



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Patricia L. West**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

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## March 2012 through April 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:15	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF OPTOMETRY

#### Initial Agency Notice

**Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry.**

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

**Name of Petitioner: Dillis Lee.**

**Nature of Petitioner's Request: To amend regulations for standards of practice relating to the requirement of an optometrist for a patient to sign a contract agreement without informed consent about the procedures and examinations to be performed.**

**Agency's Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Register of Regulations and will be published on March 12, 2012. Comment on the petition may be sent by email, regular mail, or posted on the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov); comment will be accepted until April 5, 2012. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its next meeting scheduled on May 9, 2012.**

**Public Comment Deadline: April 5, 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](mailto:elaine.yeatts@dhp.virginia.gov).**

VA.R. Doc. No. R12-18; Filed February 13, 2012, 8:45 a.m.

### BOARD OF PHARMACY

#### Initial Agency Notice

**Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.**

**Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.**

**Name of Petitioner: Kristen Barratt, R.Ph.**

**Nature of Petitioner's Request: To adopt regulations similar to those in North Carolina and West Virginia that establish a limitation on the number of hours a pharmacist can work continuously and a requirement for breaks during a shift.**

**Agency's Plan for Disposition of Request: Comment on the petition may be sent by email, regular mail, or posted on the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov).**

Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in Regulations Governing the Practice of Pharmacy. This matter will be on the board's agenda for its meeting on June 12, 2012, and the petitioner will be informed of the board's decision after that meeting.

**Public Comment Deadline: April 15, 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](mailto:elaine.yeatts@dhp.virginia.gov).**

VA.R. Doc. No. R12-19; Filed February 22, 2012, 1:53 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### COMMON INTEREST COMMUNITY BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-20, Condominium Regulations**. The purpose of the proposed action is to conduct a general review of the regulation. Changes are made annually to the Condominium Act by the General Assembly and in 2008 the regulatory authority was moved from the Real Estate Board to the newly created Common Interest Community Board. The regulation has not undergone substantial revision since 1988; therefore, a thorough review is necessary to ensure that the regulation complements the current Condominium Act, provides minimal burdens on regulants while still protecting the public, and reflects current procedures and policies of the Department of Professional and Occupational Regulation.

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

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

Public Comment Deadline: April 11, 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](mailto:cic@dpor.virginia.gov).

VA.R. Doc. No. R12-2805; Filed February 20, 2012, 7:10 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-50; repealing 4VAC20-620-75).

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

**Effective Date:** March 1, 2012.

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

#### Summary:

*The amendments (i) establish the minimum size as 16-1/2 inches for recreational harvest of Summer Flounder and (ii) repeal the research exemptions to possession and size limits.*

#### 4VAC20-620-50. Minimum size limits.

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be ~~17-1/2~~ 16-1/2 inches, total length, except that the minimum size of Summer Flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

#### 4VAC20-620-75. ~~Research exemptions to possession and size limits.~~ (Repealed.)

~~Nothing in this chapter shall preclude any person who is legally eligible to fish from possessing any Summer Flounder tagged by the Virginia Institute of Marine Science (VIMS) with two different types of tags in each of 260 Summer Flounder. One tag is a white data recording tag of 1/2 inch diameter and 1 1/2 inches in length that VIMS affixed to the Summer Flounder. That tag is inscribed with "VIMS \$200 reward" and the VIMS telephone contact number. The second tag is a yellow "T bar" or "spaghetti" type tag that VIMS affixed to the dorsal area of these double tagged Summer Flounder. The yellow T bar tag is inscribed with "reward" and the VIMS contact telephone number. Possession of these VIMS tagged Summer Flounder shall not count towards the personal recreational possession limit of four Summer Flounder, 17 1/2 inches or greater in total length. Possession of any undersized flounder that has any affixed VIMS tag, as described above, shall not constitute a violation of the minimum size limit of 17 1/2 inches in total length. It shall be unlawful for any person to remove either type of tag from any caught or harvested Summer Flounder without having contacted VIMS. It shall be unlawful for any person to retain any of these VIMS tagged Summer Flounder for a period of time that is longer than necessary to provide the VIMS tagged Summer Flounder to a VIMS representative. Under no circumstances shall any VIMS tagged flounder be stored for future use or sale or delivered to any person who is not a VIMS representative.~~

VA.R. Doc. No. R12-3117; Filed March 1, 2012, 10:36 a.m.

#### Emergency Regulation

**Title of Regulation:** 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40).

**Statutory Authority:** §§ 28.2-201 and 28.2-210 of the Code of Virginia.

**Effective Dates:** February 29, 2012, through March 30, 2012.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (804) 247-2002, or email betty.warren@mrc.virginia.gov.

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# Regulations

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## Preamble:

*This emergency amendment clarifies that the commercial fishery possession limit for Summer Flounder is the sum of the Virginia landing limit and the North Carolina landing or trip limit.*

## **4VAC20-620-40. Commercial vessel possession and landing limitations.**

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D of this section:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the first Monday in March through the day preceding the second Monday in November, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 20,000 pounds the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing or trip limit.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.
3. Land in Virginia more than 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.
4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From the second Monday in November through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 20,000 pounds the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4VAC20-620-30 F.

E. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

F. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection I of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection I of this section.

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish

will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

H. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 9 p.m. to 7 a.m.

I. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

J. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

K. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

VA.R. Doc. No. R12-3129; Filed February 29, 2012, 10:50 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4VAC20-900. **Pertaining to Horseshoe Crab (amending 4VAC20-900-25, 4VAC20-900-36).**

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

**Effective Date:** March 1, 2012.

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

**Summary:**

*The amendments establish the 2012 harvest quota as 152,495 horseshoe crabs and suballocate the annual quota by gear types as follows: (i) 40.348% of annual quota for dredge gears, (ii) 12.488% of annual quota for trawl gears, (iii) 22.095% of annual quota for hand harvester licensees, (iv) 18.142% of annual quota for pound nets, and (v) 6.927% of annual quota for other gears.*

**4VAC20-900-25. Commercial fisheries management measures.**

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The commercial quota of horseshoe crab for ~~2011~~ 2012 shall be ~~430,933~~ 152,495 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

E. During each calendar year no more than 40% of the commercial horseshoe crab quota and any and all transfers of quota from other jurisdictions shall be harvested from waters east of the COLREGS Line. It shall be unlawful for any person to harvest horseshoe crabs from waters east of the COLREGS Line, or to land horseshoe crabs, in Virginia, that are harvested east of the COLREGS Line, after 40% of Virginia's horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

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# Regulations

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F. It shall be unlawful for any person whose harvest of horseshoe crabs is from waters east of the COLREGS Line to possess aboard a vessel or to land in Virginia any quantity of horseshoe crabs that, in aggregate, is not comprised of at least a minimum ratio of two male horseshoe crabs to one female horseshoe crab. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as described in 4VAC20-900-30 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.

2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-30 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.

3. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a valid horseshoe crab endorsement license to possess horseshoe crabs, without first obtaining a valid horseshoe crab bycatch permit from the Marine Resources Commission. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it

is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

5. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license or a horseshoe crab bycatch permit to possess any horseshoe crabs.

H. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

I. When it is projected and announced that 32% of the commercial quota, as described in subsection D of this section, has been taken from waters east of the COLREGS line, the limitations on the possession and landing of horseshoe crabs are as follows:

1. It shall be unlawful for any person who possesses a valid unrestricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,250 horseshoe crabs per day.

2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 500 horseshoe crabs per day.

3. It shall be unlawful for any person who possesses a valid horseshoe crab bycatch permit to possess aboard any vessel east of the COLREGS Line or to land more than 250 horseshoe crabs per day.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel, east of the COLREGS Line, to possess or land more than 500 horseshoe crabs per day.

#### **4VAC20-900-36. Quota allocation.**

A. When it has been projected and announced that ~~42%~~ 40.348% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by dredge gears, it shall be unlawful for any person to harvest or land horseshoe crabs caught by dredge gears.

B. When it has been projected and announced that ~~43%~~ 12.488% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by trawl gears, it shall be unlawful for any person to harvest or land horseshoe crabs caught by trawl gears.

C. When it has been projected and announced that ~~23%~~ 22.095% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by licensed hand ~~harvesting~~ harvesters, it shall be unlawful for any person to harvest or land horseshoe crabs caught by hand harvesting.

D. When it has been projected and announced that 18.142% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by pound nets, it shall be unlawful for any person to harvest or land horseshoe crabs caught by pound net.

~~D.~~ E. When it has been projected and announced that 22% ~~6.927%~~ of the commercial quota, as described in 4VAC20-900-25 D, has been landed by gears not described in subsections A through ~~E~~ D of this section, it shall be unlawful for any person to harvest or land horseshoe crabs by gears not described in subsections A through ~~E~~ D of this section.

VA.R. Doc. No. R12-3118; Filed March 1, 2012, 10:38 a.m.

### Emergency Regulation

**Title of Regulation:** 4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-25).

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

**Effective Dates:** March 2, 2012, through April 1, 2012.

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

**Preamble:**

*The amendments set the hours during which gill nets may be used to harvest horseshoe crabs and establish a daily trip limit of 250 horseshoe crabs for the gill net fishery.*

**4VAC20-900-25. Commercial fisheries management measures.**

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The commercial quota of horseshoe crab for 2012 shall be 152,495 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from

Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

E. During each calendar year no more than 40% of the commercial horseshoe crab quota and any and all transfers of quota from other jurisdictions shall be harvested from waters east of the COLREGS Line. It shall be unlawful for any person to harvest horseshoe crabs from waters east of the COLREGS Line, or to land horseshoe crabs, in Virginia, that are harvested east of the COLREGS Line, after 40% of Virginia's horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

F. It shall be unlawful for any person whose harvest of horseshoe crabs is from waters east of the COLREGS Line to possess aboard a vessel or to land in Virginia any quantity of horseshoe crabs that, in aggregate, is not comprised of at least a minimum ratio of two male horseshoe crabs to one female horseshoe crab. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as described in 4VAC20-900-30 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.
2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-30 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.
3. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a valid horseshoe crab endorsement license to possess horseshoe crabs, without first obtaining a valid

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horseshoe crab bycatch permit from the Marine Resources Commission. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

5. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license or a horseshoe crab bycatch permit to possess any horseshoe crabs.

6. It shall be unlawful for any person who possesses a horseshoe crab endorsement license or a horseshoe crab bycatch permit to harvest horseshoe crabs by gill net, except as described in subdivisions a and b of this subdivision.

a. Horseshoe crabs shall only be harvested from a gill net, daily, between the hours of sunrise and sunset.

b. It shall be unlawful for any person to land horseshoe crabs caught by a gill net in excess of 250 horseshoe crabs per day.

H. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

I. When it is projected and announced that 32% of the commercial quota, as described in subsection D of this section, has been taken from waters east of the COLREGS line, the limitations on the possession and landing of horseshoe crabs are as follows:

1. It shall be unlawful for any person who possesses a valid unrestricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,250 horseshoe crabs per day.

2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 500 horseshoe crabs per day.

3. It shall be unlawful for any person who possesses a valid horseshoe crab bycatch permit to possess aboard any vessel east of the COLREGS Line or to land more than 250 horseshoe crabs per day.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel, east of the COLREGS Line, to possess or land more than 500 horseshoe crabs per day.

VA.R. Doc. No. R12-3122; Filed March 1, 2012, 10:47 a.m.

## Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.</p>
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Title of Regulation: **4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-45).**

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

Effective Date: March 1, 2012.

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

### Summary:

*The amendments increase the vessel possession and landing limits to 50,000 pounds of scup (porgy) during the period January 1 through April 30 of each year.*

### **4VAC20-910-45. Possession limits and harvest quotas.**

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than ~~30,000~~ 50,000 pounds of scup.

2. Land in Virginia more than a total of ~~30,000~~ 50,000 pounds of scup during each consecutive 7-day landing period, with the first 7-day period beginning on January 1.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 8,000 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 13,085 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R12-3119; Filed March 1, 2012, 10:41 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-47).

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

**Effective Date:** March 1, 2012.

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

**Summary:**

*This amendment establishes the 2012 commercial black sea bass directed fishery quota as 302,000 pounds and the bycatch fishery quota as 40,000 pounds, with an overall quota of 342,000 pounds.*

**4VAC20-950-47. Commercial harvest quotas.**

A. The ~~2011~~ 2012 commercial black sea bass directed fishery quota is ~~302,216~~ 302,000 pounds. When it has been

announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The ~~2011~~ 2012 commercial black sea bass bycatch fishery quota is 40,000 pounds. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount the quota overage shall be deducted from the following year's bycatch fishing quota.

VA.R. Doc. No. R12-3120; Filed March 1, 2012, 10:44 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4VAC20-1240. Fisherman Identification Program (amending 4VAC20-1240-30).

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

**Effective Date:** March 1, 2012.

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

**Summary:**

*This amendment clarifies that any person attempting to take or catch any marine or anadromous fish species recreationally in any tidal waters of the Commonwealth must annually obtain a Fisherman Identification Program number, except as provided in the regulation.*

**4VAC20-1240-30. Registration requirement; exception; procedures; confidentiality.**

A. It shall be unlawful for any resident or nonresident, 16 years of age or older, to take or catch or attempt to take or catch any marine or anadromous fish species recreationally in any tidal waters of the Commonwealth without first obtaining, annually, a Fisherman Identification Program (FIP) number, except as provided in subsection B of this section.

B. Any person who purchases a Virginia saltwater recreational fishing license under Article 1.1 (§ 28.2-302.1 et seq.) of Chapter 3 of Title 28.2 of the Code of Virginia, or a saltwater recreational fishing license issued by the Potomac River Fisheries Commission, is not required to obtain a FIP

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number for the term of that license. Any person fishing aboard a charter boat or head boat that is licensed by the Virginia Marine Resources Commission or the Potomac River Fisheries Commission is not required to obtain a FIP number.

C. The FIP number may be obtained by the fisherman at no cost by calling a toll-free number and providing the required FIP information over the telephone or by entering the required information online via an Internet access portal designated by the Marine Resources Commission for that purpose. The required FIP information shall include name, date of birth, address, and telephone number. No person shall be considered as registered under the FIP unless all of that person's FIP-required information is a part of the commission's telephone or Internet database.

D. Any person registered in the Fisherman Identification Program must be able to produce his FIP number upon request by any police officer. Failure to provide a valid FIP number for the current year shall constitute a violation of this regulation.

VA.R. Doc. No. R12-3121; Filed March 1, 2012, 10:46 a.m.

## Emergency Regulation

Title of Regulation: **4VAC20-1260. Pertaining to River Herring (amending 4VAC20-1260-30).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: February 29, 2012, through March 30, 2012.

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

### Preamble:

*The emergency amendments clarify that it is unlawful for any person to (i) catch and retain possession of any river herring from Virginia tidal waters or (ii) possess aboard a vessel on Virginia tidal waters or land in Virginia any river herring. The amendments also require that any imported river herring or byproduct be accompanied by a bill of lading or commercial invoice with the seller's name, date of sale, and pounds of river herring product.*

### 4VAC20-1260-30. Moratorium.

A. It shall be unlawful for any person to possess catch and retain possession of any river herring in the Commonwealth of Virginia from Virginia tidal waters.

B. It shall be unlawful for any person to possess aboard a vessel on Virginia tidal waters or to land in Virginia any river herring.

C. Any river herring or its byproduct imported into Virginia from another state or country shall be accompanied by a bill of lading or commercial invoice that shall include the name of the seller, the date of sale, and the pounds of river herring product.

VA.R. Doc. No. R12-3128; Filed February 29, 2012, 10:44 a.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Notice of Extension of Emergency Regulation

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

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

Expiration Date Extended Through: July 30, 2012.

On February 28, 2012, the Governor approved the Criminal Justice Services Board'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 27:11 VA.R. 986-991 January 31, 2011 (<http://register.dls.virginia.gov/vol27/iss11/v27i11.pdf>). The regulation establishes training standards for campus security officers.

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

VA.R. Doc. No. R11-2165; Filed February 28, 2011, 3:38 p.m.

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## TITLE 21. SECURITIES AND RETAIL FRANCHISING

### STATE CORPORATION COMMISSION

#### Proposed Regulation

<p><u>REGISTRAR'S NOTICE:</u> The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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Title of Regulation: **21VAC5-80. Investment Advisors (amending 21VAC5-80-215).**

Statutory Authority: §§ 12.1-13, 13.1-523, and 13.1-523.1 of the Code of Virginia.

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

Public Comment Deadline: April 12, 2012.

Agency Contact: Timothy O'Brien, Chief Examiner, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email [timothy.o'brien@scc.virginia.gov](mailto:timothy.o'brien@scc.virginia.gov).

Summary:

*The State Corporation Commission's Division of Securities and Retail Franchising proposes substantial changes to 21VAC5-80-215, which currently exempts investment advisors to certain private funds from registration as an investment advisor under the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia. The proposed amendments effectively repeal the stopgap provisions of the current regulation and adopt in substantial part the model regulation developed by members of the North American Securities Administrators Association, Inc. (the trade association of state securities regulators) to comply with the statutory requirements of the Dodd-Frank Wall Street Reform and Consumer Protections Act. Proposed 21VAC5-80-215 would generally exempt an investment advisor from state registration requirements if the advisor (i) is not subject to disqualification for registration based upon the advisor's prior disciplinary history and (ii) solely advises certain types of funds that meet the definition of a qualifying private fund under the provisions of 17 CFR 275.203(m)-1. The exemption covers advisors to venture capital funds and, in specific circumstances, advisors to funds that are eligible for exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940. The proposed amendments to 21VAC5-80-215 also contain a grandfather clause that would allow currently exempt private fund advisors to remain exempt provided the advisor meets certain specified conditions. Private fund advisors that are registered with the Securities and Exchange Commission are not eligible for the proposed exemption. In addition, to qualify for the proposed exemption, advisors must make certain notice filings and pay a notice filing fee.*

AT RICHMOND, FEBRUARY 14, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2012-00009

Ex Parte: In the matter of  
Adopting a Revision to the Rules  
Governing the Virginia Securities Act

## ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia, provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: [www.scc.virginia.gov/case](http://www.scc.virginia.gov/case).

On September 7, 2011, the Commission adopted a new regulation, 21 VAC 5-80-215, to recognize changes in federal laws and regulations governing investment advisors adopted under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The adopted regulation addressed the regulatory gap created by the Dodd-Frank Act for certain advisors. During the interim, the Division of Securities and Retail Franchising ("Division"), working as a member in conjunction with the other member states of the North American Securities Administrators Association, has developed a regulation to complete the transition from prior law to conform to the Dodd-Frank Act.

Accordingly, the Division has submitted to the Commission proposed revisions to Chapter 80 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing the Virginia Securities Act" ("Rules").

Rule 21 VAC 5-80-215 will be amended to repeal the stopgap provision adopted last year in Case No. SEC-2011-00034 and adopt the new model rule exemption for investment advisors to private funds. The purpose of this proposed regulation is to provide for an exemption for certain types of investment advisors who advise private funds from the requirement to be registered under § 13.1-504 A of the Act. The advisors exempted by this rule will still be subject to the anti-fraud provisions of the Act.

The rule adopted in Case No. SEC-2011-00034 will be extensively revised.

Rule 21 VAC 5-80-215 will be amended to add the new exemption provisions. Section A, subsections 1-5 define key terms specific to this exemption. The definitions are structured such that the types of private funds covered under the rule will include funds excluded from the definition of investment company under Sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940, along with other private funds that would satisfy the statutory requirements found in these exclusions.

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Section B 1 of the proposed new rule explains that in order to claim the exemption from registration, the advisor and its affiliates must not be subject to a "bad boy" disqualification. A "bad boy" disqualification is defined in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262. In addition, Section B 2 requires that the private advisor file a report to the Commission as required by the Securities and Exchange Commission ("SEC") for advisors to venture capital funds and private funds with less than \$150 million in assets under management. Section B 3 requires that the advisor pay a notice filing fee of \$250.

Section C of the proposed new rule and its subsections place additional conditions upon advisors to 3(c)(1) funds. Specifically, in order to qualify for the exemption from investment advisor registration, the 3(c)(1) fund must be comprised entirely of "qualified clients" under SEC Rule 205-3. This means that individual investors must have either \$1 million in investments managed by the advisor or at least \$2 million in net worth. The rule states that the value of the primary residence is not included in calculating net worth. The value of the primary residence will be an estimate of the fair market value at the time the net worth calculation is conducted. Section C also requires the advisor to deliver annual audited financial statements to investors in the fund, along with specific disclosures to those investors.

Section D of the proposed new rule notes that federal covered advisors who are registered with the SEC are not eligible for this exemption.

Section E of the proposed new rule establishes an exemption from registration for investment advisor representatives who are employed by the exempt investment advisor.

Section F of the proposed new rule requires the reports filed by the advisors to be filed with the Commission through the Investment Advisor Registration Depository ("IARD"). IARD is the registration system operated by the Financial Industry Regulatory Authority that maintains the registration and regulatory records for the state regulatory jurisdictions. The report will be accompanied by the annual \$250 filing fee.

Section G of the proposed new rule provides a grace period for exempt advisors to become registered if that advisor no longer qualifies for the exemption.

Section H of the proposed new rule is a grandfather provision that would allow advisors to private funds currently exempt under the Act to remain exempt provided that the advisor files the reports required under the rule, and the advisor no longer accepts new investors that do not meet the financial requirements imposed by the rule, and provides the required disclosures to investors.

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with an effective date of May 1, 2012, in order to allow private fund investment advisors to make the transition or be registered

once the stopgap regulation expires. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail, or e-mail request and also can be found at the Division's website: [www.scc.virginia.gov/srf](http://www.scc.virginia.gov/srf). Any comments to the proposed rules must be received by April 12, 2012.

Accordingly, IT IS ORDERED that:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218, on or before April 12, 2012. A request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2012-00009. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons may also request a copy of the proposed revisions from the Division by telephone, mail, or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to the Division's Director, who shall forthwith mail a copy of this Order to any interested persons as he may designate.

## **21VAC5-80-215. Exemption for certain private advisors.**

~~Registration under the Act shall not be required of any investment advisor or its investment advisor representative whose only client is or clients are a corporation, general partnership, limited partnership, limited liability company, trust, or other legal organization that:~~

~~1. Has assets of not less than \$5,000,000 and~~

~~2. Receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries, provided the investment advisor was exempt from registration pursuant to § 203(b)(3) of the Investment~~

~~Advisors Act of 1940 immediately prior to July 21, 2011, and the investment advisor is subject to SEC Rule 203-1(e) granting an extension to investment advisors formerly exempt from registration under § 203(b)(3) of the Investment Advisers Act of 1940 until March 30, 2012, who would otherwise have been required to register with the SEC by July 21, 2011.~~

A. For purposes of this section, the following definitions shall apply:

1. "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

2. "Private fund advisor" means an investment advisor who provides advice solely to one or more qualifying private funds.

3. "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 CFR 275.203(m)-1.

4. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under § 3(c)(1) of the Investment Company Act of 1940, 15 USC § 80a-3(c)(1).

5. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR 275.203(l)-1.

B. Subject to the additional requirements of subsection C of this section, a private fund advisor shall be exempt from the registration requirements of § 13.1-504 of the Act if the private fund advisor satisfies each of the following conditions:

1. Neither the private fund advisor nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 CFR 230.262;

2. The private fund advisor files with the commission each report and amendment thereto that an exempt reporting advisor is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 CFR 275.204-4; and

3. The private fund advisor pays a notice fee in the amount of \$250.

C. In order to qualify for the exemption described in subsection B of this section, a private fund advisor who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in subsection B of this section, comply with the following requirements:

1. The private fund advisor shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding

securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR 275.205-3, at the time the securities are purchased from the issuer;

2. At the time of purchase, the private fund advisor shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

a. All services, if any, to be provided to individual beneficial owners;

b. All duties, if any, the investment advisor owes to the beneficial owners; and

c. Any other material information affecting the rights or responsibilities of the beneficial owners; and

3. The private fund advisor shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

D. If a private fund advisor is registered with the Securities and Exchange Commission, the advisor shall not be eligible for this exemption and shall comply with the notice filing requirements applicable to federal covered investment advisors in § 13.1-504 of the Act.

E. A person is exempt from the registration requirements of § 13.1-504 of the Act if he is employed by or associated with an investment advisor that is exempt from registration in this Commonwealth pursuant to this section and does not otherwise act as an investment advisor representative.

F. The report filings described in subdivision B 2 of this section shall be made electronically through the IARD system. A report shall be deemed filed when the report and the notice fee required by subdivision B 3 of this section are filed and accepted by the IARD system on the commission's behalf.

G. An investment advisor who becomes ineligible for the exemption provided by this section must comply with all applicable laws and regulations requiring registration or notice filing within 90 days from the date the investment advisor's eligibility for this exemption ceases.

H. An investment advisor to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subdivision C 1 of this section is eligible for the exemption contained in subsection B of this section if the following conditions are satisfied:

1. The subject fund existed prior to May 1, 2012;

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2. As of May 1, 2012, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subdivision C 1 of this section;

3. The investment advisor discloses in writing the information described in subdivision C 2 of this section to all beneficial owners of the fund; and

4. As of May 1, 2012, the investment advisor delivers audited financial statements as required by subdivision C 3 of this section.

VA.R. Doc. No. R12-3113; Filed February 16, 2012, 11:16 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Social Services 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 Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 22VAC40-60. Standards and Regulations for Licensed Adult Day Care Centers (amending 22VAC40-60-10, 22VAC40-60-20, 22VAC40-60-30, 22VAC40-60-60, 22VAC40-60-130, 22VAC40-60-200, 22VAC40-60-280, 22VAC40-60-320).

**Statutory Authority:** §§ 63.2-217 and 63.2-1733 of the Code of Virginia.

**Effective Date:** April 1, 2012.

**Agency Contact:** Annette Kelley, Adult Programs Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7632, FAX (804) 726-7132, or email annette.kelley@dss.virginia.gov.

**Summary:**

*The amendments conform definitions and agency names to the Code of Virginia and update statutory and administrative code citations and regulation titles.*

Part I  
General Provisions

**22VAC40-60-10. Definitions.**

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

"Administer medication" means to open a container of medicine or to remove the prescribed dosage and to give it to the participant for whom it is prescribed.

Section 54.1-3408 of the Code of Virginia states that only persons authorized by state law may administer drugs. People authorized to administer medication include licensed physicians, registered nurses, licensed practical nurses, physician assistants, and other individuals who meet the requirements of the law. In addition to these persons designated by law, a person may administer medications who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping, when the drugs administered would be normally self-administered by a program participant in an adult day care center licensed by the Department of Social Services.

"Adult" means any person 18 years of age or older.

"Adult day care center" means "a any facility, ~~which that~~ is either operated for profit or ~~which that~~ desires licensure and ~~which that~~ provides supplementary care and protection during only a part of the day ~~only~~ to four or more aged, infirm or disabled adults who reside elsewhere except (i) a facility or portion of a facility licensed by the State Board of Health or the ~~State Board Department of Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and ~~Developmental~~ Services and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage." (§ ~~63.1-194.1~~ 63.2-100 of the Code of Virginia)

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § ~~54.2-983~~ 54.1-2983 of the Code of Virginia, or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Care" means assistance with the activities and tasks of daily living provided to participants.

"Character and reputation" means findings have established that knowledgeable and objective people agree that the

subject maintains business and professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and a concern for the well-being of others to the extent that the subject is considered suitable to be entrusted with the health, safety, and welfare of aged, infirm, or disabled adults.

"Commissioner" means the Commissioner of Social Services, also known as the Director of the Virginia Department of Social Services.

"Communicable disease" means a disease that may be transmitted directly or indirectly from one individual to another.

"Contrast" means a significant difference in diversity of adjacent parts by color, tone, or light.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services who is acting as the authorized agent of the ~~commissioner in carrying out the responsibilities and duties specified in Chapter 9, Title 63.1 of the Code of Virginia~~ Commissioner of Social Services.

"Direct care staff" means the staff in an adult day care center who are actively providing care, guidance, and interaction with participants.

"Director" means the person who has been delegated responsibility for the programmatic and administrative functions of the adult day care program.

"Disabled" means the inability to perform some or all of the activities and tasks of daily living due to physical or mental impairments or injuries.

"Infirm" means the inability to perform some or all of the activities and tasks of daily living because of weakness or illness.

"Legal guardian" means an individual who has legal control and management of the person, or the property, or of both the person and the property of the participant. A legal guardian is appointed by a court. A legal guardian of the person is appointed to see that the participant has proper care and supervision in keeping with his needs. A legal guardian of the property is appointed to manage the financial affairs in the best interest of the participant.

"Licensee" means any person, association, partnership, corporation or governmental unit to whom the license is issued.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a clinical social worker, dentist, licensed practical nurse,

nurse practitioner, pharmacist, physical therapist, physician, physician assistant, psychologist, registered nurse, and speech-language pathologist.

"Licensed practical nurse" means any individual who holds a current, valid, license from the Commonwealth of Virginia as an L.P.N.

"Nonambulatory" means the condition of a participant of an adult day care center who by reason of physical or mental impairment is not capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such safe refuge area within the structure.

"Nurse" means any individual who holds a current, valid license from the Commonwealth of Virginia as a licensed practical nurse or as a registered nurse.

"Participant" means an aged, infirm or disabled adult who takes part in the program of care and receives services from the center.

"Personal representative" means the person representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, committee, attorney-in-fact under the durable power of attorney, next of kin, descendant, trustee, or other person expressly named by the participant as his agent.

"Physician" means any individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Program director" means the person responsible for programmatic functions and supervision of all staff who work directly with participants.

"Protection" means the intent to prevent harm and to provide oversight of the participant.

"Registered nurse" means any individual who holds a current, valid license from the Commonwealth of Virginia as an R.N.

"Respite care" means temporary care given to a person to relieve family members or other caregivers. These standards apply only if respite care is provided during part of the day. If 24-hour respite care is planned or provided for four or more people, the ~~Standards and Regulations for Licensed Adult Care Residences Assisted Living Facilities (22VAC40-71-10 et seq. (22VAC40-72))~~ shall apply.

"Snack" means a light meal or nutritious meal supplement.

"Sponsor" means an individual, partnership, association, or corporation responsible for the operation of an adult day care center subject to licensure.

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"Staff or staff person" means compensated administrative, program, and service personnel including the licensee when the licensee is an individual.

"Standard precautions" means an approach to infection control. According to the concept of standard precautions, all human blood and certain human body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus, and other blood borne pathogens.

"Supplementary care" means a part of the total care that is required by participants. Supplementary care augments the care that the family or other persons provide. Care provided by an adult day care center is supplementary care.

"Supervision" means the general oversight of the physical and mental well-being of participants.

"These standards" means the requirements in this chapter, ~~22VAC40-60-10 et seq.~~ 22VAC40-60, Standards and Regulations for Licensed Adult Day Care Centers.

"Volunteer" means a person who works at the center and:

1. Is not compensated; and
2. Is supervised by a staff member when working with participants.

## **22VAC40-60-20. Legal base.**

~~Article 3 (§ 63.1-194.1 et seq.) of Chapter 9 17~~ of Title ~~63.1 63.2~~ of the Code of Virginia describes the responsibility of the Department of Social Services for the regulation of adult day care centers.

## **22VAC40-60-30. Board authority.**

Section ~~63.1-194.2~~ 63.2-1733 of the Code of Virginia requires the State Board of Social Services to prescribe standards for certain activities, services, and facilities for adult day care centers.

## **22VAC40-60-60. Facilities not covered.**

The following types of facilities are not subject to licensure as an adult day care center:

1. A facility or portion of a facility licensed by the State Board of Health;
2. A facility or portion of a facility licensed by the State Board of ~~Mental Health and Mental Retardation~~ Behavioral Health and Developmental Services;
3. A home or residence of an individual who provides care only for persons related to him by blood or marriage;
4. A facility or a portion of a facility that is licensed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services, and that conducts a mental health program where treatment is provided for adults who are experiencing varying degrees of mental health related problems;

5. A facility or a portion of a facility licensed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services that conducts a mental retardation program where treatment is provided for mentally retarded or developmentally disabled adults;

6. A facility or a portion of a facility that conducts programs whose primary purpose is training or employment for physically or mentally impaired adults (e.g., sheltered workshops, etc.); and

7. A facility or a portion of a facility that conducts a socialization or recreation activity program for adults who do not receive assistance with the activities or tasks of daily living or protective oversight and supervision (e.g., senior centers, etc.).

## **22VAC40-60-130. Financial responsibilities.**

With an initial application for licensure, the applicant shall provide the department with the following evidence of financial responsibility:

1. A projected budget detailing income and expenses of the proposed center for the first year of operation;
2. A complete balance sheet showing separately the current assets committed to and current liabilities charged against the proposed center; and
3. Documentation of funds or credit available for the first 90 days of operation.

NOTE: Financial records may be requested pursuant to § ~~63.1-194.7~~ 63.2-1706 of the Code of Virginia.

### Part III Personnel

## **22VAC40-60-200. General qualifications.**

A. All staff members, including the administrator, shall:

1. Be of good character and reputation;
2. Be competent, qualified and capable of carrying out assigned responsibilities;
3. Be willing and able to accept training and supervision;
4. Be considerate, understanding and respectful of aged and disabled persons;
5. Be clean and well groomed; and
6. Meet the requirements specified in the Regulation for ~~Criminal Record Checks for Homes for Adults~~ Background Checks for Assisted Living Facilities and Adult Day Care Centers (~~22VAC40-90-10 et seq.~~) (22VAC40-90).

B. All staff members shall be able to communicate in English effectively both orally and in writing as applicable to their job responsibilities.

C. All staff members shall be able to understand and apply these standards as they relate to their respective responsibilities.

D. All staff persons who work directly with participants and who are counted in the staff-to-participant ratio shall be at least 18 years of age.

**22VAC40-60-280. Orientation and staff training.**

A. Prior to working directly with participants, all staff shall receive training in:

1. Their individual responsibilities in the event of fire, including the location and operation of any fire extinguishers and fire alarm boxes and approved exits;
2. Their individual responsibilities in the event of illness or injuries, including the location and use of the first aid and emergency supplies;
3. Their individual responsibilities in the event of emergencies, such as a lost or missing participant, severe weather, and loss of utilities;
4. Standard precautions; and
5. Participant rights.

B. Staff who work with participants shall receive at least 24 hours of training no later than three weeks after starting employment; part-time staff shall receive the training no later than six weeks after employment.

C. A supervisor or designated trained staff shall closely oversee the individual's work with participants until training is complete.

D. The following areas or topics shall be covered in the staff training:

1. The purpose and goals of the adult day care center;
2. The policies of the center as they relate to the staff member's responsibilities and to the responsibilities of other staff members;
3. Procedures for detecting and reporting suspected abuse, neglect, or exploitation of participants to the appropriate local department of social services (§ ~~63.1-55.3~~ 63.2-1606 of the Code of Virginia);
4. Confidential treatment of personal information about participants and their families;
5. This chapter as it relates to the employee's responsibilities;
6. Needs of the center's target population (for example, those with dementia, developmental disability, depression);

7. Individual capabilities and special needs of the elderly, the cognitively impaired adult, or the handicapped;

8. The specific needs of participants in care, including diagnoses, plans of care, and adjustment issues;

9. The schedule of activities;

10. Behavioral interventions, behavior acceptance and accommodation, and behavior management techniques;

11. Interdisciplinary team approach;

12. Communication skills;

13. Review of basic terminology;

14. Advance directive policies;

15. How to safely and appropriately help participants perform activities of daily living (ADLs), including good body mechanics;

16. Risk management; and

17. The needs of participants' family members or care givers.

E. The required 24 hours of training can be accomplished through a variety of methods including, but not limited to, formal lecture, observation, self-study of material provided by the center, supervised practice, and audio-visual training.

**22VAC40-60-320. Director.**

A. There shall be one person responsible for the center's program who is present at least 51% of the center's weekly hours of operation and whose responsibilities shall include, but not be limited to, the following areas:

1. The content of the program offered to the participants in care;
2. Programmatic functions, including orientation, training, and scheduling of all staff who directly supervise participants, whether or not the director personally performs these functions;
3. Management of the supervision provided to all staff who directly supervise participants, whether or not the director individually supervises such staff;
4. Assignment of a sufficient number of qualified staff to meet the participants' needs for:
  - a. Adequate nutrition;
  - b. Health supervision and maintenance;
  - c. Personal care;
  - d. Socialization, recreation, activities and stimulation;
  - e. Supervision and protection;
  - f. Safety; and

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5. The duties and responsibilities required by this chapter.

B. The director shall meet the following qualifications.

1. The director shall be at least 21 years of age.

2. The director shall have completed at least a bachelor's degree from an accredited college or university and two years of experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment, volunteer work, or internship. The following qualifications may be substituted for a bachelor's degree:

a. Current licensure as a nursing home administrator from the Board of ~~Nursing Home~~ Long-Term Care Administrators; or

b. Current licensure in Virginia as a registered nurse who meets the experience requirements in subdivision 2 of this subsection.

EXCEPTION: Any person employed in an adult day care center licensed prior to July 1, 2000, as either a director or assistant director shall have completed at least 48 semester hours or 72 quarter hours of post-secondary education from an accredited college or institution and shall have completed at least two years experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment or in volunteer work.

3. The director shall demonstrate knowledge, skills and abilities in the administration and management of the adult day care program including: (i) knowledge and understanding of impaired elderly or disabled individuals, (ii) supervisory and interpersonal skills, (iii) ability to plan and implement the program, and (iv) knowledge of financial management sufficient to ensure program development and continuity.

4. The director shall demonstrate knowledge of supervisory and motivational techniques sufficient to: (i) accomplish day-to-day work; (ii) train, support and develop staff; (iii) plan responsibilities for auxiliary staff to ensure that services are provided to participants.

5. The director shall complete 24 hours of continuing education annually to maintain and develop skills. This training shall be in addition to first aid, CPR, or orientation training.

**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 (22VAC40-60)

~~Initial Application for a State License to Operate an Adult Day Care Center, 032-05-316/4 (rev. 8/02).~~

~~Renewal Application for a State License to Operate an Adult Day Care Center, 032-05-317/3 (rev. 8/02).~~

~~Report of Tuberculosis Screening Evaluation (eff. 7/00).~~

~~Meal Pattern for Adults (eff. 7/00).~~

[Initial Application for a State License to Operate an Adult Day Care Center, 032-05-0316-05-eng \(rev. 8/07\).](#)

[Renewal Application for a State License to Operate an Adult Day Care Center, 032-05-0317-04-eng \(rev. 8/07\).](#)

[Report of Tuberculosis Screening, 032-05-0420-00-eng \(rev. 02/12\).](#)

[Report of TB Screening, 032-05-0077-01-eng \(rev. 02/12\).](#)

VA.R. Doc. No. R12-3091; Filed February 20, 2012, 9:44 a.m.

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### Proposed State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. If adopted, the Commonwealth intends to submit the regulation or a portion thereof to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is as follows: Regulation for the Control of Motor Vehicles in Northern Virginia, 9VAC5-91 (Revision VV2).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments that became effective in 1998 should be submitted as a revision to the SIP.

Public comment period: March 12, 2012, to April 11, 2012.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments were adopted by the State Air Pollution Control Board on September 11, 1997, with an effective date of January 1, 1998. Since the amendments have already been adopted, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: In essence, the proposed revision consists of amendments to existing regulation provisions concerning the Regulation for the Control of Motor Vehicles in Northern Virginia. The major provisions of the proposal consist of the repeal of the following provisions: 9VAC5-91-40, Establishment of regulations; 9VAC5-91-60, Hearings and proceedings; 9VAC5-91-80, Variances; and 9VAC5-91-110, Procedural information and guidance. These provisions were moved from 9VAC5-91 into a new chapter 9VAC5-170, Regulation for General Administration.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the

federal Clean Air Act in accordance with 40 CFR 51.104. DEQ plans 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 documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website: <http://www.deq.state.va.us/air/permitting/planotes.html>. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 5 p.m. of each business day until the close of the public comment period at the following locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070, and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Karen G. Sabasteanski, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Load for Schenks Branch, Meadow Creek, Lodge Creek, and Moores Creek Watersheds

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) and Implementation Plans (IPs) for the Schenks Branch, Meadow Creek, Lodge Creek, and Moores Creek watersheds in the City of Charlottesville and Albemarle County. These streams were listed on the 2006 and 2008 303(d) TMDL Priority List and Report as impaired due to violations of the state's general water quality standard (benthic) for aquatic life. The benthic impairment on Schenks Branch extends 1.138 miles from the headwaters of its tributaries to the Meadow Creek confluence. Meadow Creek is benthically impaired from where it becomes a perennial stream to its confluence with the Rivanna River (4 miles). The benthic impairment on Moores Creek extends 6.377 miles from its confluence with the Ragged Mountain Dam receiving stream downstream to its confluence with the Rivanna River. The Moores Creek watershed includes the tributary locally known as Lodge

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## General Notices/Errata

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Creek, which is benthically impaired for 1.57 miles from its headwaters to the confluence with Moores Creek.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. Section 62.1-44.19:7 C of the Code of Virginia requires the development of an Implementation Plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The first public meeting on the development of these TMDLs and IPs will be held on Thursday, March 15, 2012, 6 p.m. at CitySpace on Charlottesville's Downtown Mall, 100 5th Street NE, Charlottesville, VA 22902-5230.

The public comment period for the first public meeting will end on April 16, 2012. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email [tara.sieber@deq.virginia.gov](mailto:tara.sieber@deq.virginia.gov).

### **Total Maximum Daily Loads and Implementation Plans for Long Meadow Run and Turley Creek**

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) and Implementation Plans (IPs) for Long Meadow Run and Turley Creek in Rockingham County. These streams were listed in 2002 as impaired due to violations of the state's general water quality standard (benthic) for aquatic life. The aquatic life impairment on Long Meadow Run extends from its headwaters to the confluence with the North Fork Shenandoah River, which is a total of 8.53 miles. The Turley Creek aquatic life impairment extends a total of 4.01 miles from its headwaters to the confluence with the North Fork Shenandoah River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. Section 62.1-44.19:7 C of the Code of Virginia requires the development of an Implementation Plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The second public meeting on the development of these TMDLs and IPs will be held on Wednesday, March 21, 2012, 7 p.m. at J. Frank Hillyard Middle School, 226 Hawks Hill Drive, Broadway, VA 22815. The TMDL document will be available on the DEQ website the day of the meeting for public comment and review: <https://www.deq.virginia.gov/TMDLDataSearch/DraftReport.s.jsp>.

The public comment period for the second public meeting will end on April 23, 2012. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email [tara.sieber@deq.virginia.gov](mailto:tara.sieber@deq.virginia.gov).

### **Notice of Bacteria TMDL Modification of James River and Tributaries - Lower Piedmont Region in Goochland, Fluvanna, Louisa, Powhatan, and Cumberland Counties, Virginia**

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on 4 proposed minor modifications of the total maximum daily loads (TMDLs) developed for impaired segment: Beaverdam Creek.

A total maximum daily load (TMDL) of E. coli was developed to address the bacterial impairments in the James River and Tributaries - Lower Piedmont Region in Goochland, Fluvanna, Louisa, Powhatan, and Cumberland Counties. This TMDL was approved by the Environmental Protection Agency on June 11, 2008. The report is available at <http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/jmsggrp2.pdf>. DEQ issued a notice of modification for minor modifications from November 7, 2011, to December 7, 2011. No comments were received. In addition to the three modifications included previously for the Beaverdam Creek TMDL, DEQ is proposing one additional modification and seeks written comments from interested persons.

In November 2011, three modifications were proposed for the Beaverdam Creek TMDL. First, DEQ proposed to remove facility Huguenot Academy (VA0063037), which should not have been given a waste load allocation (WLA) in the Beaverdam Creek TMDL because it discharges to the Fine Creek drainage. DEQ suggested the WLA of 6.96E+09 (cfu/yr) E. coli, based on a maximum discharge of 0.004 million gallons per day (MGD), be added to the "Future Growth" load for the Beaverdam Creek TMDL. Second, DEQ proposed to remove facility James River Correctional Center (VA0020681), which no longer discharges to Beaverdam Creek. DEQ suggested the WLA of 3.76E+11 (cfu/yr) E. coli, based on a maximum discharge of 0.216 MGD, be added to the "Future Growth" load for Beaverdam Creek. Third, DEQ

proposed to add a new WLA, Oilville Waste Water Treatment Plant (WWTP) (VA0092428), which is a municipal facility with a maximum discharge of 0.3 MGD, and suggested allocation by subtracting from the "Future Growth" load of Beaverdam Creek. The WLA to be assigned to this facility based on design flow at the standard is equal to 5.23E+11 (cfu/yr) E. coli.

The new proposed modification is related to the original Future Growth calculation, which was five times the WLA of dischargers (James River Correctional Center (VA0020681), VDOT Interstate 64 Goochland Rest Area (VA0023108), Huguenot Academy (VA0063037), and James River Correctional Center (VA0006149)), and equal to 2.61E+12 (cfu/yr) E. coli. This Future Growth value is 32% of the TMDL, which is relatively excessive when compared to the majority of Virginia TMDLs, whose Future Growth values are usually <10% of the TMDL. Out of the four original facilities given WLAs, only the VDOT facility remains and a new facility will begin discharging (Oilville WWTP #VA0092428). DEQ proposes to revise the Future Growth to a new value of two times the WLA of the new Oilville WWTP, equal to 1.05E+12 (cfu/yr) E. coli. The revised Future Growth would be equal to 12.8% of the TMDL, which DEQ believes is a more reasonable number of future growth reserve as a portion of the overall TMDL. The difference in old and new Future Growth will be moved to the Load Allocation (LA) (nonpoint source category). The total revised WLA will be equal to 5.57E+11 and the total revised LA will be equal to 6.54E+12, (cfu/yr) E. coli, respectively. The proposed changes for the Beaverdam Creek TMDL are equal to <1.0%.

The proposed WLA changes above will neither cause nor contribute to the nonattainment of the James River basin.

The public comment period for these modifications will end on April 16, 2012. Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, by email at [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov), or FAX at (804) 527-5106. Following the comment period, a modification letter and any comments received will be sent to EPA for final approval.

**Bacteria TMDL Modification of James River and Tributaries - Hopewell to Westover in Chesterfield, Charles City, Prince George, and Hopewell, Virginia**

The Department of Environmental Quality (DEQ) would like to inform the public of a retraction of previously proposed minor modifications of the total maximum daily load (TMDL) developed for the James River (tidal) segment.

A total maximum daily load of E. coli was developed to address the bacterial impairments in the James River and Tributaries - Hopewell to Westover in Chesterfield, Charles

City, Prince George, and Hopewell, Virginia. This TMDL was approved by the Environmental Protection Agency on July 10, 2008. A modification to remove an unnecessary WLA and add to future growth in James River segment was approved on July 7, 2009. The report and previous modification are available by searching the approved TMDL reports page at [https://www.deq.virginia.gov/TMDLDataSearch/DraftReport\\_s.jsp](https://www.deq.virginia.gov/TMDLDataSearch/DraftReport_s.jsp). A public comment period was held for proposed modifications from October 10, 2011, to November 10, 2011. One comment was received in support of DEQ's proposed actions. DEQ would like to provide notification regarding the redacted changes and seeks comments from interested persons.

DEQ previously proposed eight modifications for the James River (tidal) TMDL. DEQ proposes to now retract the proposed modification to assign a waste load allocation (WLA) for existing facility Rock Tenn (formerly known as Smurfit Stone Container Corporation, permit #VA0004642), an industrial facility with a maximum discharge of 0.288 MGD (at outfall 002). A limit for E. coli in the permit was considered because a sample submitted by the facility as part of their permit reissuance indicated the presence of bacteria. The sample, taken from an outfall receiving car-rinse water, is believed to be caused by wildlife. Bacteria runoff from wildlife sources at the site is already modeled in the Load Allocation (LA) (nonpoint source category). For this reason, DEQ believes the proposed WLA for the facility based on the design flow at the standard of 5.01E+11 colony forming units per year (cfu/yr) E. coli is unnecessary. Therefore, the loading will not be allocated to the facility or removed from Future Growth.

Current DEQ guidance on TMDL modifications instructs regions to track the addition or subtraction of Single Family Home General Permits (SFHGP), rather than modifying the TMDL for each change, providing the additions or subtractions are in compliance with the TMDL and future growth loading. Therefore, the remaining proposed modifications included in the previous notice will not be pursued with EPA at this time. These modifications included the addition of five new WLAs for domestic dischargers VAG404083 (UT Walls Run), VAG404132 (Parish Hill Creek), VAG404199 (James River), VAG404270 (UT James River), and VAG404271 (UT James River), which are single family home facilities, each with a design flow each of 0.001 million gallons per day (MGD). The WLA that was to be assigned to each facility based on design flow at the standard is equal to 1.75E+09 (cfu/yr) E. coli. For modifications 7 and 8, DEQ proposed to remove the WLA assigned to two single family home permits, VAG404131 and VAG404215, which are no longer in operation. Their respective WLAs of 1.75E+09 (cfu/yr) E.coli (each) were to be added to "Future Growth" load. The combined revised "Future Growth" load in

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the James River (tidal) TMDL as a result of these modifications was to be equal to 7.66E+14 (cfu/yr) E. coli.

DEQ also proposed two modifications to Powell Creek in the previous public notice. The first was to add a domestic discharger (VAG404083), which is a SFHGP with a design flow of 0.001 million gallons per day (MGD), and assign a waste load allocation (WLA) of 1.75E+09 colony forming units per year (cfu/yr) for E. coli in the Powell Creek TMDL. The second modification is to remove domestic discharger VAG404131, which is a single family home facility with a WLA of 1.75E+09 (cfu/yr) E.coli that is no longer in operation. The addition of one discharger and subtraction of another would equal a net change of 0% of the Powell Creek

TMDL. Again, DEQ proposes to track these SFHGP changes rather than formally modify the TMDL at this time.

In summary, no formal modification will be pursued for the James River and Tributaries - Hopewell to Westover TMDL at this time. The addition and subtraction of SFHGPs will be tracked internally at DEQ to ensure compliance with the TMDL.

The public comment period for the retraction will end on April 16, 2012. Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, telephone (804)527-5124, FAX (804) 527-5106, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

### DEPARTMENT OF FORENSIC SCIENCE

#### Approval of Field Tests for Detection of Drugs

In accordance with 6VAC40-30, 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:

ODV INCORPORATED  
13386 INTERNATIONAL PARKWAY  
JACKSONVILLE, FLORIDA 32218-2383

#### **ODV NarcoPouch**

##### Drug or Drug Type:

Heroin  
Amphetamine  
Methamphetamine  
3,4-Methylenedioxymethamphetamine (MDMA)  
Cocaine Hydrochloride

Cocaine Base

Barbiturates  
Lysergic Acid Diethylamide (LSD)  
Marijuana  
Hashish Oil  
Marijuana  
Hashish Oil  
Phencyclidine (PCP) Reagent  
Heroin  
Methamphetamine  
3,4-Methylenedioxymethamphetamine (MDMA)  
Heroin  
Diazepam  
Ketamine  
Ephedrine  
gamma – Hydroxybutyrate (GHB)

#### **ODV NarcoTest**

##### Drug or Drug Type:

Heroin  
Amphetamine  
Methamphetamine

##### Manufacturer's Field Test:

902 – Marquis Reagent  
902 – Marquis Reagent  
902 – Marquis Reagent  
902 – Marquis Reagent  
904 or 904B – Cocaine HCl and Base Reagent  
904 or 904B – Cocaine HCl and Base Reagent  
905 – Dille-Koppanyi Reagent  
907 – Ehrlich's (Modified) Reagent  
908 – Duquenois – Levine Reagent  
908 – Duquenois – Levine Reagent  
909 – K N Reagent  
909 – K N Reagent  
914 – PCP Methaqualone  
922 – Opiates Reagent  
923 – Methamphetamine/Ecstasy Reagent  
923 – Methamphetamine/Ecstasy Reagent  
924 – Mecke's (Modified) Reagent  
925 – Valium/Ketamine Reagent  
925 – Valium/Ketamine Reagent  
927 – Ephedrine Reagent  
928 – GHB Reagent

##### Manufacturer's Field Test:

7602 – Marquis Reagent  
7602 – Marquis Reagent  
7602 – Marquis Reagent

3,4-Methylenedioxyamphetamine (MDMA)  
 Barbiturates  
 Lysergic Acid Diethylamide (LSD)  
 Marijuana  
 Hashish Oil  
 Marijuana  
 Hashish Oil  
 Cocaine Hydrochloride  
 Cocaine Base  
 Phencyclidine (PCP)  
 Heroin  
 Methamphetamine  
 3,4-Methylenedioxyamphetamine (MDMA)  
 Heroin  
 Diazepam  
 Ketamine  
 Ephedrine  
 gamma – Hydroxybutyrate (GHB)

7602 – Marquis Reagent  
 7605 – Dille-Koppanyi Reagent  
 7607 – Ehrlich's (Modified) Reagent  
 7608 – Duquenois Reagent  
 7608 – Duquenois Reagent  
 7609 – K N Reagent  
 7609 – K N Reagent  
 7613 – Scott (Modified) Reagent  
 7613 – Scott (Modified) Reagent  
 7614 – PCP Methaqualone Reagent  
 7622 – Opiates Reagent  
 7623– Methamphetamine/Ecstasy Reagent  
 7623– Methamphetamine/Ecstasy Reagent  
 7624 – Mecke's Reagent  
 7625 – Valium/Ketamine Reagent  
 7625 – Valium/Ketamine Reagent  
 7627 – Chen's Reagent - Ephedrine  
 7628 – GHB Reagent

SIRCHIE FINGERPRINT LABORATORIES  
 100 HUNTER PLACE  
 YOUNGSVILLE, NORTH CAROLINA 27596

**NARK**

Drug or Drug Type:

Narcotic Alkaloids  
 Heroin  
 Morphine  
 Amphetamine  
 Methamphetamine  
 Opium Alkaloids  
 Heroin  
 Morphine  
 Amphetamine  
 Methamphetamine  
 3,4-Methylenedioxyamphetamine (MDMA)  
 Meperidine (Demerol) (Pethidine)  
 Heroin  
 Morphine  
 Cocaine Hydrochloride  
 Cocaine Base  
 Procaine  
 Tetracaine  
 Barbiturates  
 Heroin  
 Morphine  
 Amphetamine  
 Methamphetamine  
 Lysergic Acid Diethylamide (LSD)  
 Marijuana  
 Hashish  
 Hashish Oil  
 Tetrahydrocannabinol (THC)  
 Marijuana  
 Hashish  
 Hashish Oil

Manufacturer's Field Test:

1 – Mayer's Reagent  
 2 – Marquis Reagent  
 3 – Nitric Acid  
 3 – Nitric Acid  
 4 – Cobalt Thiocyanate Reagent  
 5 – Dille-Koppanyi Reagent  
 6 – Mandelin Reagent  
 6 – Mandelin Reagent  
 6 – Mandelin Reagent  
 6 – Mandelin Reagent  
 7 – Ehrlich's Reagent  
 8 – Duquenois Reagent  
 8 – Duquenois Reagent  
 8 – Duquenois Reagent  
 8 – Duquenois Reagent  
 9 – NDB (Fast Blue B Salt) Reagent  
 9 – NDB (Fast Blue B Salt) Reagent  
 9 – NDB (Fast Blue B Salt) Reagent

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Tetrahydrocannabinol (THC)  
Cocaine Base

### **NARK II**

#### Drug or Drug Type:

Narcotic Alkaloids  
Heroin  
Morphine  
Amphetamine  
Methamphetamine  
3,4-Methylenedioxymethamphetamine (MDMA)  
Morphine  
Heroin  
Barbiturates  
Lysergic Acid Diethylamide (LSD)  
Marijuana  
Hashish  
Hashish Oil  
Tetrahydrocannabinol (THC)  
Cocaine Hydrochloride  
Cocaine Base  
Phencyclidine (PCP)  
Opiates  
Heroin  
Morphine  
Heroin  
3,4-Methylenedioxymethamphetamine (MDMA)  
Pentazocine  
Ephedrine  
Diazepam  
Methamphetamine

Narcotic Alkaloids  
Heroin  
Morphine  
Amphetamine  
Methamphetamine  
3,4-Methylenedioxypyrovalerone (MDPV)  
4-Methylmethcathinone (Mephedrone)

ARMOR HOLDINGS, INCORPORATED  
13386 INTERNATIONAL PARKWAY  
JACKSONVILLE, FLORIDA 32218-2383

### **NIK**

#### Drug or Drug Type:

Heroin  
Amphetamine  
Methamphetamine  
3,4-Methylenedioxymethamphetamine (MDMA)  
Morphine  
Barbiturates  
Lysergic Acid Diethylamide (LSD)  
Marijuana  
Hashish Oil  
Tetrahydrocannabinol  
Cocaine Hydrochloride

9 – NDB (Fast Blue B Salt) Reagent  
13 – Cobalt Thiocyanate/Crack Test

#### Manufacturer's Field Test:

01 – Marquis Reagent  
02 – Nitric Acid  
02 – Nitric Acid  
03 – Dille-Koppanyi Reagent  
04 – Ehrlich's Reagent  
05 – Duquenois – Levine Reagent  
07 – Scott's (Modified) Reagent  
07 – Scott's (Modified) Reagent  
09 – Phencyclidine Reagent  
10 – Opiates Reagent  
10 – Opiates Reagent  
10 – Opiates Reagent  
11 – Mecke's Reagent  
11 – Mecke's Reagent  
12 – Talwin/ Pentazocine Reagent  
13 – Ephedrine Reagent  
14 – Valium Reagent  
15 – Methamphetamine (Secondary Amines Reagent)  
19 – Mayer's Reagent  
24 – MDPV (Bath Salts) Reagent  
25 – Mephedrone (Bath Salts) Reagent

#### Manufacturer's Field Test:

Test A 6071 – Marquis Reagent  
Test B 6072 – Nitric Acid Reagent  
Test C 6073 – Dille-Koppanyi Reagent  
Test D 6074 – LSD Reagent System  
Test E 6075 – Duquenois – Levine Reagent  
Test E 6075 – Duquenois – Levine Reagent  
Test E 6075 – Duquenois – Levine Reagent  
Test G 6077 – Scott (Modified) Reagent



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Lysergic Acid Diethylamide  
Methamphetamine  
3,4-Methylenedioxymethamphetamine (MDMA)  
Morphine  
Opium  
Diazepam  
Ephedrine  
Pseudoephedrine

JANT PHARMACAL CORPORATION  
16255 VENTURA BLVD., #505  
ENCINO, CA 91436  
Formerly available through:  
MILLENNIUM SECURITY GROUP

### **Accutest IDenta**

#### Drug or Drug Type:

Marijuana

Hashish Oil

Heroin  
Cocaine Hydrochloride  
Cocaine Base  
3,4-Methylenedioxymethamphetamine (MDMA)  
Methamphetamine

COZART PLC  
92 MILTON PARK  
ABINGDON, OXFORDSHIRE ENGLAND OX14 4RY

#### Drug or Drug Type:

Cocaine

Lynn Peavey Company  
10749 West 84th Terrace  
Lexexa, KS 66214

### **QuickCheck**

#### Drug or Drug Type:

Marijuana  
Marijuana  
Hashish Oil  
Hashish Oil  
Heroin  
Heroin  
Cocaine Hydrochloride  
Cocaine Base  
Methamphetamine  
Methamphetamine  
MDMA  
MDMA

M.M.C. INTERNATIONAL B.V.  
FRANKENTHALERSTRAAT 16-18  
4816 KA BREDA  
THE NETHERLANDS

#### Drug or Drug Type:

Heroin

Pen Test – LSD Test  
Pen Test – Meth/X Test  
Pen Test – Meth/X Test  
Pen Test – Opiatest  
Pen Test – Opiatest  
Pen Test – BZO  
Pen Test – Ephedrine  
Pen Test – Ephedrine

#### Manufacturer's Field Test:

Marijuana/Hashish (Duquenois-Levine Reagent)  
Marijuana/Hashish (Duquenois-Levine Reagent)  
Heroin Step 1 and Step 2  
Cocaine/Crack Step 1 and Step 2  
Cocaine/Crack Step 1 and Step 2  
MDMA Step 1 and Step 2  
Methamphetamine Step 1 and Step 2

#### Manufacturer's Field Test:

Cocaine Solid Field Test

#### Manufacturer's Field Test:

Marijuana – 10120  
Marijuana – 10121  
Marijuana – 10120  
Marijuana – 10121  
Marquis – 10123  
Heroin - 10125  
Cocaine – 10124  
Cocaine – 10124  
Meth/Ecstasy – 10122  
Marquis – 10123  
Meth/Ecstasy – 10122  
Marquis – 10123

#### Manufacturer's Field Test:

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)
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)
Lysergic Acid Diethylamide (LSD)	LSD Test (Ampoule)
Phencyclidine (PCP)	PCP Test (Ampoule)
Methaqualone	Methaqualone Test (Ampoule)
Amobarbital	Barbiturates Test (Ampoule)
Pentobarbital	Barbiturates Test (Ampoule)
Phenobarbital	Barbiturates Test (Ampoule)
Secobarbital	Barbiturates Test (Ampoule)
Propoxyphene	Propoxyphene Test (Ampoule)
Diazepam	V&R Test (Ampoule)
3,4-methylenedioxypyrovalerone (MDPV)	Synthetic Cathinones Test (Ampoule)
3,4-methylenedioxymethcathinone (methylone)	Synthetic Cathinones 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

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# General Notices/Errata

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## DEPARTMENT OF GENERAL SERVICES

### Construction Management Procedures as Adopted by the Secretary of Administration

In accordance with the provision of § 2.2-4306 of the Code of Virginia, the Secretary of Administration hereby adopts the following procedures for the procurement of construction management (CM) contracts, as defined in § 2.2-4301 of the Code of Virginia, which shall be followed by all departments, agencies, and institutions of the Commonwealth (each of which is hereinafter referred to as the "agency"). These procedures shall be effective March 1, 2012.

A. LEGISLATIVE AUTHORITY: Under the authority of § 2.2-4306 of the Code of Virginia, the Commonwealth may enter into a contract with a construction manager (CM) in accordance with these procedures and § 2.2-1502 of the Code of Virginia. Under the authority of § 2.2-4303 D 1 of the Code of Virginia, an agency is authorized to use competitive negotiations to procure CM contracts when it determines in advance, and sets forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

B. CRITERIA FOR USE OF CM: CM contracts may be approved for use on projects where 1) fast tracking of construction is needed to meet agency program requirements, or 2) value engineering and/or constructability analyses concurrent with design are required.

The use of CM shall be limited to projects with a construction value that is in excess of \$10,000,000. With proper justification for small complex projects, the Director of the Division of Engineering and Buildings (director) may grant a waiver of this requirement.

C. PROCEDURE FOR APPROVAL TO USE CM: Prior to taking any further action, the agency shall request authority in writing and receive approval from the director to use a CM contract.

The request shall justify and substantiate that a CM contract meets the criteria found in paragraph B. The request must also include the stipulation that the CM contract will be initiated no later than the schematic phase of design. The request shall also include a written justification that competitive sealed bidding is not practical and/or fiscally advantageous.

Approval of exceptions to this policy may be granted by the director, who is the approving authority for requests to use CM procedures.

#### D. CM SELECTION PROCEDURES:

1. The agency shall appoint an Evaluation Committee (committee) which shall consist of at least three members from the agency, including a registered design professional, if possible. The committee shall include a licensed professional

engineer or architect provided by the Division of Engineering and Buildings. The agency shall contact the section in the Office of the Attorney General (OAG) representing the Division of Engineering and Buildings (currently the Real Estate and Land Use Section) to determine whether a representative from the OAG should be involved.

2. The basis of the award of the contract shall be in accordance with § 2.2-4301 (3) (b) of the Code of Virginia and the criteria for the award shall be submitted to the director, in advance, for approval. Cost shall be a critical component of the selection criteria.

3. Selection of qualified offerors (Step I): On projects approved for CM, the agency shall conduct a prequalification process as follows to determine which offerors are qualified to submit proposals.

a) The agency shall post a Request for Qualifications (RFQ) in accordance with the current standards for the posting of public bids in the Code of Virginia and in accordance with the latest edition of the Construction and Professional Services Manual.

b) The committee shall evaluate each responding firm's submittals and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.

c) An offeror may be denied prequalification only as specified under § 2.2-4317 of the Code of Virginia.

d) At least 30 days prior to the date established for the submission of proposals, the agency shall advise in writing each offeror that sought prequalification whether that offeror has been prequalified. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

e) In addition to the procedures described above for prequalifying firms for individual CM projects, the director may approve requests to prequalify construction managers for particular types of construction projects in accordance with § 2.2-4317 of the Code of Virginia. Firms qualified under that approval may compete for projects of the same type for which they qualified unless the director determines that further prequalification for a particular project is desirable.

#### 4. Selection of a construction manager (Step II):

a) The committee will send a Request for Proposal (RFP) to each of the prequalified firms and request submission of formal proposals from them.

b) The committee will evaluate and rank the proposals and conduct negotiations with two or more offerors submitting the best proposals. Should the agency determine, in writing and at its sole discretion, that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the

others under consideration, a contract may be negotiated with that offeror after approval of the director.

c) The committee shall make its recommendation on the selection of a construction manager to the agency head based on its evaluations and negotiations. The contract shall be awarded to the offeror who is fully qualified, has submitted an acceptable proposal, and has been determined to provide the best value in response to the RFP. When the terms and conditions for multiple awards are so provided in the RFP, awards may be made to more than one offeror.

d) The agency shall notify the Division of Engineering and Buildings of its selection of the construction manager and shall request authority to award a contract by submission of form DGS-30-058, CO-8, Approval to Award Construction Contract, and supporting documents to the Bureau of Capital Outlay Management via email to [coforms@dgs.virginia.gov](mailto:coforms@dgs.virginia.gov).

e) Award of the CM contract shall be made to the offeror selected.

f) The agency will notify all offerors who submitted proposals which offeror was selected for the project.

**E. REQUIRED CONSTRUCTION MANAGEMENT CONTRACT TERMS:** Any guaranteed maximum price construction management contract entered into by any agency will contain provisions requiring that (1) not more than 10% of the construction work (measured by cost of the work) will be performed by the CM with its own forces and (2) that the remaining 90% of the construction work will be performed by subcontractors of the CM which the CM must procure by publicly advertised, competitive sealed bidding. In extraordinary circumstances the director may grant a waiver of these contractual requirements in whole or in part.

F. The guaranteed maximum price shall be established at the completion of working drawings unless a waiver has been granted to this requirement by the director.

G. An agency may request from the director approval to perform a one-step solicitation for its project. If adequate justification is provided, the director may approve the request.

H. Any institution of higher education with authority for capital projects pursuant to the Restructured Higher Education Financial and Administrative Operations Act may utilize these procedures or such other procedures as they may have adopted pursuant to any signed memorandum of agreement.

I. The Code of Virginia requires other public bodies planning to use CM to adopt guidelines consistent with the above procedures. A key difference is that steps requiring the approval or involvement of the Director of the Division of Engineering and Buildings will instead seek the approval or involvement of the appropriate authority as directed by the governing body of the public body. Before implementing CM, such public body must have the required professional

staff and meet the material requirements of § 2.2-4308 of the Code of Virginia. It should also be noted that certain procedures incorporated above are mandated by the Code of Virginia for state agencies. Other public bodies may not be required to adopt identical standards, but their procedures are required to be consistent with these.

Contact Information: 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](mailto:rhonda.bishton@dgs.virginia.gov).

## **Design-Build Procedures as Adopted by the Secretary of Administration**

In accordance with the provisions of § 2.2-4306 of the Code of Virginia, the Secretary of Administration hereby adopts the following procedures for the procurement of design-build (D/B) contracts, as defined in § 2.2-4301 of the Code of Virginia, which shall be followed by all departments, agencies, and institutions of the Commonwealth (each of which is hereinafter referred to as an "agency"). These procedures shall be effective March 1, 2012.

**A. LEGISLATIVE AUTHORITY:** Under the authority of § 2.2-4306 of the Code of Virginia, the Commonwealth may contract to secure D/B projects on a fixed price basis in accordance with these procedures and the regulations adopted pursuant to § 2.2-1502 of the Code of Virginia. Under the authority of § 2.2-4303 D 1 of the Code of Virginia, an agency is authorized to use competitive negotiations to procure D/B contracts when it determines in advance, and sets forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

**B. CRITERIA FOR USE OF D/B CONTRACTS:** D/B contracts are intended to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

**C. PROCEDURE FOR APPROVAL TO USE D/B:** Prior to taking any action, the agency shall request authority, in writing and receive approval from the Director of the Division of Engineering and Buildings (director), to use a D/B contract.

The request shall justify and substantiate that D/B is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the Commonwealth will benefit from using D/B. The request shall also include a written justification that competitive sealed bidding is not practical and/or fiscally advantageous.

Approval of exceptions to this policy may be granted by the director, who is the approving authority for requests to use D/B procedures.

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D. D/B SELECTION PROCEDURES: On projects approved for D/B, procurement of the contract shall be a two-step competitive negotiation process. The following procedures shall be used in selecting a design-builder and awarding a contract:

1. The agency shall appoint an Evaluation Committee ("committee") which shall consist of at least three members from the agency, including a registered design professional, if possible. The committee shall include a registered design professional provided by the Division of Engineering and Buildings. The agency shall contact the section in the Office of the Attorney General (OAG) representing the Division of Engineering and Buildings (currently the Real Estate and Land Use Section) to determine whether a representative from the OAG should be involved.

2. The basis of the award of the contract shall be in accordance with § 2.2-4301 (3) (b) of the Code of Virginia and the criteria for the award shall be submitted to the director, in advance, for approval. Cost shall be a critical component of the selection criteria.

3. Selection of qualified offerors (Step I):

On projects approved for D/B, the agency shall conduct a prequalification process as follows to determine which offerors are qualified to submit proposals.

a) The agency shall prepare a Request for Qualifications (RFQ) containing the agency's facility requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate submittals and other relevant information, including any unique capabilities or qualifications that will be required of the contractor.

b) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Code of Virginia and in accordance with the latest edition of the Construction and Professional Services Manual.

c) The committee shall evaluate each responding firm's submittals and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.

d) An offeror may be denied prequalification only as specified under § 2.2-4317 of the Code of Virginia.

e) At least 30 days prior to the date established for the submission of proposals, the agency shall advise in writing each offeror that sought prequalification whether that offeror has been prequalified. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

4. Selection of design-build contractor (Step II):

a) The agency will send a Request for Proposal (RFP) to at least two\*, and up to five, of the D/B offerors deemed most

suitable for the project, from those selected by the committee. Sealed technical proposals as described in the RFP will be submitted to the committee. Separately-sealed cost proposals will be submitted to the agency's Virginia construction contracting officer (VCCO), and shall be secured by and kept sealed until evaluation of the technical proposals and the design development negotiations are completed.

\* Should the agency determine, in writing and in its sole discretion, that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated with that offeror after approval of the director.

b) The committee will evaluate the technical proposals based on the criteria contained in the RFP. It will inform each D/B offeror of any adjustments necessary to make its technical proposal fully comply with the requirements of the RFP. In addition, the agency may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the committee during design development.

c) Based on the revisions made to the technical proposals, the committee and an offeror may negotiate additive and deductive amendments to the offeror's cost proposals. In addition, an offeror may submit cost deductions from its original sealed cost proposal that are not based upon revisions to the technical proposals. When the terms and conditions for multiple awards are so provided in the RFP, awards may be made to more than one offeror.

d) The committee shall make its recommendation on the selection of a design-builder to the agency head based on its evaluations and negotiations. The contract shall be awarded to the offeror who is fully qualified, has submitted an acceptable proposal and has been determined provide the best value in response to the RFP.

e) The agency shall notify the Division of Engineering and Buildings of its selection of the design-builder and shall request authority to award a contract by submission of form DGS-30-058, CO-8, Approval to Award Construction Contract and supporting documents, to the Bureau of Capital Outlay Management via email to [coforms@dgs.virginia.gov](mailto:coforms@dgs.virginia.gov).

f) Award of the D/B contract shall be made to the offeror selected.

g) The agency will notify all offerors who submitted proposals which offeror was selected for the project.

E. Any institution of higher education with authority for capital projects pursuant to the Restructured Higher Education Financial and Administrative Operations Act, may utilize these procedures or such other procedures as they may have adopted pursuant to any signed memorandum of agreement.

F. The Code of Virginia requires other public bodies planning to use D/B to adopt guidelines consistent with the above procedures. A key difference is that steps requiring the approval or involvement of the Director of the Division of Engineering and Buildings will instead seek the approval or involvement of the appropriate authority, as directed by the governing body of the public body. Before implementing D/B, such public body must have the required professional staff and meet the material requirements of § 2.2-4308 of the Code of Virginia. It should also be noted that certain procedures incorporated above are mandated by Virginia law for state agencies. Other public bodies may not be required to adopt identical standards, but their procedures are required to be consistent with these.

Contact Information: 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](mailto:rhonda.bishton@dgs.virginia.gov).

## STATE WATER CONTROL BOARD

### Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (Board) is considering the approval of eight Total Maximum Daily Load Implementation Plans (TMDL IPs) and granting authorization to include the TMDL IPs in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The Board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve eight TMDL IPs as Virginia's plans for the management actions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: March 12, 2012, to April 12, 2012.

Description of proposed action: The Department of Environmental Quality (DEQ) staff intends to recommend (i) that the DEQ director approve the TMDL IPs listed below as Virginia's plans for the management actions necessary for attainment of water quality goals in the impaired segments, and (ii) that the DEQ director authorize inclusion of the TMDL IPs in the appropriate WQMPs. No regulatory amendments are required for these TMDL IPs.

At previous meetings, the board voted unanimously to delegate to the DEQ director the authority to approve TMDL IPs, provided that a summary report of the action the director plans to take is presented to the board prior to the director's approval. The TMDL IPs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with 1997 Water Quality Monitoring, Information and Restoration Act (WQMIRA, §§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia) and federal recommendations. The TMDL IPs were developed in accordance with DEQ's Public Participation Procedures for Water Quality Management Planning. Extensive public participation was solicited during the development of the plans, and the public comment process provided the affected stakeholders with opportunities for comment on the proposed plans. The final TMDL IPs can be found at <http://www.deq.virginia.gov/tmdl/iprpts.html>.

Affected Waterbodies and Localities:

#### In the Tennessee/Big Sandy River Basin:

1. "Lewis Creek Sediment Total Maximum Daily Load Implementation Plan"
  - The IP proposes management actions needed to reduce sediment and restore the aquatic life use in Lewis Creek, located in Russell County.

#### In the Potomac/Shenandoah River Basin:

2. "Water Quality Improvement Plan, South River and Christians Creek"
  - The IP proposes management actions needed to reduce bacteria and sediment in South River and Christians Creek as well as total phosphorus in South River to restore the primary contact (swimming) use and aquatic life use. The waterbodies are located in August County,

#### In the James River Basin:

3. " Water Quality Improvement Plan, Hays, Moffatts, Walker and Otts Creeks"
  - The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in Hays Creek, Moffatts Creek, Walker Creek, and Otts Creek located in Augusta and Rockbridge counties.
4. " James River and Tributaries TMDL Implementation Plan: A Plan to Reduce Bacteria in the James River and its Tributary Watersheds"
  - The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) use in Ivy Creek, Fishing Creek, Blackwater Creek, Tomahawk Creek, Burton Creek, Judith Creek, Beaver Creek, and a portion of the James River, located in the City of Lynchburg, as well as in Amherst, Bedford, and Campbell counties.
5. "Implementation Plan for Fecal Coliform TMDL (Total Maximum Daily Load) for Mill Creek and Powhatan Creek"

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- The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) use in Mill Creek and Powhatan Creek, located in James City County.

### 6. "Slate River and Rock Island Creek Bacteria Total Maximum Daily Load Implementation Plan"

- The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) use in Rock Island Creek, Austin Creek, Frisby Creek, North River, Troublesome Creek, Upper Slate River, and Lower Slate River (including Muddy Creek and Turpin Creek), located in Buckingham County.

#### In the Rappahannock River Basin:

### 7. "Craig Run, Browns Run, and Marsh Run Bacteria Total Maximum Daily Load Implementation Plan"

- The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) use in Craig Run, Browns Run, and Marsh Run located in Fauquier County.

### 8. "Little Dark Run and Robinson River Bacteria Total Maximum Daily Load Implementation Plan"

- The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) use in Little Dark Run, Upper Robinson River, and Lower Robinson River, located in Madison and Culpeper counties.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL implementation plans are available on the DEQ website at <http://www.deq.virginia.gov/tmdl/iprpts.html> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email [elizabeth.mckercher@deq.virginia.gov](mailto:elizabeth.mckercher@deq.virginia.gov).

### **Approval of Water Quality Management Planning Actions**

Notice of action: The State Water Control Board (board) is considering the approval of five Total Maximum Daily Load

(TMDL) reports and four TMDL modifications, and granting authorization to include the TMDL reports and modifications in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve five TMDL reports and four TMDL modifications as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: March 12, 2012, to April 12, 2012.

Description of proposed action: DEQ staff intends to recommend (i) that the DEQ director approve the TMDL reports and TMDL modifications listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments and (ii) that the DEQ director authorize inclusion of the TMDL reports and TMDL modifications in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At previous meetings, the board voted unanimously to delegate to the DEQ director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the director plans to take is presented to the board prior to the director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with federal regulations (40 CFR § 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq.) of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDL reports presented under this public notice. The approved reports can be found at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jsp>.

#### Affected Waterbodies and Localities:

##### In the James River Basin:

1. " Bacteria Total Maximum Daily Load (TMDL) Development for the Hoffler Creek Watershed"
  - 1 bacteria TMDL, located in the cities of Portsmouth and Suffolk, proposes bacteria reductions to address primary contact (swimming use) impairment

2. "Bacterial Total Maximum Daily Load Development for the James River Tributaries - City of Richmond"

- 10 bacteria TMDLs, located in the Cities of Richmond and Hopewell, and the counties of Charles City, Chesterfield, Goochland, Henrico, and Powhatan, propose bacteria reductions to address primary contact (swimming use) impairment

3. " Bacteria Total Maximum Daily Load (TMDL) Development for the Bear Garden Creek Watershed"

- 1 bacterial TMDL, located in Buckingham County, proposes bacteria reductions to address primary contact (swimming use) impairment

4. Modification for "Development of the Total Maximum Daily Load (TMDL) for Fecal Coliform Bacteria in Moore's Creek, Albemarle County, Virginia"

- 1 bacteria TMDL proposes bacteria reductions to address primary contact (swimming use) impairment (modification)

In the Rappahannock River Basin:

5. Modification for "Shellfish Bacteria Total Maximum Daily Load (TMDL) Developments for Upper Rappahannock Tidal River, Unsegmented Estuaries in E23, Little Carter Creek, Jugs Creek, Piscataway Creek, Mark Haven Beach, and Garrett's Marina"

- 5 bacteria TMDLs, located in Essex, Richmond, Westmoreland, and Northumberland counties, propose bacteria reductions to portions of the watersheds to address VDH Shellfish Area Condemnations and primary contact (swimming use) impairments (modification.)

In the Tennessee-Big Sandy River Basin:

6. " E. coli Total Maximum Daily Loads in the Upper Clinch River Watershed of Tazewell County, Virginia"

- 2 bacteria TMDLs propose bacteria reductions to address primary contact (swimming use) impairment

In the Chowan River Basin:

7. "E. coli Total Maximum Daily Load Development for Unnamed Tributary to Nebletts Mill Run and Hatcher Run in Sussex and Dinwiddie Counties, VA"

- 2 bacteria TMDLs propose bacteria reductions to address primary contact (swimming use) impairments

8. Modification for "E. coli Total Maximum Daily Load Development for Assamoosick Swamp and Tributaries in Sussex and Southampton Counties, VA"

- 1 bacteria TMDL, located in Sussex and Southampton counties, proposes bacteria reductions to address primary contact (swimming use) impairment

In the Chesapeake Bay - Small Coastal - Eastern Shore Basin:

9. Modification for "Indian, Tabbs, Dymmer, and Antipoison Creeks Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Pollution"

- 2 bacteria TMDLs for Indian Creek, located in Lancaster County, propose bacteria reductions to portions of the watershed to address VDH Shellfish Area Condemnations and primary contact (swimming use) impairment (modification)

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ web site at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.h.jsp> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email [elizabeth.mckercher@deq.virginia.gov](mailto:elizabeth.mckercher@deq.virginia.gov).

## **Amendment of Water Quality Management Planning Regulation**

Notice of action: The State Water Control Board (board) is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt four total maximum daily load (TMDL) waste load allocations.

Public comment period: March 12, 2012, to April 12, 2012.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning Regulation for the Tennessee/Big Sandy River Basin (9VAC25-720-90 A), Chowan River Basin (9VAC25-720-100 A), and Chesapeake Bay - Small Coastal - Eastern Shore Basin (9VAC25-720-110 A). Statutory authority for

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promulgating these amendments can be found in § 62.1-44.15 (10) of the Code of Virginia.

Staff intends to recommend that (i) the board approve three TMDL reports and one TMDL modification as the plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, (ii) the board authorize inclusion of the TMDL reports in the appropriate Water Quality Management Plan, and (iii) the board adopt four TMDL waste load allocations as part of the state's Water Quality Management Planning Regulation in accordance with §§ 2.2-4006 A 4 c and 2.2-4006 B of the Code of Virginia.

The three TMDL reports and one TMDL modification were developed in accordance with federal regulations (40 CFR § 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq.) of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDLs presented under this public notice. The approved reports can be found at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.h.jsp>.

Affected Waterbodies and Localities:

### In the Tennessee/Big Sandy River Basin (9VAC25-720-90 A):

1. Mercury Total Maximum Daily Load Development for the North Fork Holston River, Virginia

- The North Fork Holston Mercury TMDL, located in Scott, Washington, Smyth, Bland, Tazewell, and Russell counties, proposes reductions for portions of the watershed and provides a total mercury waste load allocation of 11.9 grams/year.

### In the Chowan River Basin (9VAC25-720-100 A):

2. Total Maximum Daily Load Development for the Albemarle Canal/North Landing River, A Total Phosphorus TMDL Due to Low Dissolved Oxygen Impairment

- The Albemarle Canal/North Landing River TMDL, located in the Cities of Virginia Beach and Chesapeake, provides a waste load allocation of 989.96 kg/yr.

3. Total Maximum Daily Load Development for the Northwest River Watershed A Total Phosphorus TMDL Due to Low Dissolved Oxygen Impairment

- The Northwest River TMDL, located in the City of Chesapeake and in the eastern portion of the City of Virginia Beach, provides a total phosphorus waste load allocation of 3,262.86 kg/yr.

### In the Chesapeake Bay-Small Coastal-Eastern Shore River Basin (9VAC25-720-110 A):

4. Modification for Benthic Total Maximum Daily Load (TMDL) Development Parker Creek, Virginia

- The Parker Creek TMDL, located in Accomack County, was modified to clarify that the total phosphorus WLA of 664.2 lb/yr is concentration based and flow independent. There was no change to the WLA.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens that submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports and the proposed regulatory amendments are available on the DEQ website at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.h.jsp> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email [elizabeth.mckercher@deq.virginia.gov](mailto:elizabeth.mckercher@deq.virginia.gov).

## 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](mailto: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.

## ERRATA

### STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **9VAC5-530. Electric Generator Voluntary Demand Response General Permit (adding 9VAC5-530-10 through 9VAC5-530-290) (Rev. Dg).**

Publication: 27:23 VA.R. 2523-2540 July 18, 2011.

Correction to Final Regulation:

Page 2525, 9VAC5-530-20, first column, delete the definition of "Independent system operator"

Page 2526, 9VAC5-530-40 A, line 5, before "C 1 and D 1" delete "9VAC5-80-1105" and insert "9VAC5-80-1320"

VA.R. Doc. No. R10-2295; Filed February 21, 2012, 1:06 p.m.

Title of Regulation: **9VAC5-540. Emergency Generator General Permit (adding 9VAC5-540-10 through 9VAC5-530-220) (Rev. Eg).**

Publication: 27:23 VA.R. 2540-2552 July 18, 2011.

Correction to Final Regulation:

Page 2542, 9VAC5-540-20, first column, insert the following definition:

"Independent system operator" or "ISO" means a person who may receive or has received by transfer pursuant to § 56-576 of the Code of Virginia, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

Page 2543, 9VAC5-540-40 A, line 4, before "B 2 b" strike "9VAC5-80-1105" and insert "9VAC5-80-1320"

Page 2543, 9VAC5-540-40 A, line 5, before "C 1" strike "9VAC5-80-1105" and insert "9VAC5-80-1320"

Page 2543, 9VAC5-540-40 A, line 5, before "D 1" strike "9VAC5-1105" and insert "9VAC5-80-1320"

VA.R. Doc. No. R10-2296; Filed February 21, 2012, 1:06 p.m.

