PT-128 (rev. 9/97).

Written Findings, DMLR-PT-237 (rev. 1/98).

~~Irrevocable Standby Letter of Credit, DMLR-PT-255 (rev. 8/07).~~

Irrevocable Standby Letter of Credit, DMLR-PT-255 (rev. 10/11).

Confirmation of Irrevocable Standby Letter of Credit, DMLR-PT-255A (eff. 8/03).

Affidavit DMLR-AML-312 (eff. 7/98).

Indemnity Agreement - Self Bond, DMLR-PT-221 (eff. 12/07).

Permittee Consent to Service by Electronic Mail, DMLR-PT-265 (rev. 3/09).

VA.R. Doc. No. R12-3087; Filed January 5, 2012, 3:41 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: **8VAC20-730. Regulations Governing the Collection and Reporting of Truancy (adding 8VAC20-730-10, 8VAC20-730-20, 8VAC20-730-30).**

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

Public Hearing Information:

March 22, 2012 - 10 a.m. - James Monroe Building, 101 North 14th Street, 22nd Floor Conference Room, Richmond, VA

Public Comment Deadline: April 1, 2012.

Agency Contact: Dr. Cynthia Cave, Director of Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2818, FAX (804) 225-2524, or email cynthia.cave@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. The board is responsible for enforcing the compulsory school attendance statutes.

Section 22.1-258 of the Code of Virginia requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence. Section 22.1-260 B requires reporting conference data to the Superintendent of Public Instruction annually.

Purpose: The primary goal of the Board of Education is to set forth definitions for data collection, procedures, and responsibilities of the participants to address nonattendance issues. Enacting these regulations should enhance daily school attendance and decrease referrals to court services for truancy.

The intent of the Board of Education to (i) provide for consistent and accurate data collection and reporting; (ii) improve attendance related policies, procedures, and evidence-based prevention and intervention practices; (iii) enhance school staffs' capability to identify students with nonattendance issues early, intervene and provide support, and manage and monitor case progress; (iv) create a positive impact on the family, the student, school divisions, and court services in their efforts to improve school attendance; (v) increase a student's opportunity to benefit from a quality education in preparation for a career or post-secondary education; (vi) create a climate for improving communication, cooperation, and coordination of services among community service agencies and public systems to address issues manifested in truancy behavior; and (vii) encourage dissemination of information to increase public knowledge of the importance of regular school attendance and these regulations.

Substance: The proposed regulations (i) define terms, such as attendance plan, excused absence, and unexcused absence; (ii) establish the procedures and responsibilities for early identification and intervention with nonattendance behavior and the issues that manifest truancy; (iii) delineate processes for assisting the student and family in preventing nonattendance and define the steps to intercede; and (iv) identify the attendance data to be reported to the Department of Education that includes for each individual student all excused and unexcused absences and for students with five, six, or more unexcused absences: (a) the number of attendance plans developed, (b) the number of attendance conferences scheduled and held; and (d) the number of court referrals.

Issues: The proposed regulations pose no disadvantage to the public or the Commonwealth. The proposed regulations will serve to more accurately collect daily school attendance and nonattendance data and guide early identification and intervention processes to remove barriers that disengage a student from school, thus improving school attendance.

Students who attend school daily, kindergarten though grade 12, are more likely to graduate. Students who do not attend school regularly are more likely to experience academic failure, school dropout, criminal and violent acts, unemployment, substance abuse, adult criminality and incarceration, unwanted pregnancy, and social isolation. Due to the strong link between truancy and these negative consequences, it is critical to address attendance issues early and effectively.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Code of Virginia includes required procedures for intervening with students who have unexcused absences and required truancy data collection and reporting. The Board of Education proposes these regulations to provide: 1) clarifying definitions to help ensure consistency in reported data across school divisions and improved understanding of required truancy procedures, 2) recommended options for satisfying the required procedures for intervening with students who have unexcused absences, and 3) further specificity of the required truancy data.

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

Estimated Economic Impact. Section 22.1-258 of the Code of Virginia requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence ... upon the next unexcused absence by such pupil, the school attendance officer shall enforce compulsory

attendance by (i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in 16.1-288 or (ii) instituting proceedings against the parent pursuant to § 18.2-371 or § 22.1-262.... Further, § 22.1-260 B requires that at the end of each school year, each public school principal shall report to the division superintendent the number of students by grade level for whom a conference was scheduled as required by § 22.1-258. The division superintendent shall compile such grade level information for the division and provide such information to the Superintendent of Public Instruction annually.

According to the Department of Education (Department), there has been some uncertainty of the options available to local school divisions in satisfying the required procedures for intervening with students who have unexcused absences. Additionally, there has been inconsistency in the truancy data reported by school divisions. The proposed clarifying definitions and listing of recommended options produce no cost and will likely produce some benefit in addressing the problem of truancy. The proposed additional specificity of truancy data to be reported will be beneficial in that it will likely produce more consistent and accurate information for use by analysts and policymakers. It may a require a very small addition in staff time for some school divisions; but this potential very small cost would likely be significantly smaller than the benefit of having more accurate and consistent data.

Businesses and Entities Affected. The proposed amendments affect the 132 public school divisions in the Commonwealth.

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 Economic Impact Analysis: The agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

Summary:

The regulations establish criteria for truancy data collection and a procedure for intervening with a student who has unexcused absences. The regulations provide definitions to promote consistent data collection and reporting among school divisions and to the Virginia Department of Education. The regulations direct a referral to court services when a student is noncompliant with compulsory attendance law.

CHAPTER 730
REGULATIONS GOVERNING THE COLLECTION AND REPORTING OF TRUANCY

8VAC20-730-10. Definitions.

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

"Attendance conference" means a face-to-face meeting, at a minimum, after the sixth unexcused absence among school staff, parents, and student (if appropriate). The conference may include, if necessary, community representatives to discuss the current attendance plan and make modifications to support regular school attendance.

"Attendance plan" means action steps developed by a school representative, parent, and student (if appropriate) to engage the student in regular school attendance. The plan shall identify academic, social, emotional, and familial barriers that impede daily attendance along with positive strategies to support regular attendance. This plan may include school-

based activities or suggested referrals to community supports, or both.

"Court referral" means referral to the Juvenile and Domestic Relations Court intake worker after the student's seventh unexcused absence. Copies of the attendance plan and documentation of conference meetings will be provided to the intake worker.

"Excused absence" means an absence of an entire assigned instructional school day with an excuse acceptable to the school administration that is provided by the parent. If circumstances permit, the parent should provide the school authority with the reason for the nonattendance prior to the absence. Examples of an excused absence may include, but are not limited to, the following reasons: funeral, illness (including mental health and substance abuse illnesses), injury, legal obligations, medical procedures, suspensions, religious observances, and military obligation.

"Instructional school day" means the length of a regularly scheduled school day for an individual student.

"Multi-disciplinary team" means a school-based team that convenes on a regular basis to review student records and to identify an integrated system of care for the student in need, including (i) prevention, early intervention, and support services and (ii) school-based case management. These services should address academic, social, emotional, and familial issues in order to improve regular school attendance. Members of the team meet confidentially with the parent and the student (if appropriate) to develop, evaluate, and update action steps and supports. Team members may include, but are not limited to, the following: an administrator, school counselor, social worker or psychologist, student assistance specialist, special education and regular education teacher, and attendance officer.

"Parent" means the parent or parents, guardian or guardians, or other person or persons having legal control of the student.

"Truancy" means the act of accruing one or more unexcused absences.

"Unexcused absence" means an absence where (i) either the student misses his scheduled instructional school day in its entirety or misses part of the scheduled instructional school day without permission from an administrator and (ii) no indication has been received by school personnel within three days of the absence that the student's parent is aware and supports the absence, or the parent provides an excuse that is unacceptable to the school administration. An administrator may change an unexcused absence to an excused absence when the parent has provided an acceptable excuse for the student's absence or there are extenuating circumstances. Absences resulting from suspensions shall not be considered unexcused.

8VAC20-730-20. Unexcused absences intervention process and responsibilities.

A. The following intervention steps shall be implemented to respond to unexcused absences from school and to engage students in regular school attendance.

1. Whenever a student fails to report to school on a regularly scheduled school day and no information has been received by school personnel that the student's parent is aware of and supports the absence, the school principal or designee, attendance officer, or other school personnel or volunteer will notify the parent by phone or e-mail or any other electronic means to obtain an explanation. The school staff shall record the student's absence for each day as "excused" or "unexcused."

2. When a student has received five unexcused absences, the school principal or designee or the attendance officer shall make a reasonable effort to ensure that direct contact is made with the parent. The parent shall be contacted either in a face-to-face conference or by telephone. During the direct contact with the parent and the student (if appropriate), reasons for nonattendance shall be documented and the consequences of nonattendance explained. An attendance plan shall be made to resolve the nonattendance issues. The student and parent may be referred to a school-based multi-disciplinary team for assistance implementing the attendance plan and case management.

3. The school principal or designee or the attendance officer shall schedule a face-to-face attendance conference within 10 school days from the date of the student's sixth unexcused absence for the school year. The attendance conference must be held within 15 days from the date of the sixth unexcused absence. The conference shall include the parent, student (when applicable), and school personnel (which may be a representative or representatives from the multi-disciplinary team) and may include community service providers.

4. The school principal or designee shall notify the attendance officer or division superintendent of the student's seventh unexcused absence for the school year. The division superintendent or designee shall contact the Juvenile and Domestic Relations Court intake to file a Child In Need of Supervision (CHINSup) petition or begin proceedings against the parent. In addition to documentation of compliance with the notice provisions of § 22.1-258 of the Code of Virginia, copies of the conference meeting notes, attendance plan, and supports provided prior to filing the petition shall be presented to the intake worker. The decision shall be made by the intake worker either to divert the case or to file the petition for presentation before the court.

B. A record shall be maintained of each meeting that includes the attendance plan, the name of individuals in attendance at each conference meeting (including telephone or electronic devices), the location and date of the conference, a summary of what occurred, and follow-up steps. This record does not become a part of the student's permanent scholastic record.

8VAC20-730-30. Data collection and reporting.

Data collection shall begin on the first day students attend for the school year. Each school division shall provide student level attendance data for each student that includes the number of unexcused absences as prescribed by the Virginia Department of Education. A student's attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first unexcused absence and will be cumulative.

Excused and unexcused absences shall be counted for each individual student and shall be reported to the Virginia Department of Education as follows:

1. All excused and unexcused absences as defined in this chapter for each individual student shall be collected.

2. For each student with five unexcused absences, whether an attendance plan was developed, and if not, the reason.

3. For each student with six unexcused absences, whether an attendance conference was scheduled, and if not, the reason.

4. For each student with six unexcused absences, whether an attendance conference was actually held, and if not, the reason.

5. For each student with seven unexcused absences, whether a court referral or petition was filed.

VA.R. Doc. No. R11-2535; Filed December 29, 2011, 2:31 p.m.

LONGWOOD UNIVERSITY

Final Regulation

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

Title of Regulation: **8VAC50-20. Regulation on Prohibiting Weapons at Longwood University (adding 8VAC50-20-10, 8VAC50-20-20, 8VAC50-20-30).**

Statutory Authority: § 23-188 of the Code of Virginia.

Effective Date: January 17, 2012.

Agency Contact: Robert Beach, Chief of Police and Director of Public Safety, Longwood University, 201 High Street, Farmville, VA 23909, telephone (434) 395-2092, or email beachrr@longwood.edu.

Summary:

This regulation establishes the weapons limitations at Longwood University.

CHAPTER 20
REGULATION ON PROHIBITING WEAPONS AT LONGWOOD UNIVERSITY

8VAC50-20-10. Definitions.

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

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15-2-1609 et seq.) of Chapter 16 and Chapter l7 (§ 15.2-1700 et seq.) of Title 15.2, Chapter 17 (§ 23-232 et seq.) of Title 23, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia or sworn federal law-enforcement officers.

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

"Weapon" means (i) any pistol, revolver, shotgun, bow and arrow, or other weapon designed or intended to propel a missile of any kind; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such manner as to allow them to swing freely, which may be known as nun chahka, nunchaku, shuriken, or fighting chain; or (iv) any disc, of whatever configuration, having at least two points or pointed blades that is designed to be thrown or propelled and that may be known as throwing star or oriental dart.

8VAC50-20-20. Possession of weapons prohibited.

Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student resident buildings, or dining facilities or while attending sporting, entertainment, or educational events. Entry upon the aforementioned university property in violation of this prohibition is expressly forbidden.

8VAC50-20-30. Person lawfully in charge.

In addition to individuals authorized by university policy, Longwood University police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this prohibition.

VA.R. Doc. No. R12-3093; Filed January 17, 2012, 4:29 p.m.

OLD DOMINION UNIVERSITY

Final Regulation

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

Title of Regulation: **8VAC65-10. Weapons on Campus (adding 8VAC65-10-10, 8VAC65-10-20, 8VAC65-10-30).**

Statutory Authority: § 23-49.17 of the Code of Virginia.

Effective Date: January 13, 2012.

Agency Contact: Donna Meeks, University Policy Manager, Old Dominion University, 225A Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, or email dmeeks@odu.edu.

Summary:

This regulation addresses the limitation on weapons at Old Dominion University.

CHAPTER 10
WEAPONS ON CAMPUS

8VAC65-10-10. Definitions.

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

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 and Chapter 17 (§ 15.2-1700 et seq.) of Title 15.2, Chapter 17 (§ 23-232 et seq.) of Title 23, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia or sworn federal law-enforcement officers.

"University property" means any property owned, leased, or controlled by Old Dominion University.

"Weapon" means (i) firearms; (ii) knives, machetes, straight razors, spring sticks, metal knucks, or blackjacks; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration having at least two points or pointed blades, that is designed to be thrown or propelled and that may be known as a throwing star or oriental dart; and (v) any electrical conduction weapon including tasers. "Weapon" does not mean knives used for domestic purposes, pen or folding knives with blades less than three inches in length, or box cutters and utility knives kept or carried for use in accordance with the purpose intended by the original seller.

8VAC65-10-20. Possession of weapons prohibited.

Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student residence buildings, or dining facilities, or while attending sporting, entertainment, or educational events. Entry upon the university property described in this section in violation of this chapter is expressly forbidden.

8VAC65-10-30. Person lawfully in charge.

In addition to individuals authorized by university policy, Old Dominion University police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this chapter.

VA.R. Doc. No. R12-3048; Filed January 13, 2012, 2:41 p.m.

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TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Regulation

Title of Regulation: **9VAC15-60. Small Renewable Energy Projects (Solar) Permit by Rule (adding 9VAC15-60-10 through 9VAC15-60-140).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 30, 2012.

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

Basis: Section 10.1-1197.7 of the Code of Virginia requires the Department of Environmental Quality (DEQ) to develop one or more permits by rule for small renewable energy projects. This action is mandated by Chapters 808 and 854 of the 2009 Acts of Assembly.

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

Substance: This regulatory action addresses the need for a reasonable degree of certainty and timeliness in the natural resource protections required of small solar energy projects by setting forth, as fully as practicable, these required protections up front in this new permit by rule for solar

energy projects. The regulatory action describes how the department will address analysis of potential environmental impacts, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, compliance, enforcement, and other topics that may be brought up during the public comment period.

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

For any individual or company wishing to develop a small solar energy project, the proposed regulation provides certain, consistent and, DEQ believes, reasonable standards for obtaining a permit to construct and operate. Furthermore, the proposal mandates that DEQ process permit applications in no more than 90 days; a timeframe that should help developers in their planning. Provision of certain and timely regulatory requirements should assist developers in obtaining project financing.

For individuals or companies wishing to develop very small projects (e.g., 5 MW and below) or projects falling into certain categories (e.g., mounted on buildings or parking lots), the proposed 9VAC15-60-130 allows the applicant to perform a greatly reduced number of regulatory requirements. This provision should make it less costly to develop residential-scale and community-scale projects.

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

Of interest is the agreement of the regulatory advisory panel (RAP), a group comprised of representatives from environmental advocacy groups, industry, local government, academia, industry, and state agencies, on all issues presented in the proposal. In a number of states, interested parties and government agencies are debating what natural resource protections are appropriate for solar energy projects. RAP members who have experience with such projects and regulations across the country expressed the view that Virginia's proposed solar permit by rule is fair, balanced, and appropriately protective of natural resources, while not over-burdening business interests. The fact that the RAP was able to agree on all issues was a significant milestone in creating a constructive and productive process for approving proposed solar energy projects in Virginia.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to 2009 Acts of Assembly Chapters 808 and 854, the Department of Environmental Quality (DEQ) proposes to establish requirements for permits by rule for solar-energy projects with rated capacity not exceeding 100 megawatts. By means of the 2009 legislation, the General Assembly moved permitting authority for these projects from the State Corporation Commission (SCC) to DEQ. By requiring a permit by rule, the legislature is mandating that permit requirements be set forth up front within this regulation, rather than being developed on a case-by-case basis.

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

Estimated Economic Impact. Prior to the 2009 legislation small renewable energy projects were permitted on a case-by-case basis by the SCC. For those considering small solar-energy projects there was large uncertainty concerning the requirements and potential costs of completing a project, as well as how long the permitting process would take. The permit by rule framework eliminates much of that uncertainty. Applicants need to meet the 14 criteria set forth by § 10.1-1197.6(B) of the Code of Virginia to obtain permit by rule. Further, the proposed regulations specify that DEQ must render a decision concerning the permit application within 90 days.[1] This significant reduction in uncertainty is in itself beneficial and will increase the likelihood that net beneficial projects will go forward. Solar power is generally considered less damaging to the environmental than most other sources of energy. Thus, to the degree that the likely increase in generation of solar energy replaces more polluting forms of energy, there will likely be some benefit to the environment.

There was no known small solar-energy project that went forward when permitting authority was vested with the SCC. Since projects were to be permitted on a case-by-case basis a precise comparison of the costs for establishing small solar-energy projects under the prior system with the costs under the proposed permit by rule system cannot be made. Given both the significant benefit for reduced risk, reduced time cost, and reduced administrative costs for both applicants and the state inherent in the permit by rule system, total application costs will likely be reduced under the proposed regulation.

The following table describes application fees and the fee for modification:

Type of Action	Fee
Application: >5 MW to 25 MW	$8,000
Application: >25 MW to 50	$10,000

MW	
Application: >50 MW to 75 MW	$12,000
Application: >75 MW to 100 MW	$14,000
Modification: any rated capacity	$4,000

MW = megawatts

In addition to fees, there are survey requirements for wildlife and historic resources based upon the rated capacity of the solar-energy project, as well as the size of the area affected by the project.

Rated Capacity/ Disturbance Zone Acreage	Non-Fee Requirements	Estimated Cost of Non-Fee Requirements
500 KW or less, or 2 acres or less	none	none
greater than 500 KW and less than or equal to 5 MW, or greater than 2 acres and less than or equal to 10 acres	desktop database surveys*	$5,000 - $10,000
Greater than 5 MW and greater than 10 acres	desktop and field surveys for both wildlife and cultural resources*	$50,000 - $70,000

KW = kilowatts; MW = megawatts

* These cost estimates include reporting, recordkeeping, and administrative costs.

Businesses and Entities Affected. The proposed amendments affect individuals, businesses or other entities wishing to develop a small solar energy project with rated capacity less than or equal to 100 MW, but greater than 5 MW. DEQ staff is currently aware of two proposed projects that would be affected by the proposed regulations.

Localities Particularly Affected. The proposed regulation applies statewide and is not designed to have a disproportionate material impact on any particular locality. As a practical matter, however, solar-energy projects are more likely to be located in areas with minimal shade.

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

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

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

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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] For a point of comparison, though there was no known small solar-energy project that went forward when permitting authority was vested with the State Corporation Commission, there was one known small wind-energy project that went forward. The approval process took nearly seven years.

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

Summary:

Pursuant to Chapters 808 and 854 of the 2009 Acts of Assembly, the proposed regulation establishes requirements for permits by rule for solar-energy projects with rated capacity not exceeding 100 megawatts. The proposed regulation describes how the Department of Environmental Quality will address analysis of potential environmental impacts, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, compliance, and enforcement.

CHAPTER 60
SMALL RENEWABLE ENERGY PROJECTS (SOLAR) PERMIT BY RULE

Part I
Definitions and Applicability

9VAC15-60-10. Definitions.

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

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

"Archive search" means a search of DHR's cultural resource inventory for the presence of previously recorded archaeological sites and for architectural structures and districts.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1).

"Concentrating photovoltaics" or "CPV" means PV systems with equipment to focus or direct sunlight on the PV cells. For purposes of this chapter, CPV is included in the definition of PV.

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

"DCR" means the Department of Conservation and Recreation.

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

"DHR" means the Department of Historic Resources.

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

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

"Integrated PV" means photovoltaics incorporated into building materials, such as shingles.

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

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

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

"Other solar technologies" means materials or devices or methodologies of producing electricity from sunlight other than PV or CPV.

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

"Parking lot" means an improved area, usually divided into individual spaces and covered with pavement or gravel, intended for the parking of motor vehicles.

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

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Photovoltaic" or "PV" means materials and devices that absorb sunlight and convert it directly into electricity by semiconductors.

"Photovoltaic cell" or "PV cell" means a solid state device that converts sunlight directly into electricity. PV cells may be connected together to form PV modules, which in turn may be combined and connected to form PV arrays (often called PV panels).

"Photovoltaic system" or "PV system" means PV cells, which may be connected into one or more PV modules or arrays, including any appurtenant wiring, electric connections, mounting hardware, power-conditioning equipment (inverter), and storage batteries.

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

"Rated capacity" means the maximum capacity of a solar energy project based on Photovoltaic USA Test Conditions (PVUSA Test Conditions) rating.

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

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

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

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

"VLR" means the Virginia Landmarks Register (9VAC15-60-120 B 1).

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

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

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

9VAC15-60-20. Authority and applicability.

A. This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for solar-powered electric generation projects consisting of PV systems and associated facilities with either no connection to the electrical grid or a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts.

B. The department has determined that a permit by rule is required for small solar energy projects with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the projects do not otherwise meet the criteria for Part III (9VAC15-60-130) of this chapter, and this regulation contains the permit by rule provisions for these projects in Part II (9VAC15-60-30 et seq.) of this chapter.

C. The department has determined that different provisions should apply to projects that meet the criteria as set forth in Part III (9VAC15-60-130) of this chapter, and this regulation contains the requirements, if any, for these projects in Part III (9VAC15-60-130 A and 9VAC15-60-130 B) of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.

D. The department has determined that small renewable energy projects utilizing other solar technologies shall fulfill all of the requirements in 9VAC15-40 as prescribed for small wind energy projects, unless (i) the owner or operator of the proposed project presents to the department information indicating that the other solar technology presents no greater likelihood of significant adverse impacts to natural resources than does PV technology and (ii) the department determines that it is appropriate for the proposed project utilizing the other solar technology to meet the requirements of this chapter or of some modification to either 9VAC15-40 or 9VAC15-60, as prescribed by the department for that particular project.

Part II
Permit by Rule Provisions

9VAC15-60-30. Application for permit by rule for solar energy projects with rated capacity greater than five megawatts and disturbance zone greater than 10 acres.

A. The owner or operator of a small solar energy project with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the project does not otherwise meet the criteria for Part III (9VAC15-60-130 A or B) of this chapter, shall submit to the department a complete application in which he satisfactorily accomplishes all of the following:

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

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

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

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

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

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

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-60-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-60-60 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines, pursuant to 9VAC15-60-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-60-40 indicates that significant adverse impacts to wildlife or historic resources are likely. The mitigation plan shall be an addendum to the operating plan of the solar energy project and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-60-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan that includes a description of how the project will be operated in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-60-50;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-60-70;

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

13. Prior to authorization of the project and in accordance with § 10.1-1197.6 B 13 and 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-60-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

14. In accordance with 9VAC15-60-110, furnishes to the department the appropriate fee.

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

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a small solar energy project pursuant to this chapter.

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

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

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

9VAC15-60-40. Analysis of the beneficial and adverse impacts on natural resources.

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

1. Desktop surveys and maps. The applicant shall obtain a wildlife report and map generated from DGIF's Virginia Fish and Wildlife Information Service web-based application (9VAC15-60-120 C 3) or from a data and mapping system including the most recent data available from DGIF's subscriber-based Wildlife Environmental Review Map Service of the following: (i) known wildlife species and habitat features on the site or within two miles of the boundary of the site and (ii) known or potential sea turtle nesting beaches located within one-half mile of the disturbance zone.

2. Desktop map for avian resources in Coastal Avian Protection Zones (CAPZ). The applicant shall consult the "Coastal Avian Protection Zones" map generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1) and determine whether the proposed solar energy project site will be located in part or in whole within one or more CAPZ.

B. Analyses of historic resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct a preconstruction historic resources analysis. The analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation (9VAC15-60-120 B 2) in the appropriate discipline. The analysis shall include each of the following:

1. Compilation of known historic resources. The applicant shall gather information on known historic resources within the disturbance zone and within one-half mile of the disturbance zone boundary and present this information on the context map referenced in 9VAC15-60-70 B, or as an overlay to this context map, as well as in tabular format.

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

3. Archaeological survey. The applicant shall conduct an archaeological field survey of the disturbance zone and evaluate the eligibility of any identified archaeological site for listing in the VLR. As an alternative to performing this archaeological survey, the applicant may make a demonstration to the department that the project will utilize nonpenetrating footings technology and that any necessary grading of the site prior to construction does not have the potential to adversely impact any archaeological resource.

C. Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct a preconstruction desktop survey of natural heritage resources within the disturbance zone.

D. Summary report. The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subsections A, B, and C of this section, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife and historic resources identified by these studies and analyses.

9VAC15-60-50. Determination of likely significant adverse impacts.

A. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-60-40 A document that any of the following conditions exists:

1. State-listed T&E wildlife are found to occur within the disturbance zone or the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach.

2. The disturbance zone is located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map.

B. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-60-40 B indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

9VAC15-60-60. Mitigation plan.

A. If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then the applicant shall prepare a mitigation plan.

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

1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-60-40 A or C.

2. For proposed projects where the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided, and why additional proposed mitigation actions are reasonable. Mitigation measures shall include the following:

a. Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 through October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 through August 31) and one mile beyond the northern and southern reaches of the disturbance zone (hereinafter "sea turtle nest survey zone") between sunrise and 9 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and nonnesting emergences.

b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found within the sea turtle nest survey zone.

c. Minimizing nighttime construction during the nesting season and designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings.

3. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map, contribute $1,000.00 per megawatt of rated capacity, or partial megawatt thereof, to a fund designated by the department in support of scientific research investigating the impacts of projects in CAPZ on avian resources.

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

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the solar energy project or the installation of vegetative or other screening.

2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

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

9VAC15-60-70. Site plan and context map requirements.

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

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

9VAC15-60-80. Small solar energy project design standards.

The design and installation of the small solar energy project shall incorporate any requirements of the mitigation plan that pertain to design and installation if a mitigation plan is required pursuant to 9VAC15-60-50.

9VAC15-60-90. Public participation.

A. Before the initiation of any construction at the small solar energy project, the applicant shall comply with this section. The owner or operator shall first publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a project eligible for a permit by rule. No later than the date of newspaper publication of the initial notice, the owner or operator shall submit to the department a

copy of the notice along with electronic copies of all documents that the applicant plans to submit in support of the application. The notice shall include:

1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number and configuration of PV systems, and approximate maximum height of PV systems;

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

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

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

5. Location where copies of the documentation to be submitted to the department in support of the permit by rule application will be available for inspection.

B. The owner or operator shall place a copy of the documentation in a location accessible to the public during business hours for the duration of the 30-day comment period in the vicinity of the proposed project.

C. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin no sooner than 15 days after the applicant initially publishes the notice in the local newspaper.

D. The applicant shall hold a public meeting not earlier than 15 days after the beginning of the 30-day public comment period and no later than seven days before the close of the 30-day comment period. The meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project.

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

9VAC15-60-100. Change of ownership, project modifications, termination.

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

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

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

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

B. Project modifications. Provided project modifications are in accordance with the requirements of this permit by rule and do not increase the rated capacity of the small solar energy project, the owner or operator of a project authorized under a permit by rule may modify its design or operation or both by furnishing to the department new certificates prepared by a professional engineer, new documentation required under 9VAC15-60-30, and the appropriate fee in accordance with 9VAC15-60-110. The department shall review the received modification submittal in accordance with the provisions of subsection B of 9VAC15-60-30.

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

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

2. After the department has taken enforcement actions pursuant to 9VAC15-60-140, the owner or operator persistently operates the project in significant violation of the project's mitigation plan.

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

9VAC15-60-110. Fees for projects subject to Part II of this chapter.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule or a modification to an existing permit by rule for a small solar energy project subject to Part II (9VAC15-60-30 et seq.) of this chapter.

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

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

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

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

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

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

Type of Action	Fee
Permit by rule application – by rated capacity:	
>5 MW up to and including 25 MW	$8000
>25 MW up to and including 50 MW	$10,000
>50 MW up to and including 75 MW	$12,000
>75 MW up to and including 100 MW	$14,000
Permit by rule modification – for any project subject to Part II of this chapter	$4000

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

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

F. Periodic review of fees. Beginning July 1, 2013, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.

9VAC15-60-120. Internet accessible resources.

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

B. Internet available resources.

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

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

3. The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation, Version 2.4, June 2011, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA. Available at the following Internet address: http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml.

4. Virginia's Comprehensive Wildlife Conservation Strategy, 2005 (referred to as the Virginia Wildlife Action Plan), Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. Available at the following Internet address: http://www.bewildvirginia.org/wildlifeplan/.

C. Internet applications.

1. Coastal GEMS application, 2010, Virginia Department of Environmental Quality. Available at the following Internet address: http://www.deq.virginia.gov/coastal/coastalgems.html.

NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, (804) 698-4000.

2. Natural Landscape Assessment, 2010, Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtm. Land maps may be viewed at DCR's Land Conservation Data Explorer Geographic Information System website at http://www.vaconservedlands.org/gis.aspx.

NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at vaconslands@dcr.virginia.gov or DCR, Division of Natural Heritage, 217 Governor Street, Richmond, Virginia 23219, (804) 786-7951.

3. Virginia Fish and Wildlife Information Service 2010, Virginia Department of Game and Inland Fisheries. Available at the following Internet address: http://www.vafwis.org/fwis/.

NOTE: This website is maintained by DGIF and is accessible to the public as "visitors," or to registered subscribers. Registration, however, is required for access to resource-specific or species-specific locational data and records. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Information Service, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-6913.

Part III
Provisions for Projects Less Than or Equal to Five Megawatts or Less Than or Equal to 10 Acres or Meeting Certain Categorical Criteria

9VAC15-60-130. Small solar energy projects less than or equal to five megawatts or less than or equal to 10 acres or meeting certain categorical criteria.

A. The owner or operator of a small solar energy project is not required to submit any notification or certification to the department if he meets at least one of the following criteria:

1. The small solar energy project has either a rated capacity equal to or less than 500 kilowatts or a disturbance zone equal to or less than two acres; or

2. The small solar project falls within at least one of the following categories, without regard to the rated capacity or the disturbance zone of the project:

a. The small solar energy project is mounted on a single-family or duplex private residence.

b. The small solar energy project is mounted on one or more buildings less than 50 years old.

c. The small solar energy project is mounted over one or more existing parking lots.

d. The small solar energy project utilizes integrated PV only, provided that the building or structure on which the integrated PV materials are used is less than 50 years old.

B. The owner or operator of a small solar energy project with either a rated capacity greater than 500 kilowatts and less than or equal to five megawatts or a disturbance zone greater than two acres and less than or equal to 10 acres shall notify the department by submitting a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances. In addition, the owner or operator of such small solar energy project shall certify in writing to the department that he has (i) performed a desktop survey of known VLR-listed and VLR-eligible historic resources within the project's disturbance zone and within one-half mile of the disturbance zone boundary by means of an archives search of DHR's cultural resource inventory; (ii) performed a desktop survey of T&E species within the project's disturbance zone by obtaining a wildlife report and map generated from DGIF's Virginia Fish and Wildlife Information Service web-based application (9VAC15-60-120 C 3) or from a data and mapping system including the most recent data available from DGIF's subscriber-based Wildlife Environmental Review Map Service; and (iii) reported in writing the results of the archives search of known historic resources and desktop survey of T&E species to the governing body of the locality or localities wherein the project will be located.

Part IV
Enforcement

9VAC15-60-140. Enforcement.

The department may enforce the provisions of this chapter and any permits by rule authorized under this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-1197.11 of the Code of Virginia. In so doing, the department may:

1. Issue directives in accordance with the law;

2. Issue special orders in accordance with the law;

3. Issue emergency special orders in accordance with the law;

4. Seek injunction, mandamus, or other appropriate remedy as authorized by the law;

5. Seek civil penalties under the law; or

6. Seek remedies under the law, or under other laws including the common law.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC15-60)

The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation

(Version 2.4) 2011, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia.

Virginia's Comprehensive Wildlife Conservation Strategy, 2005, Virginia Department of Game and Inland Fisheries, Richmond, Virginia.

Chapter 1: Introduction.

Chapter 2: Methods.

Chapter 3: Statewide Overview.

Chapter 4: Virginia's Mid-Atlantic Coastal Plain.

Chapter 5: Virginia's Southern Appalachian Piedmont.

Chapter 6: Virginia's Blue Ridge Mountains.

Chapter 7: Virginia's Northern Ridge and Valley.

Chapter 8: Virginia's Northern Cumberland Mountains.

Chapter 9: Virginia's Southern Cumberland Mountains.

Chapter 10: Conclusions.

Glossary.

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Appendix B: Species of Greatest Conservation Need with No Known Ecoregional Associations.

Appendix C: Terrestrial Species with No Landcover Associations.

Appendix D: Potential Habitat Mapping for Terrestrial & Aquatic Tier I Species.

Appendix E: List of Tier I Species and Reviewers.

Appendix F: Complete list of Stress/Source Combinations Identified by the Taxonomic Advisory Committees.

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Appendix H: Threats to Virginia's Species of Greatest Conservation Need.

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Appendix O: Reference Maps.

Appendix P: Public Comments.

VA.R. Doc. No. R10-2506; Filed January 10, 2012, 8:39 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

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

Title of Regulation: **12VAC5-590. Waterworks Regulations (amending 12VAC5-590-545).**

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Effective Date: March 1, 2012.

Agency Contact: Robert A. K. Payne, Compliance Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7498, or email rob.payne@vdh.virginia.gov.

Summary:

The amendments include provisions for a waiver for community waterworks serving less than 10,000 persons from the requirement to mail the consumer confidence report (CCR) annually to each customer. Instead, eligible waterworks are allowed to publish annual CCRs in a local newspaper or newspapers if certain conditions are met. The mailing waiver provision is allowable under the National Primary Drinking Water Regulations (40 CFR 141.155(g)). This action is mandated by Chapter 843 of the 2011 Acts of Assembly.

12VAC5-590-545. Consumer confidence reports.

A. Purpose and applicability.

1. Each community waterworks owner shall deliver to his customers an annual report that contains information on the quality of the water delivered by the waterworks and

characterizes the risks, if any, from exposure to contaminants detected in the drinking water.

2. For the purpose of this section, customers are defined as billing units or service connections to which water is delivered by a community waterworks.

3. For the purpose of this section, a contaminant is detected when the laboratory reports the contaminant level as a measured level and not as nondetected (ND) or less than (<) a certain level. The owner shall utilize a laboratory that complies with 12VAC5-590-340, and the laboratory's analytical and reporting procedures shall have been in accordance with 12VAC5-590-440; laboratory certification requirements of the Commonwealth of Virginia, Department of General Services, Division of Consolidated Laboratory Services; and consistent with current U. S. Environmental Protection Agency regulations found at 40 CFR Part 141.

B. Effective dates.

1. Each existing community waterworks owner shall deliver his report by July 1 annually.

2. The owner of a new community waterworks shall deliver his first report by July 1 of the year after its first full calendar year in operation and annually thereafter.

3. The owner of a community waterworks that sells water to a consecutive waterworks shall deliver the applicable information necessary to comply with the requirements contained in this section to the consecutive waterworks by April 1 annually, or on a date mutually agreed upon by the seller and the purchaser and specifically included in a contract between the parties.

C. Content.

1. Each community waterworks owner shall provide his customers an annual report that contains the information on the source of the water delivered as follows:

a. Each report shall identify the source or sources of the water delivered by the community waterworks by providing information on:

(1) The type of the water (e.g., surface water, ground water); and

(2) The commonly used name, if any, and location of the body or bodies of water.

b. Where a source water assessment has been completed, the report shall:

(1) Notify consumers of the availability of the assessment;

(2) Describe the means to obtain the assessment; and

(3) Include a brief summary of the waterworks' susceptibility to potential sources of contamination.

c. The owner should highlight in the report significant sources of contamination in the source water area if such information is readily available.

2. For the purpose of compliance with this section, each report shall include the following definitions:

a. "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

b. "Maximum contaminant level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

c. A report for a community waterworks operating under a variance or an exemption issued by the commissioner under 12VAC5-590-140 and 12VAC5-590-150 shall include the following definition: "Variances and exemptions" means state or EPA permission not to meet an MCL or a treatment technique under certain conditions.

d. A report that contains data on contaminants that EPA regulates using any of the following terms shall include the applicable definitions:

(1) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(2) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that an owner shall follow.

(3) "Maximum residual disinfectant level goal" or "MRDLG" means the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(4) "Maximum residual disinfectant level" or "MRDL" means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

3. Information on detected contaminants.

a. This section specifies the requirements for information to be included in each report for the following contaminants:

(1) Contaminants subject to a PMCL, action level, maximum residual disinfectant level, or treatment technique as specified in 12VAC5-590-370;

(2) Unregulated contaminants subject to monitoring as specified in 12VAC5-590-370; and

(3) Disinfection byproducts or microbial contaminants, except Cryptosporidium, for which monitoring is required by Information Collection Rule (40 CFR 141.142 and 141.143 (7-1-97 Edition)), except as provided under subdivision 5 a of this subsection, and which are detected in the finished water.

b. The data relating to these contaminants shall be displayed in one table or in several adjacent tables. Any additional monitoring results that a community waterworks owner chooses to include in the report shall be displayed separately.

c. The data shall be derived from data collected to comply with EPA and state monitoring and analytical requirements during the calendar year preceding the year the report is due, except that:

(1) Where an owner is allowed to monitor for contaminants specified in subdivision 3 a (1) and (3) of this subsection less often than once a year, the table or tables shall include the date and results of the most recent sampling, and the report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

(2) Results of monitoring in compliance with the Information Collection Rule (40 CFR 141.142 and 141.143 (7-1-97 Edition)) need only be included for five years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

d. For detected contaminants subject to a PMCL, action level, or treatment technique as specified in 12VAC5-590-370 and listed in Tables 2.1, 2.2 (Primary Maximum Contaminant Levels only), 2.3, 2.4 (Primary Maximum Contaminant Levels only), and 2.5, the table or tables shall contain:

(1) The PMCL for that contaminant expressed as a number equal to or greater than 1.0 as provided in Appendix O, with an exception for beta/photon emitters. When the detected level of beta/photon emitters has been reported in the units of pCi/L and does not exceed 50 pCi/L, the report may list the PMCL as 50 pCi/L. In this case, the owner shall include in the report the following footnote: The PMCL for beta particles is 4 mrem/year. EPA considers 50 pCi/L to be the level of concern for beta particles;

(2) The MCLG for that contaminant expressed in the same units as the PMCL as provided in Appendix O;

(3) If there is no PMCL for a detected contaminant, the table shall indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report shall include the definitions for treatment technique and/or action level, as appropriate, specified in subdivision 3 d of this subsection;

(4) For contaminants subject to a PMCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance and the range of detected levels is as follows:

(a) When compliance with the PMCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the PMCL.

(b) When compliance with the PMCL is determined by calculating a running annual average of all samples taken at a sampling point, the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the PMCL. For the PMCLs for TTHM and HAA5, the owner shall include the highest locational running annual average and the range of individual sample results for all sampling points expressed in the same units as the PMCL. If more than one location exceeds the TTHM or HAA5 PMCL, the owner shall include the locational running annual averages for all locations that exceed the PMCL.

(c) When compliance with the PMCL is determined on a systemwide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection expressed in the same units as the PMCL. The range of detection for TTHM and HAA5 shall include individual sample results for the IDSE conducted under 12VAC5-590-370 B 3 e (2) for the calendar year that the IDSE samples were taken.

(5) For turbidity, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 12VAC5-590-420 for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;

(6) For lead and copper, the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;

(7) For total coliform:

(a) The highest monthly number of positive samples for waterworks collecting fewer than 40 samples per month;

(b) The highest monthly percentage of positive samples for waterworks collecting at least 40 samples per month;

(8) For fecal coliform, the total number of positive samples;

(9) The likely source or sources of detected contaminants. Specific information regarding contaminants may be available in sanitary surveys and

source water assessments, and should be used when available to the owner. If the owner lacks specific information on the likely source, the report shall include one or more of the typical sources for that contaminant listed in Appendix O that are most applicable to the system.

e. If a community waterworks owner distributes water to his customers from multiple hydraulically independent distribution systems that are fed by different raw water sources:

(1) The table shall contain a separate column for each service area and the report shall identify each separate distribution system; or

(2) The owner shall produce a separate report tailored to include data for each service area.

f. The table or tables shall clearly identify any data indicating violations of PMCLs, MRDLs, or treatment techniques and the report shall contain a clear and readily understandable explanation of the violation including:

(1) The length of the violation;

(2) The potential adverse health effects using the relevant language of Appendix O; and

(3) Actions taken by the waterworks owner to address the violation.

g. For detected unregulated contaminants subject to monitoring as specified in 12VAC5-590-370 and listed in Tables 2.6 and 2.7, for which monitoring is required, the table or tables shall contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

4. Information on Cryptosporidium, radon, and other contaminants:

a. If the owner has performed any monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of the Informational Collection Rule (40 CFR 141.143 (7-1-97 Edition)), which indicates that Cryptosporidium may be present in the source water or the finished water, the report shall include:

(1) A summary of the results of the monitoring; and

(2) An explanation of the significance of the results.

b. If the owner has performed any monitoring for radon which indicates that radon may be present in the finished water, the report shall include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results.

c. If the owner has performed additional monitoring that indicates the presence of other contaminants in the finished water, the report should include any results that may indicate a health concern, as determined by the commissioner. Detections above a proposed MCL or health advisory level may indicate possible health concerns. For such contaminants, the report should include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

5. Compliance with other regulations.

a. In addition to the requirements of subdivision 3 f of this subsection the report shall note any violation that occurred during the year covered by the report of a requirement listed below.

(1) Monitoring and reporting of compliance data;

(2) Filtration and disinfection prescribed by 12VAC5-590-420. For owners who have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes which constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches;

(3) Lead and copper control requirements prescribed by 12VAC5-590-370. For owners who fail to take one or more of the prescribed actions, the report shall include the applicable language of Appendix O for lead, copper, or both;

(4) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by 12VAC5-590-420 G. For owners who violate the requirements of that section, the report shall include the relevant language from Appendix O;

(5) Recordkeeping of compliance data;

(6) Special monitoring requirements for unregulated contaminants prescribed by 12VAC5-590-370 B 4 and for sodium;

(7) Violation of the terms of a variance, an exemption, or an administrative or judicial order.

b. The report shall contain:

(1) A clear and readily understandable explanation of the violation;

(2) Any potential adverse health effects; and

(3) The steps the owner has taken to correct the violation.

c. For community groundwater systems, the following shall be included:

(1) A significant deficiency that is uncorrected at the time of the report, or;

(2) An E. coli positive groundwater source sample that is not invalidated at the time of the report.

d. The owner of a community groundwater system shall report annually the information in subdivision 5 c of this subsection until the ODW determines that the significant deficiency or the E. coli positive source water sample has been satisfactorily addressed. The report shall include the following information:

(1) The nature of the significant deficiency or the source of the E. coli contamination and the date the significant deficiency was identified by the ODW or the date or dates of the E. coli positive source samples.

(2) If the E. coli contamination has been addressed in accordance with 12VAC5-590-421 and the date of such action.

(3) The ODW approved plan and schedule for correcting the significant deficiency or E. coli contamination including interim measures, progress to date, and which interim measures have been completed.

(4) In communities with a large portion of non-English speaking consumers, the notice shall contain information in the appropriate language or languages regarding the importance of the notice or contain a telephone number or address where the consumers may contact the owner to obtain a translated copy of the notice or assistance with the appropriate language.

(5) For E. coli contamination, the potential health effects language shall be included.

e. If directed by the ODW, the owner of a community groundwater system with significant deficiencies that have been corrected at the time of the report shall inform his consumers of the significant deficiencies, how the deficiencies were corrected, and the date or dates of correction under subdivisions 5 d (1) through (4) of this subsection.

6. Variances and exemptions. If a system is operating under the terms of a variance or an exemption issued by the commissioner under 12VAC5-590-140 and 12VAC5-590-150, the report shall contain:

a. An explanation of the reasons for the variance or exemption;

b. The date on which the variance or exemption was issued;

c. A brief status report on the steps the owner is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

d. A notice of any opportunity for public input in the review or renewal of the variance or exemption.

7. Additional information.

a. The report shall contain a brief explanation regarding contaminants, which may reasonably be expected to be found in drinking water including bottled water. This explanation shall include the exact language of subdivisions 8 a (1), (2) and (3) of this subsection or the owner shall use his own comparable language following approval by the commissioner. The report also shall include the exact language of subdivision 8 a (4) of this subsection.

(1) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(2) Contaminants that may be present in source water include: (i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife; (ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming; (iii) pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses; (iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems; (v) radioactive contaminants, which can be naturally occurring or be the result of oil and gas production and mining activities.

(3) In order to ensure that tap water is safe to drink, EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(4) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts

of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

b. The report shall include the telephone number of the owner, operator, or designee of the community waterworks as a source of additional information concerning the report.

c. In communities with a large proportion of non-English speaking residents, as determined by the commissioner, the report shall contain information in the appropriate language or languages regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

d. The report shall include the following information about opportunities for public participation in decisions that may affect the quality of the water. The waterworks owner should consider including the following additional relevant information:

(1) The time and place of regularly scheduled board meetings of the governing body which has authority over the waterworks.

(2) If regularly scheduled board meetings are not held, the name and telephone number of a waterworks representative who has operational or managerial authority over the waterworks.

e. The owner may include such additional information as he deems necessary for public education consistent with, and not detracting from, the purpose of the report.

D. Additional health information.

1. All reports shall prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer who are undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

2. Any waterworks owner who detects arsenic at levels above 0.005 mg/L, but equal to or below the PMCL of 0.010 mg/L, shall include in his report the following informational statement about arsenic: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

In lieu of the statement required in this subdivision, the waterworks owner may include his own educational statement after receiving approval from the commissioner.

3. A waterworks owner who detects arsenic levels above 0.010 mg/L shall include the health effects language contained in Appendix O.

4. An owner who detects nitrate at levels above 5 mg/L, but below the PMCL, shall include in his report the following informational statement about the impacts of nitrate on children: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.

In lieu of the statement required in this subdivision, the waterworks owner may include his own educational statement after receiving approval from the commissioner.

5. All reports shall prominently display the following language: If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. [NAME OF UTILITY] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (800-426-4791).

In lieu of the statement required in this subdivision, the owner may include his own educational statement after receiving approval from the commissioner.

6. Community waterworks owners who detect TTHM above 0.080 mg/L, but below the PMCL, as an annual average shall include health effects language prescribed by paragraph 81 of Appendix O.

E. Report delivery and recordkeeping.

1. Each community waterworks owner shall mail or otherwise directly deliver one copy of the report to each customer~~.~~, except as follows:

a. Owners of community waterworks serving fewer than 10,000 persons shall have the option to either mail (or otherwise directly deliver) a copy of the report to each customer or publish the report in a local newspaper or newspapers of general circulation serving the area in which the waterworks is located by July 1 of each year; and

b. If the owner chooses to publish the report, the owner shall inform customers, either in the newspaper in which the report is to be published or by other means approved by the commissioner, that a copy of the report will not be mailed to them and that a copy of the report will be made available to the public upon request.

2. ~~The owner~~ Community waterworks owners shall make a good faith effort ~~that shall be tailored~~ to deliver the report to the consumers who are served by the ~~system~~ waterworks but are not bill paying customers, such as renters ~~and~~ or workers. This good faith effort shall include at least one, and preferably two or more, of the following methods appropriate to the particular waterworks:

a. Posting the reports on the Internet;

b. Mailing to postal patrons in metropolitan areas;

c. Advertising the availability of the report in the news media;

d. Publication in a local newspaper;

e. Posting in public places such as libraries, community centers, and public buildings;

f. Delivery of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers;

g. Delivery to community organizations~~.~~; or

h. Other methods as approved by the commissioner.

3. No later than July 1 of each year ~~the owner~~ community waterworks owners shall deliver a copy of the report to the district engineer, followed within three months by a certification that the report has been distributed to customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the commissioner.

4. No later than July 1 of each year ~~the owner~~ community waterworks owners shall deliver the report to any other agency or clearinghouse specified by the commissioner.

5. ~~Each community~~ Community waterworks ~~owner~~ owners shall make the report available to the public upon request.

6. The owner of each community waterworks serving 100,000 or more persons shall post the current year's report to a publicly accessible site on the Internet.

7. ~~Each community~~ Community waterworks ~~owner~~ owners shall retain copies of the report for no less than three years.

VA.R. Doc. No. R12-2755; Filed January 4, 2012, 3:46 p.m.

TITLE 13. HOUSING

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 30, 2012.

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

Summary:

The amendments to the authority's rules and regulations for the allocation of low-income housing tax credits (i) delete certain requirements for new construction points; (ii) remove amenity points for the number of bathrooms in certain size units; (iii) revise the amenity point categories for low-flow faucets and energy efficient water heaters; (iv) add amenity point categories for water efficient toilets, energy efficient bathroom vents, wall insulation, and fire prevention for cooking surfaces; (v) add a provision for the distribution of credits among the allocation pools; (vi) remove the noncompetitive preservation pool; and (vii) make other miscellaneous administrative clarification changes.

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

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of

housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

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

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

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

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

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

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein,

the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

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

1. Readiness.

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

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

2. Housing needs characteristics.

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

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

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

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

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

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

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

e. Commitment by the applicant <u>for any development without section 8 project-based assistance</u> 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)~~ (a) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)

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

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

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

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

~~(h)~~ (g) If each bathroom contains only ~~low-flow~~ WaterSense labeled faucets and showerheads ~~as defined by the authority~~. ~~(3~~ (2 points)

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

~~(j)~~ (i) If all the water heaters meet the EPA's Energy Star qualified program requirements; or any centralized commercial system that has a 95%+ efficiency performance rating, [~~and~~ or] any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points)

~~(k)~~ (j) 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 ~~(10~~] points)

~~(l)~~ (k) 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)

(l) If each bathroom is equipped with a WaterSense labeled toilet. (2 points)

(m) If each full bathroom is equipped with EPA Energy Star qualified bath vent [~~fans/lights~~ fans]. (2 points)

(n) New installation of continuous R-3 or higher wall sheathing insulation. (5 points)

(o) If all cooking surfaces are equipped with fire prevention or suppression features that meet the authority's design and construction standards. [(4 points for fire prevention or 2 points for fire suppression)]

(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~~ 42 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 (approved by the executive director) 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 common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and 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 (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (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. ~~e.~~] 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. ~~f.~~] Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the authority's list of LEED/EarthCraft certified architects. (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, 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.

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

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

[j. ~~i.~~] 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 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, 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) supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation, if in the reasonable discretion of the executive director, it serves the best interest of the plan, or (iv) 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 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. R12-2966; Filed January 9, 2012, 9:30 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (amending 18VAC48-50-10 through 18VAC48-50-40, 18VAC48-50-60, 18VAC48-50-80, 18VAC48-50-90 through 18VAC48-50-160, 18VAC48-50-180, 18VAC48-50-190, 18VAC48-50-220, 18VAC48-50-240, 18VAC48-50-250, 18VAC48-50-290; adding 18VAC48-50-35, 18VAC48-50-37, 18VAC48-50-253, 18VAC48-50-255, 18VAC48-50-257).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: March 1, 2012.

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.

Summary:

The amendments establish certification requirements for supervisory and principal employees of common interest community managers and provide more flexible experience and training requirements for common interest community managers.

Pursuant to legislative changes made at the 2011 Session of the General Assembly, the implementation date of the employee certification requirements is extended to July 1, 2012, and the expiration date of provisional common interest community manager licenses is extended through June 30, 2012.

Other changes from the proposed regulation include (i) incorporation of a requirement that applicants for certification must complete a fair housing training program that includes a minimum of two contact hours and focuses on Virginia fair housing laws as they relate to the management of common interest communities and (ii) incorporation of a requirement that certified employees must complete a two-hour training program that encompasses Virginia laws and regulations related to common interest community management and the creation, governance, administration, and operations of associations. Both of these training programs must be completed biannually as a requirement for renewal.

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

18VAC48-50-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

"Common interest community"

"Common interest community manager"

"Declaration"

"Governing board"

"Lot"

"Management services"

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

"Active status" means the status of a certificated person in the employ of a common interest community manager.

"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board. Notice mailed to the address of record by certified mail, return receipt requested, shall be deemed valid notice.

"Applicant" means a common interest community manager that has submitted an application for licensure or an individual who has submitted an application for certification.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Certified principal or supervisory employee" refers to any individual who has principal responsibility for management services provided to a common interest community or who has supervisory responsibility for employees who participate directly in the provision of management services to a common interest community, and who holds a certificate issued by the board.

"Contact hour" means 50 minutes of instruction.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervision" means exercising oversight and direction of, and control over, the work of another.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia and properly registered, as may be required, with the Virginia State Corporation Commission.

~~"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed common interest community manager.~~

"Gross receipts" means all revenue derived from providing management services to common interest communities in the Commonwealth of Virginia, excluding pass-through expenses or reimbursement of expenditures by the regulant on behalf of an association.

"Principal responsibility" means having the primary obligation for the direct provision of management services provided to a common interest community.

"Regulant" means a common interest community manager as defined in § 54.1-2345 of the Code of Virginia who holds a license issued by the board or an individual who holds a certificate issued by the board.

"Reinstatement" means the process and requirements through which an expired license or certificate can be made valid without the regulant having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license ~~for another period of time~~ or certificate.

"Responsible person" means the employee, officer, manager, owner, or principal of the firm who shall be designated by each firm to ensure compliance with Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, and all regulations of the board, and to receive communications and notices from the board that may affect the firm [~~or affect any certificateholder with the firm~~]. In the case of a sole proprietorship, the sole proprietor shall have the responsibilities of the responsible person.

"Sole proprietor" means any individual, not a corporation or other registered business entity, 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.

"Supervisory responsibility" means providing formal supervision of the work of at least one other person. The individual who has supervisory responsibility directs the work of another employee or other employees, has control over the work performed, exercises examination and evaluation of the employee's performance, or has the authority to make decisions personally that affect the management services provided.

Part II
Entry

18VAC48-50-20. Application procedures.

All applicants seeking licensure or certification shall submit an application with the appropriate fee specified in 18VAC48-50-60. Application shall be made on forms provided by the ~~department~~ board or its agent.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be considered complete until all required documents are received by the board.

~~A~~ An individual or firm will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. ~~Firms~~ An individual or firm that ~~fail~~ fails to complete the process within 12 months of receipt of the application in the board's office must submit a new application and fee.

18VAC48-50-30. Qualifications for licensure as a common interest community manager.

A. Firms that provide common interest community management services shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2346 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm offering management services as defined in § 54.1-2345 of the Code of Virginia shall hold a license as a common interest community manager. All names under which the common interest community manager conducts business shall be disclosed on the application. The name

under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the county or jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant for a common interest community manager license shall disclose the firm's mailing address, the firm's physical address, and the address of the office from which the firm provides management services to Virginia common interest communities. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for a common interest community manager license shall disclose the following information about the firm, the responsible person, and any of the principals of the firm:

1. All felony convictions.

2. All misdemeanor convictions~~,~~ in any jurisdiction~~,~~ that occurred within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant for a common interest community manager license shall submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with § 54.1-2346 D of the Code of Virginia. Proof of current bond or insurance policy with the firm as the named bondholder or insured must be submitted in order to obtain or renew the license. The bond or insurance policy must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license.

F. The applicant for a common interest community manager license shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et. seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

G. The applicant for a common interest community manager license, the responsible person, and any principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose principals have been subject to, or any firm in which the ~~applicant's~~ principals of the applicant for a common interest community manager license hold a 10% or greater interest have been subject to, any form of adverse disciplinary action, including but not limited to, reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining licensure in Virginia.

H. The applicant for a common interest community manager license shall provide all relevant information about the firm, the responsible person, and any of the principals of the firm for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, and specifically shall provide all relevant financial information related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for a common interest community manager license shall further disclose whether or not one or more of the principals who individually or collectively own more than a 50% equity interest in the firm are or were equity owners holding, individually or collectively, a 10% or greater interest in any other entity licensed by any agency of the Commonwealth of Virginia that was the subject of any adverse disciplinary action, including revocation of a license, within the seven-year period immediately preceding the date of application.

[~~I. The applicant for a common interest community manager license shall attest that all employees of the firm who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate as a certified principal or supervisory employee issued by the board or shall be under the direct supervision of a certified principal or supervisory employee.~~]

~~Applicants~~ [~~J.~~ I.] An applicant for ~~licensure~~ a common interest community manager license shall hold an active designation as an Accredited Association Management Company by the Community Associations Institute.

[J. ~~K. In~~ Prior to July 1, 2012, in] lieu of the provisions of subsection [I ~~J~~] of this section, an [~~applicant~~ application] for a common interest community manager license may be [~~licensed~~ approved] provided the applicant certifies to the board that the applicant has [:]

~~(i)~~ [~~at~~ 1. At] least one supervisory employee ~~or,~~ officer ~~with five years of experience in providing management~~

~~services and who has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, involved in all aspects of the management services offered and provided by the firm and (ii) at least 50% of persons who have principal responsibility for management services to a common interest community in the Commonwealth of Virginia meet one of the following~~, manager, owner, or principal of the firm [who is] involved in all aspects of the management services offered and provided by the firm and who has satisfied one of the following criteria:

~~1. Hold an active designation as a Professional Community Association Manager and certify having provided management services for a period of 12 months immediately preceding application;~~

~~2. Hold an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application;~~

~~3. Hold an active designation as an Association Management Specialist and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application; or~~

~~4. Have completed an introductory training program, as set forth in 18VAC48-50-250 A, and passed a certifying examination approved by the board and certify having two years experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application.~~

[~~1.~~ a.] Holds an active designation as a Professional Community Association Manager by Community Associations Institute;

[~~2.~~ b.] Has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, and has at least three years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to [~~provide~~ have supervisory responsibility or principal responsibility for] management services;

[~~3.~~ c.] Has successfully completed an introductory training program as described in 18VAC48-50-250 A, as approved by the board, and has at least five years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to [~~provide~~ have supervisory responsibility or principal responsibility for] management services; or

[~~4.~~ d.] Has not completed a board-approved training program but who, in the judgment of the board, has obtained the equivalent of such training program by documented course work that meets the requirements of a board-approved comprehensive training program as described in Part VI (18VAC48-50-230 et seq.) of this chapter, and has at least 10 years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to [~~provide~~ have supervisory responsibility or principal responsibility for] management services.

[2. At least 50% of persons in the firm with principal responsibility for management services to a common interest community in the Commonwealth of Virginia have satisfied one of the following criteria:

a. Hold an active designation as a Professional Community Association Manager and certify having provided management services for a period of 12 months immediately preceding application;

b. Hold an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application;

c. Hold an active designation as an Association Management Specialist and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application; or

d. Have completed a comprehensive or introductory training program, as set forth in 18VAC48-50-250 A or B, and passed a certifying examination approved by the board and certify having two years experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application.

K. Effective July 1, 2012, the applicant for a common interest community manager license shall attest that all employees of the firm who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate as a certified principal or supervisory employee issued by the board or shall be under the direct supervision of a certified principal or supervisory employee.

L. Effective July 1, 2012, in lieu of the provisions of subsection I of this section, an application for a common interest community manager license may be approved provided the applicant certifies to the board that the applicant has at least one supervisory employee, officer, manager, owner, or principal of the firm who is involved in all aspects of the management services offered and provided by the firm and who has satisfied one of the following criteria:

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute;

2. Has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, and has at least three years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services;

3. Has successfully completed an introductory training program as described in 18VAC48-50-250 A, as approved by the board, and has at least five years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services; or

4. Has not completed a board-approved training program but who, in the judgment of the board, has obtained the equivalent of such training program by documented course work that meets the requirements of a board-approved comprehensive training program as described in Part VI (18VAC48-50-230 et seq.) of this chapter, and has at least 10 years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services.]

~~K.~~ [~~L.~~ M.] The firm shall designate a responsible person.

18VAC48-50-35. Qualifications for certification as a certified principal or supervisory employee [effective July 1, 2012].

A. [~~Applicants for certification as a certified principal or supervisory employee~~ Principal or supervisory employees requiring certification pursuant to § 54.1-2346 of the Code of Virginia] shall meet the requirements [~~set out in~~ of] this section [and submit an application for certification on or after July 1, 2012].

B. The applicant for certification shall be at least 18 years of age.

C. The applicant for certification shall have a high school diploma or its equivalent.

D. The applicant for certification shall provide a mailing address. A post office box is only acceptable as a mailing address when a physical address is also provided. The mailing address provided shall serve as the address of record.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant for certification shall disclose the following information:

1. All felony convictions.

2. All misdemeanor convictions that occurred in any jurisdiction within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

F. The applicant for certification shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the certificate is in effect.

G. The applicant for certification shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered to provide management or related services; and the board, in its discretion, may deny certification to any applicant for certification who has been subject to any form of adverse disciplinary action, including but not limited to reprimand, revocation, suspension or denial, imposition of a monetary penalty, requirement to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining certification in Virginia.

H. The applicant for certification shall provide all relevant information for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, all as related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for certification shall further disclose whether or not he was the subject of any adverse disciplinary action, including revocation of a license, certificate, or registration within the seven-year period immediately preceding the date of application.

I. An applicant for certification may be certified provided the applicant provides proof to the board that the applicant meets one of the following:

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute and certifies having provided

management services for a period of three months immediately preceding application;

2. Holds an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certifies having two years of experience in providing management services. Of the required two years experience, a minimum of six months of experience must have been gained immediately preceding application;

3. Holds an active designation as an Association Management Specialist by Community Associations Institute and certifies having two years of experience in providing management services. Of the required two years experience, a minimum of three months of experience must have been gained immediately preceding application; or

4. Has completed an introductory [or comprehensive] training program as set forth in 18VAC48-50-250 A [or B] and passed a certifying examination approved by the board and certifies having two years experience in providing management services. Of the required two years experience, a minimum of six months of experience must have been gained immediately preceding application.

J. The applicant for certification shall provide the name of his employing common interest community manager, if applicable.

[~~K. The applicant for certification shall provide proof of completion of two hours of Virginia common interest community law and regulation training as approved by the board. Initial certificateholders have one year from the date the certificate is issued to complete the required common interest community law and regulation training.~~

~~L. The applicant for certification shall provide proof of completion of two hours of fair housing training as it relates to the management of common interest communities in Virginia and as approved by the board. Initial certificateholders have one year from the date the certificate is issued to complete the required fair housing training.~~]

18VAC48-50-37. Licensure and certification by reciprocity.

A. The board may waive the requirements of 18VAC48-50-30 [~~J and K~~ I, J, and L] and issue a license as a common interest community manager to an applicant who holds an active, current license, certificate, or registration in another state, the District of Columbia, or any other territory or possession of the United States provided the requirements and standards under which the license, certificate, or registration was issued are substantially equivalent to those established in this chapter and related statutes.

B. [~~The~~ Effective July 1, 2012, the] board may waive the requirements of 18VAC48-50-35 [~~H and J~~ I] and issue a certificate as a certified employee to an applicant who holds an active, current license, certificate, or registration in another state, the District of Columbia, or any other territory or possession of the United States provided the requirements and standards under which the license, certificate, or registration was issued are substantially equivalent to those established in this chapter and related statutes.

18VAC48-50-40. Application denial.

The board may refuse initial licensure or certification due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant. ~~The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia. The denial is considered to be a case decision and is subject to appeal under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.~~

18VAC48-50-60. Fee schedule.

Fee Type	Fee Amount		Recovery Fund Fee* (if applicable)	Total Amount Due (excluding annual assessment in ~~18VAC48-50-80)~~ 18VAC48-50-70)	When Due
Initial Common Interest Community Manager Application	$100	+	25	$125	With ~~initial~~ application ~~filed on or after January 1, 2009~~
Common Interest Community Manager Renewal	$100			$100	With renewal application
Common Interest Community Manager Reinstatement (includes a $200 reinstatement fee in	$300			$300	With renewal application

addition to the regular $100 renewal fee)					
Certified Principal or Supervisory Employee Initial Application	$75			$75	With application
Certified Principal or Supervisory Employee Renewal	$75			$75	With renewal application
Certified Principal or Supervisory Employee Reinstatement (includes a $75 reinstatement fee in addition to the regular $75 renewal fee)	$150			$150	With renewal application
Training Program Provider Initial Application	$100			$100	With application
Training Program Provider Additional Program	$50			$50	With application

*In accordance with § 55-530.1 of the Code of Virginia.

18VAC48-50-80. [Provisional licenses. ~~(Repealed.)~~]

[Provisional licenses will be subject to the annual assessment for each year that the provisional license is in effect. When the annual assessment due is less than $1,000, the common interest community manager shall submit documentation of gross receipts for the preceding calendar year with each annual assessment in order to verify the annual assessment amount due. Documentation of gross receipts is not required from common interest community managers that submit the maximum annual assessment amount of $1,000. Acceptable documentation may include, but is not limited to, audits, tax returns, or financial statements.

Provisional licensees must submit annual proof of current bond or insurance policy in accordance with 18VAC48-50-30] ~~D~~ [E, and are also subject to the provisions of 18VAC48-50-150 D. Failure to submit the annual assessment and proof of current bond or insurance policy within 30 days of the request by the board shall result in the automatic suspension of the license.]

Part IV
Renewal and Reinstatement

18VAC48-50-90. Renewal required.

A license issued under this chapter shall expire one year from the last day of the month in which it was issued. A certificate issued under this chapter shall expire two years from the last day of the month in which it was issued. A fee shall be required for renewal. In accordance with § 54.1-2346 F of the Code of Virginia, provisional licenses shall expire on June 30, [~~2011~~ 2012], and shall not be renewed.

18VAC48-50-100. Expiration and renewal.

A. Prior to the expiration date shown on the license, licenses shall be renewed upon (i) completion of the renewal application, (ii) submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 ~~D~~ E, and (iii) payment of the fees specified in 18VAC48-50-60 and 18VAC48-50-70.

B. Prior to the expiration date shown on the certificate, certificates shall be renewed upon (i) completion of the renewal application; (ii) submittal of proof of completion of two hours of fair housing training as it relates to the management of common interest communities and two hours of Virginia common interest community law and regulation training, both as approved by the board and completed within the two-year certificate period immediately prior to the expiration date of the certificate; and (iii) payment of the fees specified in 18VAC48-50-60.

C. The board will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the license or certificate may be submitted with the required fees as an application for renewal. By submitting an application for renewal, the regulant is certifying continued compliance with the Standards of Conduct and Practice in Part V (18VAC48-50-140 et seq.) of this chapter.

~~B.~~ D. Applicants for renewal shall continue to meet all of the qualifications for licensure and certification set forth in ~~18VAC48-50-30~~ Part II (18VAC48-50-20 et seq.) of this chapter.

18VAC48-50-110. Reinstatement of common interest community manager license and certified principal or supervisory employee certificate required.

A. If all of the requirements for renewal of a license~~, including receipt of the fees by the board and submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D~~ as specified in 18VAC48-50-100 A are not completed within 30 days of the license expiration date, the ~~regulant~~ licensee shall be required to reinstate the license by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

B. If all of the requirements for renewal of a certificate as specified in 18VAC48-50-100 B are not completed within 30 days of the certificate expiration date, the certificateholder shall be required to reinstate the certificate by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

C. A license or certificate may be reinstated for up to six months following the expiration date. After six months, the license or certificate may not be reinstated under any circumstances and the ~~regulant~~ [~~individual or~~] firm [or individual] must meet all current entry requirements and apply as a new applicant.

~~C.~~ D. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-120. Status of license or certificate during the period prior to reinstatement.

A regulant who applies for reinstatement of a license or certificate shall be subject to all laws and regulations as if the regulant had been continuously licensed or certified. The regulant shall remain under and be subject to the disciplinary authority of the board during this entire period.

18VAC48-50-130. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license or certificate for the same reasons as ~~it~~ the board may refuse initial licensure or certification, or discipline a ~~current~~ regulant.

The board may deny renewal or reinstatement of a license or certificate if the regulant has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure or certification, has not satisfied all sanctions, or has not fully paid any monetary penalties and costs imposed by the board.

Part V
Standards of Conduct and Practice

18VAC48-50-140. Grounds for disciplinary action.

The board may place a regulant on probation, impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia, or revoke, suspend or refuse to renew any license or certificate when the regulant has been found to have violated or cooperated with others in violating any provisions of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-150. Maintenance of license or certificate.

A. No license or certificate issued by the board shall be assigned or otherwise transferred.

B. A regulant shall report, in writing, all changes of address to the board within 30 days of the change and shall return the license or certificate to the board. In addition to the address of record, a physical address is required for each license or certificate. If the regulant holds more than one license, certificate, or registration, the regulant shall inform the board of all licenses, certificates, and registrations affected by the address change.

C. Any change in any of the qualifications for licensure or certification found in 18VAC48-50-30 or 18VAC48-50-35 shall be reported to the board within 30 days of the change.

D. Notwithstanding the provisions of subsection C of this section, a ~~regulant~~ licensee shall report the cancellation, amendment, expiration, or any other change of any bond or insurance policy submitted in accordance with 18VAC48-50-30 ~~D~~ E within five days of the change.

E. A licensee shall report to the board the discharge or termination of active status of an employee holding a certificate within 30 days of the discharge or termination of active status.

[F. A certified principal or supervisory employee shall report a change in employing common interest community manager within 30 days of the change.]

18VAC48-50-160. Maintenance and management of accounts.

~~Regulants~~ Licensed firms shall maintain all funds from associations in accordance with § 54.1-2353 A of the Code of Virginia. Funds that belong to others that are held as a result of the fiduciary relationship shall be labeled as such to clearly distinguish funds that belong to others from those funds of the common interest community manager.

18VAC48-50-180. Notice of adverse action.

A. ~~Regulants~~ Licensed firms shall notify the board of the following actions against the firm, the responsible person, and any principals of the firm:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, license or certificate revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, ~~of any felony or of any misdemeanor~~ in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. Certified principal or supervisory employees shall notify the board, and the responsible person of the employing firm, if applicable, of the following actions against [~~themselves~~ the certified principal or supervisory employee]:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC48-50-190. Prohibited acts.

[~~A.~~] The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia, Chapter 24 (§ 55-424 et seq.) of Title 55 of the Code of Virginia, Chapter 26 (§ 55-508 et seq.) of Title 55 of the Code of Virginia, or Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia, or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

2. Allowing ~~the common interest community manager~~ a license or certificate issued by the board to be used by another.

3. Obtaining or attempting to obtain a license or certificate by false or fraudulent representation, or maintaining, renewing, or reinstating a license or certificate by false or fraudulent representation.

4. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

5. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

6. Failing to report a change as required by 18VAC48-50-150 or 18VAC48-50-170.

7. The intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents.

8. Engaging in dishonest or fraudulent conduct in providing management services.

9. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

10. ~~Incompetence in providing~~ Egregious or repeated violations of generally accepted standards for the provision of management services.

11. Failing to handle association funds in accordance with the provisions of § 54.1-2353 A of the Code of Virginia or 18VAC48-50-160.

12. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.

13. Failing to disclose to the association material facts related to the association's property or concerning management services of which the regulant has actual knowledge.

14. Failing to provide complete records related to the association's management services to the association

within 30 days of any written request by the association or within 30 days of the termination of the contract unless otherwise agreed to in writing by both the association and the common interest community manager.

15. Failing upon written request of the association to provide books and records such that the association can perform pursuant to §§ 55-510 (Property ~~Owners~~ Owners' Association Act), 55-79.74:1 (Condominium Act), and 55-474 (Virginia Real Estate Cooperative Act) of the Code of Virginia.

16. Commingling the funds of any association by a principal, his employees, or his associates with the principal's own funds or those of his firm.

17. Failing to act in providing management services in a manner that safeguards the interests of the public.

18. Advertising in any name other than the name or names in which licensed.

19. Failing to make use of a legible, written contract clearly specifying the terms and conditions of the management services to be performed by the common interest community manager. The contract shall include, but not be limited to, the following:

a. Beginning and ending dates of the contract;

b. Cancellation rights of the parties;

c. Record retention and distribution policy;

d. A general description of the records to be kept and the bookkeeping system to be used; and

e. The common interest community manager's license number.

[~~B. Prior to commencement of the terms of the contract or acceptance of~~ 20. Performing management services or accepting] payments [~~,~~ prior to the signing of] the contract [~~shall be signed~~] by ~~the regulant~~ an authorized official of the licensed firm and the client or the client's authorized agent.

18VAC48-50-220. Response to inquiry and provision of records.

A. A regulant must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the regulant was involved, or for which the regulant 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 regulant 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 regulant must respond to an inquiry by the board or its agent within 21 days.

18VAC48-50-240. Approval of common interest community manager training programs.

Each provider of a training program shall submit an application for program approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC48-50-60, the application shall include but is not limited to:

1. The name of the provider;

2. Provider contact person, address, and telephone number;

3. Program contact hours;

4. Schedule of training program, if established, including dates, times, and locations;

5. Instructor information, including name, license ~~number or numbers~~ or certificate number(s), if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject-matter knowledge and qualifications acceptable to the board;

6. A summary of qualifications and experience in providing training ~~for common interest communities~~ under this chapter;

7. Training program and material fees; and

8. Training program syllabus.

18VAC48-50-250. ~~Training~~ Introductory and comprehensive training program requirements.

A. In order to qualify as an introductory training program under ~~18VAC48-50-30 J 4~~ [18VAC48-50-30 or] 18VAC48-50-35 [~~H or J~~], the introductory training program must include a minimum of 16 contact hours and the syllabus shall encompass all of the subject areas set forth in subsection C of this section.

B. In order to qualify as a comprehensive training program under 18VAC48-50-30 [~~J~~ or 18VAC48-50-35] ~~I~~, the comprehensive training program must include a minimum of 80 contact hours and the syllabus shall include at least 40 contact hours encompassing all of the subject areas set forth in subsection C of this section and may also include up to 40 contact hours in other subject areas approved by the board.

C. The following subject areas as they relate to common interest communities and associations shall be included in ~~each~~ all comprehensive and introductory training ~~program~~ programs. The time allocated to each subject area must be sufficient to ensure adequate coverage of the subject as determined by the board.

1. Governance, legal matters, and communications;

2. Financial matters, including budgets, reserves, investments, internal controls, and assessments;

3. Contracting;

4. Risk management and insurance;

5. Management ethics for common interest community managers;

6. Facilities maintenance; and

7. Human resources.

D. All training programs are required to have a final, written examination.

~~E. All training program providers must provide each student with a certificate of training program completion or other documentation that the student may use as proof of training program completion. Such documentation shall contain the contact hours completed.~~

18VAC48-50-253. Virginia common interest community law and regulation training program requirements.

In order to qualify as a Virginia common interest community law and regulation training program for applicants for and renewal of certificates issued by the board, the common interest community law and regulation program must include a minimum of two contact hours and the syllabus shall encompass Virginia laws and regulations related to common interest community management and creation, governance, administration, and operations of associations.

18VAC48-50-255. Fair housing training program requirements.

In order to qualify as a fair housing training program for applicants for and renewal of certificates issued by the board, the fair housing training program must include a minimum of two contact hours and the syllabus shall encompass Virginia fair housing laws related to the management of common interest communities.

18VAC48-50-257. Documentation of training program completion required.

All training program providers must provide each student with a certificate of training program completion or other documentation that the student may use as proof of training program completion. Such documentation shall contain the contact hours completed.

18VAC48-50-290. Examinations.

All examinations required for licensure or certification shall be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental 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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[FORMS (18VAC48-50)

~~Common Interest Community Manager Change of Responsible Person, Principal, or Supervisory Employee/Officer, MGRCHG (eff. 04/10).~~

~~Common Interest Community Manager License Application, MGRLIC (eff. 04/10).~~

~~CIC Manager Training Program Approval Application, 05TRNGPROV (eff. 04/10).~~

Common Interest Community Manager Personnel Change Form, MGRCHG (eff. 03/12).

Common Interest Community Manager License Application, MGRLIC (eff. 03/12).

CIC Manager Training Program Approval Application, 05TRNGPROV (eff. 03/12).

Common Interest Community Manager Application Supplement Experience Verification Form, CICEXP (eff. 03/12).

Common Interest Community Manager Application Supplement Training Program Equivalency Form, CICTRNEQ (eff. 03/12).]

VA.R. Doc. No. R10-2069; Filed January 10, 2012, 4:37 p.m.

BOARD OF PHARMACY

Notice of Extension of Emergency Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-275, 18VAC110-20-690, 18VAC110-20-700; adding 18VAC110-20-685, 18VAC110-20-725, 18VAC110-20-726, 18VAC110-20-727, 18VAC110-20-728).**

Statutory Authority: §§ 54.1-3307 and 54.1-3420.2 of the Code of Virginia.

Effective Dates: December 20, 2010, through June 18, 2012.

On January 13, 2012, the Governor approved the Board of Pharmacy's request to extend the expiration date of the above-

referenced emergency regulation as provided in § 2.2-4011 D of the Code of Virginia. The emergency regulation was published in 27:9 VA.R. 818-825 January 3, 2011. The regulation establishes requirements for (i) registration of a community services board or behavioral health authorities to possess, repackage, and dispense drugs and (ii) a program to train unlicensed persons in repackaging for community services boards or behavioral health authorities. The expiration date of the emergency regulation is extended to June 18, 2012.

Agency Contact: Caroline Juran, RPh, 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.

VA.R. Doc. No. R11-2366; Filed January 13, 2012, 3:20 p.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities and § 2.2-4002 B 11 of the Code of Virginia, which exempts regulations relating to traffic signs, markers, or control devices.

Titles of Regulations: **24VAC30-310. Virginia Supplement to the Manual on Uniform Traffic Control Devices (repealing 24VAC30-310-10).**

24VAC30-315. Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways (adding 24VAC30-315-10).

24VAC30-520. Classifying and Marking State Highways (repealing 24VAC30-520-10, 24VAC30-520-20).

24VAC30-561. Adoption of the Federal Manual on Uniform Traffic Control Devices (repealing 24VAC30-561-10, 24VAC30-561-20).

Statutory Authority: §§ 33.1-12 and 46.2-830 of the Code of Virginia; 23 CFR 655.603.

Effective Date: January 10, 2012.

Agency Contact: Vanloan Q. Nguyen, P.E., Assistant Division Administrator, Traffic Engineering Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-2918, FAX (804) 225-4978, or email vanloan.nguyen@vdot.virginia.gov.

Summary:

This action combines 24VAC30-310 (Virginia Supplement to the Manual on Uniform Traffic Control Devices), 24VAC30-520 (Classifying and Marking State Highways), and 24VAC30-561 (Adoption of the Federal Manual on Uniform Traffic Control Devices) into a single regulation. The new regulation, 24VAC30-315 (Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways), adopts the revised edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), which was published on December 16, 2009, and the department's 2011 revisions to the Virginia Supplement to the 2009 MUTCD.

The new regulation retains essential parts of the existing regulations, such as (i) the incorporation by reference of the MUTCD; (ii) the incorporation of the Virginia Supplement and the Virginia Work Area Protection Manual (WAPM) and their relationship to the MUTCD; and (iii) the role of the Commissioner of Highways in making revisions to the Virginia Supplement and the WAPM, as well as traffic sign and signal installation and control.

CHAPTER 315
STANDARDS FOR USE OF TRAFFIC CONTROL DEVICES TO CLASSIFY, DESIGNATE, REGULATE, AND MARK STATE HIGHWAYS

24VAC30-315-10. General provisions.

A. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2009 Edition (2009 MUTCD), is incorporated by reference in the Code of Federal Regulations (23 CFR Part 655 Subpart F), and is accessible from http://mutcd.fhwa.dot.gov/. 23 CFR 655.603 adopts the MUTCD as the national standard for any street, highway, or bicycle trail open to public travel in accordance with the United States Code (23 USC §§ 109 (d) and 402 (a)).

B. The 2009 MUTCD dated December 2009 shall be the standard for all highways under the jurisdiction of the Virginia Department of Transportation, with the following exceptions: (i) the Virginia Supplement to the 2009 MUTCD (2011 Edition) contains standards and guidance that exceed minimum federal requirements concerning traffic control devices and presents additional pertinent traffic control parameters not addressed by the 2009 MUTCD and (ii) the Virginia Department of Transportation uses the Virginia Work Area Protection Manual (WAPM) (2011 Edition), which is a part of the Virginia Supplement to the 2009 MUTCD (2011 Edition), instead of the 2009 MUTCD Part 6, Temporary Traffic Control. All signs, signals, pavement markings, and other traffic control devices under the

jurisdiction of the Virginia Department of Transportation shall conform accordingly.

C. Where (i) state standards exceed the minimum federal requirements; (ii) the 2009 MUTCD does not cover some design, installation, and operation details; or (iii) additional guidance on traffic control devices is needed, the Commissioner of Highways or a designee is authorized to establish and distribute appropriate documentation including, but not limited to, standards, specifications, and instructional memoranda. The Virginia Supplement to the 2009 MUTCD (2011 Edition) and the WAPM (2011 Edition) shall be applicable for all highways under the jurisdiction of the Virginia Department of Transportation. If there is a conflict between the 2009 MUTCD and the Virginia Supplement to the 2009 MUTCD (2011 Edition), the Virginia Supplement shall govern.

D. The Commissioner of Highways or a designee is authorized to make revisions to the Virginia Supplement to the MUTCD (2011 Edition) or the WAPM (2011 Edition), or both, to reflect changes to the Code of Virginia or to the 2009 MUTCD as incorporated into the Code of Federal Regulations and to be consistent with the Code of Virginia where discretion is allowed.

E. In addition to the authority referenced in subsection C of this section, the Commissioner of Highways is authorized to act for and on behalf of the Commonwealth Transportation Board in matters relating to classifying, designating, regulating, and marking state highways and the installation of signals, signs, and markings to regulate, control, and manage traffic movement.

DOCUMENTS INCORPORATED BY REFERENCE (24VAC30-315)

Manual on Uniform Traffic Control Devices for Streets and Highways, 2009 edition, December 2009, U.S. Department of Transportation, Federal Highway Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590, telephone (202) 366-1993. The text is also available from the Federal Highway Administration's website at http://mutcd.fhwa.dot.gov and by individual parts and chapters below:

Cover, Table of Contents, and Introduction

Part 1 - General

Part 2 - Signs

Chapter 2A - General

Chapter 2B - Regulatory Signs, Barricades, and Gates

Chapter 2C - Warning Signs and Object Markers

Chapter 2D - Guide Signs - Conventional Roads

Chapter 2E - Guide Signs - Freeways and Expressways

Chapter 2F - Toll Road Signs

Chapters 2G-2H - Preferential and Managed Lane Signs and General Information Signs

Chapters 2I-2N - General Service Signs, Specific Service Signs, Tourist-Oriented Directional Signs, Changeable Message Signs, Recreational and Cultural Interest Area Signs, and Emergency Management Signing

Part 3 - Markings

Part 4 - Highway Traffic Signals

Part 5 - Traffic Control Devices for Low-Volume Roads

Part 7 - Traffic Controls for School Areas

Part 8 - Traffic Control for Railroad and Light Rail Transit Grade Crossings

Part 9 - Traffic Control for Bicycle Facilities

Appendices A1 and A2 - Congressional Legislation and Metric Conversions

Virginia Supplement to the 2009 MUTCD, 2011 Edition, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219:

Cover and Introduction

1. General

2. Signs

3. Markings

4. Signals

7. Schools

8. Railroads

9. Bicycles

Appendix A

Virginia Work Area Protection Manual (WAPM), 2011 Edition, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219 (http://www.virginiadot.org/business/trafficeng-WZS.asp).

Virginia Standard Highway Signs, 2011 Edition, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219 (http://www.virginiadot.org/business/virginia_mutcd_supplement.asp).

VA.R. Doc. No. R12-3009; Filed January 10, 2012, 3:57 p.m.

AIR POLLUTION CONTROL BOARD

Proposed State Implementation Plan Revision - § 110(a)(2) Infrastructure for Lead

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) to allow areas to attain and maintain the national ambient air quality standard for lead. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the 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.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling emissions of lead.

Public comment period: January 30, 2012, to February 29, 2012.

Public hearing: A public hearing will 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 and address 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.

Description of proposal: The proposed revision will consist of a demonstration of compliance with the general requirements of § 110(a)(2) of the federal Clean Air Act for the lead (Pb) national ambient air quality standard (NAAQS).

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). 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. All information received is part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (http://www.deq.virginia.gov/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) DEQ 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, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 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: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Citizen Nomination of Surface Waters for Water Quality Monitoring

In accordance with § 62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in the Virginia Department of Environmental Quality (DEQ's) annual Water Quality Monitoring Plan.

Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance in preparation and submittal of their requests. All nominations must be received by April 30, 2012, to be considered for the 2013 calendar year. Copies of the guidance document and nomination form are available online at http://www.deq.virginia.gov/cmonitor/.

Contact Information: Stuart Torbeck, Water Quality Data Liaison, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, or email charles.torbeck@deq.virginia.gov.

Results of Total Maximum Daily Load Study for Powells Creek, Quantico Creek, South Fork Quantico Creek, North Branch Chopawamsic Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an Unnamed Tributary to the Potomac River

Announcement of a total maximum daily load (TMDL) study to restore water quality in the bacteria impaired waters of Powells Creek, Quantico Creek, South Fork Quantico Creek, North Branch Chopawamsic Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an unnamed tributary to the Potomac River.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a public meeting to present the results of TMDL studies on several tributaries to the Potomac River located in Prince William and Stafford Counties.

Public meeting: Wednesday, February 1, 2012, 7 p.m. to 8:30 p.m., Auditorium, Dr. A.J. Ferlazzo Building, 15941 Donald Curtis Drive, Woodbridge, VA 22191.

Note: In case of inclement weather please contact Katie Conaway for an alternate meeting date, time, and location. Telephone (703) 583-3804 or email katie.conaway@deq.virginia.gov.

Meeting description: This is the final public meeting for this project. The purpose of this meeting is to discuss the study with community members and present the project results.

Description of study: Portions of the following streams have been identified as impaired on the Clean Water Act § 303(d) list for not supporting Virginia's water quality recreational use standard due to exceedances of the bacteria criterion:

Waterbody Name	Watershed Location	Segment Size	Cause	Segment Description
Powells Creek	Prince William County	4.62 miles	Escherichia coli	Segment begins approximately 0.2 rivermiles below Lake Montclair and continues downstream until the end of the free-flowing waters of Powells Creek.
Quantico Creek	Prince William County Town of Dumfries	1.45 miles	Escherichia coli	Segment begins at the confluence with South Fork Quantico Creek, approximately 0.75 rivermile upstream from I-95, and continues downstream until the start of the tidal waters of Quantico Bay.
South Fork Quantico Creek	Prince William County Town of Dumfries	4.63 miles	Escherichia coli	Segment begins at the headwaters of the South Fork Quantico Creek and continues downstream until the start of the impounded waters, adjacent to what is labeled as Mawavi Camp No 2 on the Joplin quad.
North Branch Chopawamsic Creek	Stafford County Prince William County	6.9 miles	Escherichia coli	Segment begins at the headwaters of North Branch Chopawamsic Creek and continues downstream until the confluence with Middle Branch.
Austin Run	Stafford County	0.79 miles	Fecal Coliform	Segment begins at the confluence with an unnamed tributary to Austin Run (streamcode XGQ) and continues downstream until the confluence with Aquia Creek.

Accokeek Creek	Stafford County	4.21 miles	Escherichia coli	Segment begins at the confluence with an unnamed tributary to Accokeek Creek (rivermile 8.62), approximately 0.33 rivermile downstream from Route 1, and continues downstream until the end of the free-flowing waters.
Potomac Creek	Stafford County	2.18 miles	Escherichia coli	Segment begins at the railroad crossing at the west end of swamp, upstream from Route 608, and continues downstream until the east end of swamp.
Potomac Run	Stafford County	6.13 miles	Escherichia coli	Segment begins at the headwaters of Potomac Run and continues downstream until the confluence with Long Branch.
Unnamed Tributary to the Potomac River	Stafford County	2.9 miles	Escherichia coli	Segment begins at the headwaters of the unnamed tributary and continues downstream until its confluence with the Potomac River.

Virginia agencies are working to identify the sources of bacteria contamination in these stream segments. During this study, DEQ developed a total maximum daily load (TMDL) for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on materials presented at the public meeting will extend from February 1, 2012, to March 2, 2012. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email katie.conaway@deq.virginia.gov.

Total Maximum Daily Load Studies in Southampton, Sussex, and Greensville Counties

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for several water bodies that are impaired due to not meeting bacteria water quality standards.

The meeting will be held on Wednesday, February 15, 2012, and will start at 6:30 p.m. at the Southampton Board of Supervisors Meeting Room located at 26022 Administration Center Drive, Courtland, Virginia. The purpose of the meeting is to provide information and discuss the outcomes of the studies with interested local community members and local government.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily load (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

The purpose of the studies is to develop a TMDL 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.

The waters listed below were identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the recreation use. The impairments are based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for E.coli.

Flat Swamp	VAT-K13R_FTS01A04
Three Creek – Lower	VAT-K27R_TRE02A00
Three Creek – Upper	VAT-K27R_TRE01A00
Mill Swamp	VAT-K28R_MSP01A06
Darden Mill Run	VAT-K30R_DMR01A02
Tarrara Creek	VAT-K13R_TRR01A00

Several impaired segments were also identified in the assessment report as needing an assessment to determine if natural conditions are the cause of the low DO and pH values. If it is determined that anthropogenic causes contribute to the impairments, a TMDL will be developed for each waterbody listed below:

Flat Swamp	VAT-K13R_FTS01A04 DO
Mill Swamp	VAT-K28R_MSP01A06 DO
Darden Mill Run	VAT-K30R_DMR01A02 DO and pH

The public comment period on materials presented at this meeting will extend from February 16, 2012, to March 16, 2012. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

DEPARTMENT OF FORENSIC SCIENCE

Approval of Field Tests for Detection of Drugs

In accordance with 6VAC40-30, the Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of the Code of Virginia, the following field tests for detection of drugs are approved field tests:

O D V INCORPORATED
13386 INTERNATIONAL PARKWAY
JACKSONVILLE, FLORIDA 32218-2383

ODV NarcoPouch

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	902 – Marquis Reagent
Amphetamine	902 – Marquis Reagent
Methamphetamine	902 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	902 – Marquis Reagent
Cocaine Hydrochloride	904 or 904B – Cocaine HCl and Base Reagent
Cocaine Base	904 or 904B – Cocaine HCl and Base Reagent
Barbiturates	905 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	907 – Ehrlich's (Modified) Reagent
Marijuana	908 – Duquenois – Levine Reagent
Hashish Oil	908 – Duquenois – Levine Reagent
Marijuana	909 – K N Reagent
Hashish Oil	909 – K N Reagent
Phencyclidine (PCP) Reagent	914 – PCP Methaqualone
Heroin	922 – Opiates Reagent
Methamphetamine	923 – Methamphetamine/Ecstasy Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	923 – Methamphetamine/Ecstasy Reagent
Heroin	924 – Mecke's (Modified) Reagent
Diazepam	925 – Valium/Ketamine Reagent
Ketamine	925 – Valium/Ketamine Reagent
Ephedrine	927 – Ephedrine Reagent
gamma – Hydroxybutyrate (GHB)	928 – GHB Reagent

ODV NarcoTest

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	7602 – Marquis Reagent
Amphetamine	7602 – Marquis Reagent
Methamphetamine	7602 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	7602 – Marquis Reagent
Barbiturates	7605 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	7607 – Ehrlich's (Modified) Reagent
Marijuana	7608 – Duquenois Reagent
Hashish Oil	7608 – Duquenois Reagent
Marijuana	7609 – K N Reagent
Hashish Oil	7609 – K N Reagent

Cocaine Hydrochloride	7613 – Scott (Modified) Reagent
Cocaine Base	7613 – Scott (Modified) Reagent
Phencyclidine (PCP)	7614 – PCP Methaqualone Reagent
Heroin	7622 – Opiates Reagent
Methamphetamine	7623– Methamphetamine/Ecstasy Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	7623– Methamphetamine/Ecstasy Reagent
Heroin	7624 – Mecke's Reagent
Diazepam	7625 – Valium/Ketamine Reagent
Ketamine	7625 – Valium/Ketamine Reagent
Ephedrine	7627 – Chen's Reagent - Ephedrine
gamma – Hydroxybutyrate (GHB)	7628 – GHB Reagent

SIRCHIE FINGERPRINT LABORATORIES
100 HUNTER PLACE
YOUNGSVILLE, NORTH CAROLINA 27596

NARK

Drug or Drug Type:	Manufacturer's Field Test:
Narcotic Alkaloids	1 – Mayer's Reagent
Heroin	1 – Mayer's Reagent
Morphine	1 – Mayer's Reagent
Amphetamine	1 – Mayer's Reagent
Methamphetamine	1 – Mayer's Reagent
Opium Alkaloids	2 – Marquis Reagent
Heroin	2 – Marquis Reagent
Morphine	2 – Marquis Reagent
Amphetamine	2 – Marquis Reagent
Methamphetamine	2 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	2 – Marquis Reagent
Meperidine (Demerol) (Pethidine)	2 – Marquis Reagent
Heroin	3 – Nitric Acid
Morphine	3 – Nitric Acid
Cocaine Hydrochloride	4 – Cobalt Thiocyanate Reagent
Cocaine Base	4 – Cobalt Thiocyanate Reagent
Procaine	4 – Cobalt Thiocyanate Reagent
Tetracaine	4 – Cobalt Thiocyanate Reagent
Barbiturates	5 – Dille-Koppanyi Reagent
Heroin	6 – Mandelin Reagent
Morphine	6 – Mandelin Reagent
Amphetamine	6 – Mandelin Reagent
Methamphetamine	6 – Mandelin Reagent
Lysergic Acid Diethylamide (LSD)	7 – Ehrlich's Reagent
Marijuana	8 – Duquenois Reagent
Hashish	8 – Duquenois Reagent
Hashish Oil	8 – Duquenois Reagent
Tetrahydrocannabinol (THC)	8 – Duquenois Reagent
Marijuana	9 – NDB (Fast Blue B Salt) Reagent
Hashish	9 – NDB (Fast Blue B Salt) Reagent
Hashish Oil	9 – NDB (Fast Blue B Salt) Reagent
Tetrahydrocannabinol (THC)	9 – NDB (Fast Blue B Salt) Reagent
Cocaine Base	13 – Cobalt Thiocyanate/Crack Test

NARK II

Drug or Drug Type:	Manufacturer's Field Test:
Narcotic Alkaloids	01 – Marquis Reagent
Heroin	01 – Marquis Reagent
Morphine	01 – Marquis Reagent

Amphetamine	01 – Marquis Reagent
Methamphetamine	01 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	01 – Marquis Reagent
Morphine	02 – Nitric Acid
Heroin	02 – Nitric Acid
Barbiturates	03 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	04 – Ehrlich's Reagent
Marijuana	05 – Duquenois – Levine Reagent
Hashish	05 – Duquenois – Levine Reagent
Hashish Oil	05 – Duquenois – Levine Reagent
Tetrahydrocannabinol (THC)	05 – Duquenois – Levine Reagent
Cocaine Hydrochloride	07 – Scott's (Modified) Reagent
Cocaine Base	07 – Scott's (Modified) Reagent
Phencyclidine (PCP)	09 – Phencyclidine Reagent
Opiates	10 – Opiates Reagent
Heroin	10 – Opiates Reagent
Morphine	10 – Opiates Reagent
Heroin	11 – Mecke's Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	11 – Mecke's Reagent
Pentazocine	12 – Talwin/ Pentazocine Reagent
Ephedrine	13 – Ephedrine Reagent
Diazepam	14 – Valium Reagent
Methamphetamine	15 – Methamphetamine (Secondary Amines Reagent)
Narcotic Alkaloids	19 – Mayer's Reagent
Heroin	19 – Mayer's Reagent
Morphine	19 – Mayer's Reagent
Amphetamine	19 – Mayer's Reagent
Methamphetamine	19 – Mayer's Reagent
3,4-Methylenedioxypyrovalerone (MDPV)	24 – MDPV (Bath Salts) Reagent
4-Methylmethcathinone (Mephedrone)	25 – Mephedrone (Bath Salts) Reagent

ARMOR HOLDINGS, INCORPORATED
13386 INTERNATIONAL PARKWAY
JACKSONVILLE, FLORIDA 32218-2383

NIK

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Test A 6071 – Marquis Reagent
Amphetamine	Test A 6071 – Marquis Reagent
Methamphetamine	Test A 6071 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	Test A 6071 – Marquis Reagent
Morphine	Test B 6072 – Nitric Acid Reagent
Barbiturates	Test C 6073 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	Test D 6074 – LSD Reagent System
Marijuana	Test E 6075 – Duquenois – Levine Reagent
Hashish Oil	Test E 6075 – Duquenois – Levine Reagent
Tetrahydrocannabinol	Test E 6075 – Duquenois – Levine Reagent
Cocaine Hydrochloride	Test G 6077 – Scott (Modified) Reagent
Cocaine Base	Test G 6077 – Scott (Modified) Reagent
Cocaine Hydrochloride	6500 or 6501 – Cocaine ID Swab
Cocaine Base	6500 or 6501 – Cocaine ID Swab
Phencyclidine (PCP)	Test J 6079 – PCP Reagent System
Heroin	Test K 6080 – Opiates Reagent
Heroin	Test L 6081 – Brown Heroin Reagent System
gamma – Hydroxybutyrate (GHB)	Test O 6090 – GHB Reagent
Ephedrine	Test Q 6085 – Ephedrine Reagent

Pseudoephedrine	Test Q 6085 – Ephedrine Reagent
Diazepam	Test R 6085 – Valium Reagent
Methamphetamine	Test U 6087 – Methamphetamine Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	Test U 6087 – Methamphetamine Reagent
Methadone	Test W 6088 – Mandelin Reagent System

MISTRAL SECURITY INCORPORATED
7910 WOODMONT AVENUE SUITE 820
BETHESDA, MARYLAND 20814

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Detect 4 Drugs Aerosol
Amphetamine	Detect 4 Drugs Aerosol
Methamphetamine	Detect 4 Drugs Aerosol
Marijuana	Detect 4 Drugs Aerosol
Hashish Oil	Detect 4 Drugs Aerosol
Methamphetamine	Meth 1 and 2 Aerosol
Heroin	Herosol Aerosol
Marijuana	Cannabispray 1 and 2 Aerosol
Hashish Oil	Cannabispray 1 and 2 Aerosol
Cocaine Hydrochloride	Coca-Test Aerosol
Cocaine Base	Coca-Test Aerosol
Marijuana	Pen Test – D4D
Phencyclidine	Pen Test – D4D
Amphetamine	Pen Test – D4D
Ketamine	Pen Test – D4D
Methamphetamine	Pen Test – D4D
Ephedrine	Pen Test – D4D
Heroin	Pen Test – D4D
Methadone	Pen Test – D4D
Buprenorphine	Pen Test – D4D
Opium	Pen Test – D4D
Phenobarbital	Pen Test – Barbitusol
Marijuana	Pen Test – Cannabis Test
Phencyclidine	Pen Test – Coca Test
Cocaine Hydrochloride	Pen Test – Coca Test
Cocaine base	Pen Test – Coca Test
Buprenorphine	Pen Test – C&H Test
Cocaine Hydrochloride	Pen Test – C&H Test
Cocaine base	Pen Test – C&H Test
Ephedrine	Pen Test – C&H Test
Ketamine	Pen Test – C&H Test
Heroin	Pen Test – C&H Test
Lysergic Acid Diethylamide (LSD)	Pen Test – C&H Test
Methadone	Pen Test – C&H Test
Methamphetamine	Pen Test – C&H Test
Heroin	Pen Test – Herosol
Methadone	Pen Test – Herosol
Lysergic Acid Diethylamide	Pen Test – LSD Test
Methamphetamine	Pen Test – Meth/X Test
3,4-Methylenedioxymethamphetamine (MDMA)	Pen Test – Meth/X Test
Morphine	Pen Test – Opiatest
Opium	Pen Test – Opiatest
Diazepam	Pen Test – BZO
Ephedrine	Pen Test – Ephedrine
Pseudoephedrine	Pen Test – Ephedrine

JANT PHARMACAL CORPORATION
16255 VENTURA BLVD., #505
ENCINO, CA 91436
Formerly available through:
MILLENNIUM SECURITY GROUP

Accutest IDenta

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Marijuana/Hashish (Duquenois-Levine Reagent)
Hashish Oil	Marijuana/Hashish (Duquenois-Levine Reagent)
Heroin	Heroin Step 1 and Step 2
Cocaine Hydrochloride	Cocaine/Crack Step 1 and Step 2
Cocaine Base	Cocaine/Crack Step 1 and Step 2
3,4–Methylenedioxymethamphetamine (MDMA)	MDMA Step 1 and Step 2
Methamphetamine	Methamphetamine Step 1 and Step 2

COZART PLC
92 MILTON PARK
ABINGDON, OXFORDSHIRE ENGLAND OX14 4RY

Drug or Drug Type:	Manufacturer's Field Test:
Cocaine	Cocaine Solid Field Test

Lynn Peavey Company
10749 West 84th Terrace
Lexexa, KS 66214

QuickCheck

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Marijuana – 10120
Marijuana	Marijuana – 10121
Hashish Oil	Marijuana – 10120
Hashish Oil	Marijuana – 10121
Heroin	Marquis – 10123
Heroin	Heroin - 10125
Cocaine Hydrochloride	Cocaine – 10124
Cocaine Base	Cocaine – 10124
Methamphetamine	Meth/Ecstasy – 10122
Methamphetamine	Marquis – 10123
MDMA	Meth/Ecstasy – 10122
MDMA	Marquis – 10123

M.M.C. INTERNATIONAL B.V.
FRANKENTHALERSTRAAT 16-18
4816 KA BREDA
THE NETHERLANDS

Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Opiates/Amphetamine Test (Ampoule)
Morphine	Opiates/Amphetamine Test (Ampoule)
Amphetamine	Opiates/Amphetamine Test (Ampoule)
Methamphetamine	Opiates/Amphetamine Test (Ampoule)
Codeine	Opiates/Amphetamine Test (Ampoule)
Marijuana	Cannabis Test (Ampoule)
Hashish Oil	Cannabis Test (Ampoule)
Cocaine Hydrochloride	Cocaine/Crack Test (Ampoule)
Cocaine base	Cocaine/Crack Test (Ampoule)
Heroin	Heroin Test (Ampoule)
Ketamine	Ketamine Test (Ampoule)

Methadone	Methadone Test (Ampoule)
Methamphetamine	Crystal Meth/XTC Test (Ampoule)
3,4-Methylenedioxymethamphetamine (MDMA)	Crystal Meth/XTC Test (Ampoule)
Morphine	M&H Test (Ampoule)
Drug or Drug Type:	Manufacturer's Field Test:
Heroin	M&H Test (Ampoule)
Ephedrine	Ephedrine HCL Test (Ampoule)
Pseudoephedrine	Ephedrine HCL Test (Ampoule)
Pentazocine	Pentazocine Test (Ampoule)
Buprenorphine	Buprenorphine HCL Test (Ampoule)
Gamma butyrolactone (GBL)	GBL Test (Ampoule)
Gamma hydroxybutyric acid (GHB)	GHB Test (Ampoule)
Oxycodone	Oxycodone Test (Ampoule)
Oxymetholone	Steroids Test B (Ampoule)
Testosterone	Steroids Test B (Ampoule)
Methandrostenolone	Steroids Test B (Ampoule)
Phenylacetone	PMK/BMK(BMK) Test (Ampoule)
Cocaine Hydrochloride	Cocaine/Crack Test (Spray)
Cocaine base	Cocaine/Crack Test (Spray)
Cocaine Hydrochloride	Cocaine Trace Wipes
Cocaine base	Cocaine Trace Wipes
Morphine	Opiate Cassette
Heroin	Opiate Cassette
3,4-Methylenedioxymethamphetamine (MDMA)	MDMA/Ecstasy Cassette
Methamphetamine	Methamphetamine Cassette
Amphetamine	Amphetamine Cassette

STATE BOARD OF HEALTH

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Health is conducting a periodic review of 12VAC5-20, Regulations for the Conduct of Human Research. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins February 27, 2012, and ends on March 21, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.
Comments may also be sent to Susan Tlusty, Policy Analyst, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, FAX (804) 864-7722, or email susan.tlusty@vdh.virginia.gov.
Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Health is conducting a periodic review of 12VAC5-150, Regulations for the Sanitary Control of Storing, Processing, Packing and Repacking of Oysters, Clams and other Shellfish. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated

objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins January 30, 2012, and ends on February 20, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.
Comments may also be sent to Bob Croonenberghs, Ph.D., Director, Division of Shellfish Sanitation, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7477, FAX (804) 864-7481, or email bob.croonenberghs@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Health is conducting a periodic review of 12VAC5-160, Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins February 27, 2012, and ends on March 21, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.
Comments may also be sent to Bob Croonenberghs, Ph.D., Director, Division of Shellfish Sanitation, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7477, FAX (804) 864-7481, or email bob.croonenberghs@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Health is conducting a periodic review of 12VAC5-431, Sanitary Regulations for Hotels. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins February 13, 2012, and ends on March 6, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.
Comments may also be sent to Gary Hagy, Director, Division of Food and General Environmental Services, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, or email gary.hagy@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Health is conducting a periodic review of 12VAC5-530, Regulations Governing the Virginia Medical Scholarship Program. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact

on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins January 30, 2012, and ends on February 20, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Patrice Perkins, Health Equity Fellow, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7424, FAX (804) 864-7440, or email patrice.perkins@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Health is conducting a periodic review of 12VAC5-540, Rules and Regulations for the Identification of Medically Underserved Areas in Virginia. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins February 13, 2012, and ends on March 5, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Patrice Perkins, Health Equity Fellow, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7424, FAX (804) 864-7440, or email patrice.perkins@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Health is conducting a periodic review of 12VAC5-542, Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins February 27, 2012, and ends on March 21, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Patrice Perkins, Health Equity Fellow, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7424, FAX (804) 864-7440, or email patrice.perkins@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

STATE LOTTERY DEPARTMENT

Director's Order

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on January 10, 2012. The order 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 Twelve (12)

Virginia Lottery's "Lucky Dog Doubler & Cat Scratch Fever Sweepstakes" Final Rules for Game Operation (effective January 10, 2012)

STATE WATER CONTROL BOARD

Proposed Consent Special Order for HH Hunt Homes, L.C.

An enforcement action has been proposed for HH Hunt Homes, L.C. for alleged violations at Linden Pointe Subdivision, Henrico County, Virginia. The State Water Control Board proposes to issue a consent special order to HH Hunt Homes, L.C. to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from January 30, 2012, to March 2, 2012.

Proposed Consent Special Order for The Vistas Apartments Limited Partnership and Brisben Lakeview Limited Partnership

An enforcement action has been proposed for The Vistas Apartments Limited Partnership and Brisben Lakeview Limited Partnership for alleged violations at Ivy Walk Apartments, 4800 Burnt Oak Drive, Chesterfield, Virginia. The State Water Control Board proposes to issue a consent special order to The Vistas Apartments Limited Partnership and Brisben Lakeview Limited Partnership to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from January 30, 2012, to March 2, 2012.

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.