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REGISTER OF REGULATIONS

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Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **28:2 VA.R. 47-141 September 26, 2011**, refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **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. Taverner**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant; **Karen Perrine**, Staff Attorney.

PUBLICATION SCHEDULE AND DEADLINES

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

September 2012 through November 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Tuesday)	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 (Tuesday)	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
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-20, Administration of Medical Assistance Services**. The purpose of the proposed action is to implement Chapter 890, Item 300 H of the 2011 Acts of Assembly, which requires electronic Medicaid claims billing for providers newly enrolled on or after October 1, 2011, and for all other providers as of July 1, 2012.

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

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

Public Comment Deadline: October 24, 2012.

Agency Contact: Tom Edicola, Director, Program Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-8098, FAX (804) 786-1680, or email tom.edicola@dmas.virginia.gov.

VA.R. Doc. No. R13-2789; Filed September 4, 2012, 1:23 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-120, Waivered Services**. The purpose of the proposed action is to create standards for the exception to the new hourly limit for waiver covered personal care services that individuals must satisfy in order to be approved for such services in excess of the new limit.

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

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

Public Comment Deadline: October 24, 2012.

Agency Contact: Melissa Fritzman, Project Manager, Division of Long Term Care Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4206, FAX (804) 612-0040, or email melissa.fritzman@dmas.virginia.gov.

VA.R. Doc. No. R13-2812; Filed September 4, 2012, 12:35 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption 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.

Final Regulation

Title of Regulation: **4VAC20-110. Pertaining to Lobsters (amending 4VAC20-110-15 through 4VAC20-110-40).**

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

Effective Date: September 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 establish season and minimum size restrictions for lobsters harvested and landed in Virginia and require mandatory V-notching of berried (egg bearing) females.

4VAC20-110-15. Definitions.

"Berried female" means a female lobster bearing eggs attached to the abdominal appendages.

"Carapace" means the unsegmented body shell of the American lobster.

"Carapace length" means the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace.

"Ghost panel" means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Lobster" means any crustacean of the species *Homarus americanus*.

"V-notched female lobster" means any female lobster bearing a V-shaped notch (i.e., a straight-sided triangular cut

without setal hairs, at least 1/4 inch in depth and not greater than 1/2 inch in depth and tapering to a sharp point) in the flipper next to the right of the center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female that is mutilated in a manner that could hide, obscure, or obliterate such a mark.

4VAC20-110-20. Minimum and maximum size limit.

It shall be unlawful for any person to possess for a period longer than is necessary for immediate measurement any lobster less than ~~3-3/8~~ 3-17/32 inches in carapace length or any female lobster greater than ~~5-1/2~~ 5-1/4 inches in carapace length, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources.

4VAC20-110-30. Possession prohibitions.

A. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of the presence of eggs, any berried female egg-bearing lobster, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources.

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

C. It shall be unlawful to possess a V-notched female lobster. The prohibition on possession of a V-notched female lobster applies to all persons, including but not limited to fishermen, dealers, shippers, and restaurants.

D. It shall be unlawful to possess a lobster that has an outer shell that has been speared.

E. It shall be unlawful to land lobster from February 1 through March 31.

4VAC20-110-40. Marking of lobsters.

~~It shall be unlawful for any person to notch, cut, scrape, pierce, or in any like manner provide for the marking of lobster, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources. Any berried female harvested in or from Virginia waters shall be V-notched before being returned to the sea immediately.~~

VA.R. Doc. No. R13-3380; Filed August 31, 2012, 2:06 p.m.

Final Regulation

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-30, 4VAC20-252-50).**

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

Effective Date: September 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 authorize the recreational harvest of striped bass by spear fishing.

4VAC20-252-20. Definitions.

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commission" means the Marine Resources Commission.

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Share" means a percentage of the striped bass commercial harvest quota.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.

2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.

3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.

4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species *Morone saxatilis*, including any hybrid of the species *Morone saxatilis*.

4VAC20-252-30. General prohibitions and requirements.

A. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, except in accord with the provisions of Title 28.2 of the Code of Virginia and in accord with the provisions of this chapter.

B. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, during a time, from an area, and with a gear type when there is no open season set forth in this chapter for such time, area, and gear type.

C. Except for those persons permitted in accordance with 4VAC20-252-170, it shall be unlawful for any person to possess any striped bass less than 18 inches total length at any time.

D. It shall be unlawful for any person to possess any striped bass that measures less than the minimum size or more than the maximum size applicable to the open season when fishing occurs, except as described in 4VAC20-252-115.

E. Total length measurement of striped bass shall be in a straight line from tip of nose to tip of tail.

F. It shall be unlawful for any person while aboard any boat or vessel or while fishing from shore or pier to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.

G. It shall be unlawful for any person to ~~spear or~~ gaff; or attempt to ~~spear or~~ gaff any striped bass at any time.

H. It shall be unlawful for any person to use a commercial hook and line within 300 feet of any bridge, bridge-tunnel, jetty, or pier during Thanksgiving Day and the following day or during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through 6 a.m. Friday.

I. Unless specified differently in other regulations, it shall be unlawful to place, set, or fish any gill net within 300 feet of any bridge, bridge-tunnel, jetty, or pier during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday.

Regulations

J. During the period April 1 through May 31, inclusive, it shall be unlawful for any person to set or fish any anchored gill net or staked gill net, for any purpose, within the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers. Drift or float gill nets may be set and fished within the spawning reaches of these rivers during this period, provided that the person setting and fishing the net remains with the net during the time it is fishing and all striped bass that are caught shall be returned to the water immediately.

K. Holding any permit issued by the commission to fish for striped bass, recreationally or commercially, shall authorize any commission personnel or their designees to inspect, measure, weigh, or take biological samples from any striped bass in possession of the permit holder.

L. Nothing in this chapter shall preclude any person, who is legally eligible to fish, from possessing any striped bass tagged with a Virginia Institute of Marine Science (VIMS) fluorescent green tag. Possession of these VIMS-tagged striped bass shall not count towards the personal recreational possession limit, and permitted commercial striped bass individual transferable quota (ITQ) holders shall not be required to apply a tamper evident, numbered tag provided by the commission, in order to possess any striped bass tagged with a VIMS-inscribed green fluorescent tag. It shall be unlawful for any person to retain any of these VIMS-tagged striped bass for a period of time that is longer than necessary to provide the VIMS-tagged striped bass to a VIMS representative. Under no circumstance shall any VIMS-tagged striped bass be stored for future use or sale or delivered to any person who is not a VIMS representative.

4VAC20-252-50. Concerning recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take ~~or to~~ catch, or attempt to take or catch any striped bass ~~with~~ by any gear or method other than hook and line, rod and reel, ~~or~~ hand line, or spearing.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area where or at a time when there is no open recreational striped bass season, except as described in 4VAC20-252-115. Striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person fishing recreationally to possess and retain any striped bass in excess of the possession limit applicable for the area and season being fished within the 24-hour period of 12 a.m. through 11:59 p.m. Striped bass taken in excess of the possession limit shall be returned to the water immediately.

When fishing 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 the applicable personal possession limit. The captain or operator

of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. It shall be unlawful to combine possession limits when there is more than one area or season open at the same time.

E. It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished, except as described in 4VAC20-252-115. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.

F. It shall be unlawful for any person to sell, offer for sale, trade or barter any striped bass taken by hook and line, rod and reel, ~~or~~ hand line, or spearing provided, however, this provision shall not apply to persons possessing a commercial hook-and-line license and a striped bass permit and meeting the other requirements of this chapter.

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

H. It shall be unlawful for the captain of any charter boat or charter vessel to take hook-and-line, rod-and-reel, ~~or~~ hand line, or spear fishermen for hire unless the captain has obtained a permit from the commission and is the holder of a Coast Guard charter license.

I. Charter boat captains shall report to the commission, on forms provided by the commission, all daily quantities of striped bass caught and harvested, and daily fishing hours for themselves or their customers, respectively. The written report shall be forwarded to the commission no later than 15 days following the last day of any open season. In addition, charter boat captains engaging in the Bay and Coastal Spring Trophy-size Striped Bass Recreational Fishery and the Potomac River Tributaries Spring Striped Bass Recreational Fishery shall provide the report required by 4VAC20-252-60 and 4VAC20-252-70, respectively. Failure to provide these reports is a violation of this chapter.

VA.R. Doc. No. R13-3364; Filed August 31, 2012, 1:46 p.m.

Final Regulation

Title of Regulation: 4VAC20-560. Pertaining to Shellfish Management Areas (amending 4VAC20-560-20 through 4VAC20-560-50).

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

Effective Date: September 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 action removes the York River Shellfish Management Area as a location for the harvest of hard clams using

patent tongs and deletes expired provisions concerning the Newport News Shellfish Management Area.

4VAC20-560-20. Shellfish management areas.

~~A.~~ A. The York River Shellfish Management Area shall consist of all public grounds located inshore of a line beginning at the entrance to the Virginia Institute of Marine Science boat basin at Gloucester Point, running northwesterly to Buoy No. 30, thence northwesterly to Buoy No. 32, thence northwesterly to Buoy No. 34, then northwesterly to Pages Rock Buoy, thence northwesterly and ending at Clay Bank Wharf.

~~B.~~ A. The Poquoson River Shellfish Management Area shall consist of all public grounds bounded by a line beginning at Hunts Point Survey Taylor and running northwesterly to Survey Station Spit; thence northeasterly to Survey Station Cabin North; thence east to Survey Station Cabin South; thence southeasterly following the general shoreline (not to include any creeks or canals) to the flag pole near Survey Station 80 at York Point; thence 175 degrees to Day Marker No. 14 and returning to Hunts Point Survey Taylor.

~~C.~~ B. The Back River Shellfish Management Area shall consist of all current public clamming grounds bounded by a line from corner 3 on Shell Plant 115 through corner 17, a daymarker, on Shell Plant 115, 237.42 feet to a point being the point of beginning; thence southeasterly to corner number 1 Public Clamming Ground (PCG#12); thence southeasterly to corner number 3A Public Clamming Ground (PCG#12); thence northeasterly to corner number 3 Public Clamming Ground (PCG#12); thence northwesterly to corner number 2 Public Clamming Ground (PCG#12); thence southwest to the POB. Also, for a period of one year, throughout 1994, Shell Plant 115 will also be included in the Back River Shellfish Management Area.

~~D.~~ C. The James River Broodstock Management Area is located inside Public Ground No. 1, Warwick County, south of the James River Bridge, further described as follows: Beginning at a corner number 611 (State Plane Coordinates North 249766.12 East 2596017.56); thence Grid Azimuth 308-39-51, 1074.35' to a corner number 613 (State Plane Coordinates North 250437.32 East 2595178.68); thence Grid Azimuth 28-15-00, 366.30' to a corner number 614 (State Plane Coordinates North 250759.99 East 2595352.06); thence Grid Azimuth 132-36-45, 1114.51' to a corner number 612 (State Plane Coordinates North 250005.43 East 2596172.28); thence Grid Azimuth 212-53-03, 284.97' to a corner number 611, being the point of beginning, containing 8.04 acres.

~~E.~~ D. The York River Broodstock Management Area shall consist of the area under any portion of the George P. Coleman Memorial Bridge, in addition to the area within 300 feet of the eastern, or downstream, side of the George P. Coleman Memorial Bridge and the area within 300 feet of the western, or upstream, side of the George P. Coleman Memorial Bridge.

~~F.~~ E. The Newport News Shellfish Management Area shall consist of all current public clamming grounds bounded by a

line beginning at the intersection of the James River Bridge and Public Ground No. 1, Warwick County, downstream side; thence east southeasterly along the boundary to corner #5, Public Ground No. 1, Warwick County; thence southeast along the boundary to a corner (249,066.55/2,595,681.74); thence northeast along the boundary to the intersection of a line between the James River Bridge and the northwest corner of Newport News Shipbuilding and Drydock Company shipyard near station "HELO," said line being perpendicular to the James River Bridge; thence southeast along the defined line to the northwest corner of the shipyard; thence downstream to the offshore end of the floating drydock; thence to the offshore end of shipyard pier #6 just south of "Stack"; thence to the offshore end of pier #2 (F R Priv); thence to FI Y "A" off the end of the pier just south of 23rd Street; thence to the offshore end of pier #9 (2 F Y siren); thence to the offshore end of the old coal pier downstream of pier #9; thence to navigational aid FI G "13"; thence to the northeast corner of the Fan Building on the south island of the Monitor Merrimac Bridge Tunnel; thence southerly along the downstream side of the Monitor Merrimac Bridge Tunnel to the first overhead light structure on the bridge tunnel north of the small boat channel hump; thence northwesterly to corner #3, lease #10091 (Hazelwood); thence northwesterly along the boundary to corner #2, lease #10091 (Hazelwood); thence southwest to corner #1, Public Ground No. 2, Nansemond County; thence northwesterly along the boundary to corner #6, at the intersection of Public Ground No. 2, Nansemond County, and Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #614, Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #2, Public Ground No. 6, Isle of Wight County; thence northwesterly along the boundary to the intersection of the James River Bridge and Public Ground No. 6, Isle of Wight County; thence northeasterly along the downstream side of the James River Bridge to the intersection with Public Ground No. 1, Warwick County, at the point of beginning.

~~G.~~ E. The Back River Reef Broodstock Management Area shall consist of the area within a 2000' radius of the center buoy, with a position of 37° 08' 12" north, 76° 13' 54" west.

~~H.~~ G. The Middle Ground Light Broodstock Management Area shall consist of the area within a 1000' radius of the navigational light, with a position of 36° 56.7' north, 76° 23.5' west.

~~I.~~ H. The York Spit Reef Broodstock Management Area shall consist of the area contained within the defined latitudes and longitudes: northwest corner 37° 14' 75" N—076° 14' 20" W, northeast corner 37° 14' 75" N—076° 13' 30" W, southwest corner 37° 14' 05" N—076° 14' 20" W, southeast corner 37° 14' 05" N—076° 13' 30" W.

4VAC20-560-30. Permits required.

Each boat or vessel engaged in the harvesting of clams by patent tong from the ~~York River Shellfish Management Area,~~

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the Poquoson River Shellfish Management Area, or the Back River Shellfish Management Area shall first obtain a permit specific to the management area to be worked from any Marine Patrol Officer, and this permit shall be on board the vessel at all times and available for inspection. The permit shall state the name and port of the vessel, the registration or documentation number of the vessel, the name and address of the owner of the vessel and the name of the captain of the vessel. Any change to any of the above information shall require the vessel owner or captain to obtain a new permit. These permits shall be in addition to all other licenses or permits required by law.

4VAC20-560-40. Patent tong season.

~~A. The lawful season for the harvest of clams by patent tong from the York River Shellfish Management Area shall be August 15 through November 30.~~

~~B. A. The lawful season for the harvest of clams by patent tong from the Poquoson River Shellfish Management Area shall be March 15 through May 1.~~

~~C. B. The lawful season for the harvest of clams by patent tong from the Back River Shellfish Management Area shall be January 1 through March 31.~~

~~D. C. It shall be unlawful for any person to harvest clams by patent tong from either the York River, Poquoson River, Shellfish Management Area or Back River Shellfish Management Area except as provided in subsections A, and B, and C of this section.~~

~~E. Except as provided in subsection G of this section, the D. The lawful season for the harvest of clams by patent tong from the Newport News Shellfish Management Area shall be December 1 through April 30, except that if the catch of clams per tong-hour for the previous season is less than 174 clams per tong-hour, the lawful season shall be December 1 through March 31.~~

~~F. Except as provided in subsection G of this section, it E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from May 1 through November 30, except that if the catch of clams per tong-hour for the previous season is less than 174 clams per tong-hour, it shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from April 1 through November 30.~~

~~G. The lawful season for the harvest of clams by patent tong from the Newport News Shellfish Management Area shall be January 1, 2010, through June 30, 2010, and December 1, 2010, through December 31, 2010. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from July 1, 2010, through November 30, 2010.~~

4VAC20-560-50. Time of day and harvest restrictions.

A. It shall be unlawful for any person to harvest clams by patent tong from ~~either the York River or~~ Poquoson River Shellfish Management Area before sunrise or after 2 p.m.

B. It shall be unlawful for any person to harvest clams by patent tong from the Back River Shellfish Management Area before sunrise or after 4 p.m.

C. It shall be unlawful for any person to harvest clams by patent tong from either the ~~York River,~~ Poquoson River Shellfish Management Area, Newport News Shellfish Management Area, or Back River Shellfish Management Area on Saturday or Sunday.

D. It shall be unlawful for any person to harvest any shellfish from the James River Broodstock Management Area, Back River Reef Broodstock Management Area, Middle Ground Light Broodstock Management Area, York Spit Reef Broodstock Management Area, or York River Broodstock Management Area at any time.

E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area before sunrise or after 2 p.m.

F. It shall be unlawful for any person to possess any amount of hard clams from the Newport News Shellfish Management Area that consists of more than 2.0% by number of clams, which can be passed through a 1-3/8 inch inside diameter culling ring. The 2.0% allowance shall be measured by the marine patrol officer from each container or pile of clams.

VA.R. Doc. No. R13-3363; Filed August 31, 2012, 1:35 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Forms

Titles of Regulations: **4VAC25-35. Certification Requirements for Mineral Miners.**

4VAC25-130. Coal Surface Mining Reclamation Regulations.

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

NOTICE: Forms used in administering the following regulations have been filed by the Department of Mines, Minerals and Energy. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. 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 (4VAC25-35)

[Application for Certification Examination, DMM-BMME-1 \(rev. 8/12\).](#)

[Verification of Work Experience Form-Mineral Mining, DMM-BMME-2 \(rev. 8/12\).](#)

[Application for Renewal-Mineral Mining, DMM-BMME-3 \(rev. 8/12\).](#)

FORMS (4VAC25-130)

[Anniversary Report Form, DMLR-PT-028 \(rev. 9/11\).](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Coal Exploration Notice, DMLR-PT-051 \(rev. 7/10\).](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.A.R. Doc. No. R13-3391; Filed September 5, 2012, 10:15 a.m.

Final Regulation

Title of Regulation: 4VAC25-170. Geothermal Energy Regulations (amending 4VAC25-170-10 through 4VAC25-170-80).

Statutory Authority: § 45.1-179.7 of the Code of Virginia.

Effective Date: October 24, 2012.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Summary:

The amendments (i) make a technical amendment to the definition of "geothermal resource" to clarify that the regulation applies to nonresidential use only and (ii) bring consistency to data submission requirements for the Division of Gas and Oil by requiring applicants to use the Virginia Coordinate System of 1983.

Since publication of the proposed regulation, minor changes to ensure consistency with other department regulations have been made. No substantive changes have been made since publication of the proposed regulation.

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

4VAC25-170-10. Definitions.

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

"Bottom hole temperature" means the highest temperature measured in the well or bore hole. It is normally attained directly adjacent to the producing zone, and commonly at or near the bottom of the borehole.

[~~"Board" means the Virginia Gas and Oil Board.~~]

"Casing" means all pipe set in wells.

~~"Commissioner" means the Director of the Virginia Department of Mines mineral and Energy.~~

"Conservation" means the preservation of geothermal resources from loss, waste, or harm.

"Correlative rights" means the mutual right of each overlying owner in a geothermal area to produce without waste a just and equitable share of the geothermal resources. Just and equitable shares shall be apportioned according to a ratio of the overlying acreage in a tract to the total acreage included in the geothermal area.

"Department" means the Virginia Department of Mines, Minerals and Energy.

[~~"Departmental representative" means the Virginia Gas and Oil Inspector division director or a designated representative.]~~

"Designated agent" means that person appointed by the owner or operator of any geothermal resource well to represent him.

["Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Division director" means the Director of the Division of Gas and Oil, also known as the Gas and Oil Inspector as defined in the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia or his authorized agent.]

"Drilling log" means the written record progressively describing all strata, water, minerals, geothermal resources, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, casing records and such other information as is usually recorded in the normal procedure of drilling. The term shall also include the downhole geophysical survey records or logs, if any are made.

"Exploratory well" means an existing well or a well drilled solely for temperature observation purposes preliminary to filing an application for a production or injection well permit.

"Geothermal area" means the general land area ~~which that~~ is underlaid or reasonably appears to be underlaid by geothermal resources in a single reservoir, pool, or other source or interrelated sources, as such area or areas may be from time to time designated by the department.

"Geothermal energy" means the usable energy produced or ~~which that~~ can be produced from geothermal resources.

"Geothermal reservoir" means the rock, strata, or fractures within the earth from which natural or injected geothermal fluids are obtained.

"Geothermal resource" means the natural heat of the earth at temperatures 70°F or above with volumetric rates of 100 gallons per minute or greater and the energy, in whatever form, present in, associated with, or created by, or ~~which that~~ may be extracted from, that natural heat. This definition does not include ground heat or groundwater resources at lower

temperatures and rates that may be used in association with heat pump installations.

"Geothermal waste" means any loss or escape of geothermal energy, including, but not limited to:

1. Underground loss resulting from the inefficient, excessive, or improper use or dissipation of geothermal energy; or the locating, spacing, construction, equipping, operating, or producing of any well in a manner ~~which that~~ results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in Virginia; provided, however, that unavoidable dissipation of geothermal energy resulting from oil and gas exploration and production shall not be construed to be geothermal waste.
2. The inefficient above-ground transportation and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause, unnecessary or excessive surface loss or destruction of geothermal energy;
3. The escape into the open air of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

"Geothermal well" means any well drilled for the discovery or production of geothermal resources, any well reasonably presumed to contain geothermal resources, or any special well, converted producing well, or reactivated or converted abandoned well employed for reinjecting geothermal resources.

"Injection well" means a well drilled or converted for the specific use of injecting waste geothermal fluids back into a geothermal production zone for disposal, reservoir pressure maintenance, or augmentation of reservoir fluids.

~~"Inspector" means the Virginia Gas and Oil Inspector or such other public officer, employee, or other authority as may in emergencies be acting in the stead, or by law be assigned the duties of, the Virginia Gas and Oil Inspector under § 45.1-361.1 of the Code of Virginia.~~

"Monitoring well" means a well used to measure the effects of geothermal production on the quantity and quality of a potable groundwater aquifer.

"Operator" means any person drilling, maintaining, operating, producing, or in control of any well, and shall include owner when any well is operated or has been operated or is about to be operated by or under the direction of the owner.

"Owner" means the overlying property owner or lessee who has the right to drill into, produce, and appropriate from any geothermal area.

"Permit" means a document issued by the department pursuant to this chapter for the construction and operation of any geothermal exploration, production, or injection well.

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"Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation whether domestic or foreign, agency or subdivision of this or any other state or the federal government, any municipal or quasi-municipal entity whether or not it is incorporated, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

"Production casing" means the main casing string which protects the sidewalls of the well against collapse and conducts geothermal fluid to the surface.

"Production record" means written accounts of a geothermal well's volumetric rate, pressure and temperature, and geothermal fluid quality.

"Sequential utilization" means application of the geothermal resource to a use with the highest heat need and the subsequent channeling of the resource to other uses with lower temperature requirements before injection or disposal of the geothermal fluid.

"Surface casing" (water protection string) means pipe designed to protect the freshwater sands.

"Unitized drilling operation" means the management of separately owned tracts overlying a geothermal area as a single drilling unit.

4VAC25-170-20. Resource conservation.

A. In order to foster geothermal utilization, prevent waste, protect correlative rights, safeguard the natural environment, and promote geothermal resource conservation and management, the department may designate geothermal areas, require well spacing and unitization, and allow sequential utilization on a case-by-case basis.

B. Wells shall be classified as to the geothermal area from which they produce, and geothermal areas shall be determined, designated, and named by the department in accordance with the definition provided in 4VAC25-170-10 [~~of this chapter~~]. In designating geothermal areas, factors to be considered shall include but not be limited to common usage and geographic names; the surface topography and property lines of the land underlain by geothermal energy; the plan of well spacing being employed or proposed for the area; the depth at which resources have been found; and the nature and character of the producing formation or formations. In the event any person is dissatisfied with any such classification or determination, an application may be made to the department for reclassification or redetermination.

C. Information provided the ~~inspector~~ [division] director in the notice of intent to proceed shall be used by the department to determine spacing between production wells and between production and injection wells. The department may also conduct independent investigations as deemed necessary to determine appropriate well spacing and utilization.

When two or more separately owned tracts of land lie within a geothermal area, the department may require unitized operations under supervision of the ~~inspector~~ [division]

director [~~or his departmental representative~~]. Unitized drilling operations shall be operated according to the principle of correlative rights.

D. Persons desirous of engaging in sequential utilization shall file a formal request with the department ~~which that~~ shall contain the following items:

1. A statement of the uses to be made of the geothermal resource.
2. Evidence that sequential utilization will not cause heat drawdown in the geothermal aquifer, cause land subsidence, hinder observation of the geothermal resource, or contaminate potable water supplies.
3. Requests for sequential utilization shall be reviewed and acted upon by the department within 45 days of receipt.

4VAC25-170-30. Bonds, permits and fees.

A. 1. Before any person shall engage in drilling for geothermal resources or construction of a geothermal well in Virginia, such person shall file with the ~~inspector~~ [division] director a completion bond with a surety company licensed to do business in the Commonwealth of Virginia in the amount of \$10,000 for each exploratory and injection well, and \$25,000 for each production well. Blanket bonds of \$100,000 may be granted at the discretion of the ~~inspector~~ [division] director.

2. The return of such bonds shall be conditioned on the following requirements:

- a. Compliance with all statutes, rules, and regulations relating to geothermal regulations and the permit.
- b. Plugging and abandoning the well as approved by the ~~inspector~~ [division] director in accordance with 4VAC25-170-80 ~~of this chapter~~.

3. A land stabilization bond of \$1,000 per acre of land disturbed shall be required. Such bond will be released once drilling is completed and the land is reclaimed in accordance with 4VAC25-170-40 ~~of this chapter~~.

4. Liability under any bond may not be terminated without written approval of the ~~inspector~~ [division] director.

B. Each exploration, production, and injection well permit application shall be accompanied by payment of a \$75 application fee.

1. Applications will not be reviewed until the operator or designated agent submits proof of compliance with all pertinent local ordinances.

Before commencement of exploratory drilling operations on any tract of land, the operator or designated agent shall file an exploration permit application with the department. An accurate map of the proposed wells on an appropriate scale showing adjoining property lines and the proposed locations, ~~latitude and longitude~~ using the Virginia Coordinate System of 1983 (Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia), and the depths and surface elevations shall be filed with the application. The

application also shall include an inventory of local water resources in the area of proposed development.

2. Before commencement of production or injection well drilling, an application to produce and inject geothermal fluids shall be filed in the form of a notice of intent to proceed in accordance with the provisions of 4VAC25-170-40 ~~of this chapter~~.

3. New permit applications must be submitted if, either prior to or during drilling, the operator desires to change the location of a proposed well. If the new location is within the boundaries established by the permit or within an unitized drilling operation, the application may be made orally and the ~~inspector~~ [division] director may orally authorize the commencement or continuance of drilling operations. Within 10 days after obtaining oral authorization, the operator shall file a new application to drill at the new location. A permit may be issued and the old permit cancelled without payment of additional fee. If the new location is located outside the unitized drilling unit covered by the first permit, no drilling shall be commenced or continued until the new permit is issued.

4. All applications, requests, maps, reports, records, and other data (including report forms) required by or submitted to the department shall be signed by the owner, operator, or designated agent submitting such materials.

5. The department will act on all permit applications within 30 days of receipt of an application or as soon thereafter as practical.

4VAC25-170-40. Notification of intent to proceed.

The notification of intent to proceed with geothermal production as required by 4VAC25-170-30 ~~of this chapter~~ must be accompanied by (i) an operations plan, (ii) a geothermal fluid analysis, and (iii) a proposal for injection of spent fluids.

1. The operations plan shall become part of the terms and conditions of any permit ~~which~~ that is issued, and the provisions of this plan shall be carried out where applicable in the drilling, production, and abandonment phase of the operation. The department may require any changes in the operations plan necessary to promote geothermal and water resource conservation and management, prevent waste, protect potable groundwater drinking supplies, or protect the environment, including a requirement for injection or unitization. The operations plan shall include the following information:

a. An accurate plat or map, on a scale not smaller than 400 feet to the inch, showing the proposed location; ~~latitude, longitude~~ using the Virginia Coordinate System of 1983 (Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia), and surface elevation of the production and injection wells as determined by survey, the courses and distances of such locations from two permanent points or landmarks on said tract, the well

numbers, the name of the owner, the boundaries and acreage of the tract on which the wells are to be drilled, the location of water wells, surface bodies of water, actual or proposed access roads, other production and injection wells on adjoining tracts, the names of the owners of all adjoining tracts and of any other tract within 500 feet of the proposed location, and any building, highway, railroad, stream, oil or gas well, mine openings or workings, or quarry within 500 feet of the proposed location. The location must be surveyed and the plat certified by a registered surveyor and bear his certificate number.

b. A summary geologic report of the area, including depth to proposed reservoir; type of reservoir; anticipated thickness of reservoir; anticipated temperature of the geothermal resource; anticipated porosity, permeability and pressure; geologic structures; and description of overlying formations and aquifers.

c. The method of meeting the guidelines of the Erosion and Sediment Control Regulations as adopted by the Virginia [Soil and Water Conservation Board ~~Department of Conservation and Recreation~~] pursuant to §§ 10.1-561 to 10.1-564 of the Code of Virginia.

d. The method of disposing of all drilling muds and fluids, and all cement and other drilling materials from the well site; the proposed method of preventing such muds, fluids, drillings, or materials from seeping into springs, water wells, and surface waters during drilling operations.

e. The method of construction and maintenance of access roads, materials to be used, method to maintain the natural drainage area, and method of directing surface water runoff from disturbed areas around undisturbed areas.

f. The method of removing any rubbish or debris during the drilling, production, and abandonment phases of the project. All waste shall be handled in a manner ~~which~~ that prevents fire hazards or the pollution of surface streams and groundwater.

g. The primary and alternative method of spent geothermal fluid disposal. All disposal methods shall be in accordance with state and federal laws for the protection of land and water resources.

h. The methods of monitoring fluid quality, fluid temperature, and volumetric rate of production and injection wells.

i. The method of monitoring potable drinking water aquifers close to production and injection zones.

j. The method of monitoring for land subsidence.

k. The method of plugging and abandoning wells and a plan for reclaiming production and injection well sites.

l. The method of cleaning scale and corrosion in geothermal casing.

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m. A description of measures ~~which that~~ will be used to minimize any adverse environmental impact of the proposed activities on the area's natural resources, aquatic life, or wildlife.

2. Geothermal fluid analysis.

a. A geothermal fluid analysis shall be submitted with the operations plan, and annually thereafter.

b. Acceptable chemical parameters and sampling methods are set forth in 4VAC25-170-70 B ~~of this chapter~~.

3. Proposal for injection of geothermal fluids.

a. Geothermal fluid shall be injected into the same geothermal area from which it was withdrawn in the Atlantic Coastal Plain. Plans for injection wells in this area shall include information on:

- (1) Existing reservoir conditions.
- (2) Method of injection.
- (3) Source of injection fluid.
- (4) Estimate of expected daily volume in gallons per minute per day.
- (5) Geologic zones or formations affected.
- (6) Chemical analyses of fluid to be injected.
- (7) Treatment of spent geothermal fluids prior to injection.

b. Exemptions to the injection rule for geothermal fluid shall be approved by the department. Such requests shall be accompanied by a detailed statement of the proposed alternative method of geothermal fluid disposal; the effects of not injecting on such reservoir characteristics as pressure, temperature, and subsidence; and a copy of the operator's or designated agent's no-discharge permit.

4VAC25-170-50. Well construction and maintenance.

A. Every person drilling for geothermal resources in Virginia, or operating, owning, controlling or in possession of any well as defined herein, shall paint or stencil, and post and keep posted in a conspicuous place on or near the well a sign showing the name of the person, firm, company, corporation, or association drilling, owning, or controlling the well, the company or operator's well number, and the well identification number thereof. Well identification numbers will be assigned approved permits according to the USGS groundwater site inventory system. The lettering on such sign shall be kept in a legible condition at all times.

B. The ~~inspector~~ [division] director shall receive notice prior to the commencement of well work concerning the identification number of the well and the date and time that well work is scheduled to begin. Telephone notice will fulfill this requirement.

C. 1. Drilling-fluid materials sufficient to ensure well control shall be maintained in the field area and be readily accessible for use during drilling operations.

2. All drilling muds shall be used in a fashion designed to protect freshwater-bearing sands, horizons, and aquifers from contamination during well construction.

3. Drilling muds shall be removed from the drilling site after the well is completed and disposed of in the method approved in the operations plan.

4. Operations shall be conducted with due care to minimizing the loss of reservoir permeability.

D. All wells must be drilled with due diligence to maintain a reasonably vertical well bore. Deviation tests must be recorded in the drilling log for every 1000 feet drilled.

E. 1. A well may deviate intentionally from the vertical with written permission by the ~~inspector~~ [division] director. Such permission shall not be granted without notice to adjoining landowners, except for side-tracking mechanical difficulties.

2. When a well has been intentionally deviated from the vertical, a directional survey of the well bore must be filed with the department within 30 days after completion of the well.

3. The department shall have the right to make, or to require the operator to make, a directional survey of any well; at the request of an adjoining operator or landowner prior to the completion of the well and at the expense of said adjoining operator or landowner. In addition, if the department has reason to believe that the well has deviated beyond the boundaries of the property on which the well is located, the department also shall have the right to make, or to require the operator to make, a directional survey of the well at the expense of the operator.

F. 1. Valves approved by the ~~inspector~~ [division] director shall be installed and maintained on every completed well so that pressure measurements may be obtained at any time.

2. Blow-out preventers during drilling shall be required when the working pressure on the wellhead connection is greater than 1000 psi.

G. 1. Geothermal production wells shall be designed to ensure the efficient production and elimination of waste or escape of the resource.

2. All freshwater-bearing sands, horizons, and aquifers shall be fully protected from contamination during the production of geothermal fluids.

3. a. Surface casing shall extend from a point 12 inches above the surface to a point at least 50 feet below the deepest known groundwater aquifer or horizon.

b. The operator, owner, or designated agent shall use new casing. Only casing ~~which that~~ meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal production wells.

c. Cement introduced into a well for the purpose of cementing the casing or for the purpose of creating a permanent bridge during plugging operations shall be placed in the well by means of a method approved by the ~~inspector~~ [division] director. In addition:

- (1) Each surface string shall be cemented upward from the bottom of the casing.
- (2) Cement shall be allowed to stand for 24 hours or until comprehensive strength equals 500 psi before drilling.

d. The department may modify casing requirements when special conditions demand it.

4. a. The owner, operator, or designated agent shall use new casing. Only production casing ~~which~~ that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal production wells.

b. Each well shall be cemented with a quantity of cement sufficient to fill the annular space from the production zone to the surface. The production casing shall be cemented to exclude, isolate, or segregate overlapping and to prevent the movement of fluids into freshwater zones.

c. Cement shall be allowed to stand for 24 hours or until compressive strength equals 500 psi before drilling.

d. Cement introduced into a well for the purpose of cementing the casing or for the purpose of creating a permanent bridge during plugging operations shall be placed in the well by means of a method approved by the ~~inspector~~ [division] director.

e. The department may modify casing requirements when special conditions demand it.

f. The ~~inspector~~ [division] director may require additional well tests if production or monitoring records indicate a leak in the production casing. When tests confirm the presence of a production casing leak, the ~~inspector~~ [division] director may require whatever actions are necessary to protect other strings and freshwater horizons.

H. 1. The owner, operator, or designated agent shall use new casing. Only casing ~~which~~ that meets American Petroleum Institute specifications, as found in API 5AC, Restricted Yield Strength Casing and Tubing, March, 1982, API 5A, Casing Tubing, and Drill Pipe, March, 1982, and API 5AX, High-Strength Casing, Tubing, and Drill Pipe, March, 1982, (and all subsequent revisions thereto), shall be used in geothermal injection wells.

- 2. The casing program shall be designed so that no contamination will be caused to freshwater strata. Injection shall be done through production casing adequately sealed

and cemented to allow for monitoring of the annulus between the injection string and the last intermediate string or water protection string, as the case may be. Injection pressure shall be monitored and regulated to minimize the possibility of fracturing the confining strata.

3. Production casing shall be cemented through the entire freshwater zone.

4. The rate of injection of geothermal fluid shall not exceed the production rate.

5. Adequate and proper wellhead equipment shall be installed and maintained in good working order on every injection well not abandoned and plugged, so that pressure measurements may be obtained at any time.

I. 1. The ~~inspector~~ [division] director or a departmental representative shall have access to geothermal well sites during business hours.

2. The state geologist or his designated representative shall have access to any drilling site for the purpose of examining whole cores or cuttings as may be appropriate.

J. At least ~~ten~~ 10 days prior to any chemical cleaning of production casing, the operator shall notify the ~~inspector~~ [division] director in writing of the type and amount of chemical to be used and obtain approval for its use.

K. The well operator, or his designated agent, shall file a completion report within 60 days after well work is completed. The completion report shall be accompanied by copies of any drilling logs required under 4VAC25-170-40 ~~of this chapter~~.

4VAC25-170-60. Records, logs and general requirements.

A. 1. During the drilling and production phases of every well, the owner, operator, or designated agent responsible for the conduct of drilling operations shall keep at the well an accurate record of the well's operations as outlined in subsection C of this section. These records shall be accessible to the ~~inspector~~ [division] director at all reasonable hours.

2. The refusal of the well operator or designated agent to furnish upon request such logs or records or to give information regarding the well to the department shall constitute sufficient cause to require the cessation or shutting down of all drilling or other operations at the well site until the request is honored.

3. Drilling logs supplied to the department will be kept in confidence in accordance with § 40.1-11 of the Code of Virginia.

4. Copies of all drilling logs and productions records required by this chapter shall be [sent electronically or] mailed to:

Virginia Gas and Oil ~~Inspector~~ [Division] Director
 Department of Mines, Minerals and Energy
 Division of Gas and Oil
 P.O. Box 4416 159
 Abingdon, VA 24212 Lebanon, VA 24266

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5. Samples representative of all strata penetrated in each well shall be collected and furnished to the Commonwealth. Such samples shall be in the form of rock cuttings collected so as to represent the strata encountered in successive intervals no greater than 10 feet. If coring is done, however, the samples to be furnished shall consist, at a minimum, of one-quarter segments of core obtained. All samples shall be handled as follows:

- a. Rock cuttings shall be dried and properly packaged in a manner that will protect the individual samples, each of which shall be identified by the well name, identification number, and interval penetrated.
- b. Samples of core shall be boxed according to standard practice and identified as to well name and identification number and interval penetrated.
- c. All samples shall be shipped or mailed, charges prepaid, to:

Department of Mines, Minerals and Energy
Division of Mineral Resources
Fontaine Research Park
900 Natural Resources Drive
P.O. Box 3667
Charlottesville, VA 22903

B. Each well operator, owner, or designated agent, within 30 days after the completion of any well, shall furnish to the ~~inspector~~ [division] director a copy of the drilling log. Drilling logs shall list activities in chronological order and include the following information:

1. The well's location and identification number.
2. A record of casings set in wells.
3. Formations encountered.
4. Deviation tests for every one thousand feet drilled.
5. Cementing procedures.
6. A copy of the downhole geophysical logs.

C. The owner, operator, or designated agent of any production or injection well shall keep or cause to be kept a careful and accurate production record. The following information shall be reported to the ~~inspector~~ [division] director on a monthly basis for the first six months and quarterly thereafter, or as required by permit, unless otherwise stated:

1. Pressure measurements as monitored by valves on production and injection wells.
2. The volumetric rate of production or injection measured in terms of the average flow of geothermal fluids in gallons per minute per day of operation.
3. Temperature measurements of the geothermal fluid being produced or injected, including the maximum temperature measured in the bore-hole and its corresponding depth, and the temperature of the fluid as

measured at the discharge point at the beginning and conclusion of a timed production test.

4. Hydraulic head as measured by the piezometric method.

4VAC25-170-70. Groundwater monitoring.

A. 1. Groundwater shall be monitored through special monitoring wells or existing water wells in the area of impact, as determined by the department.

2. Monitoring shall be performed and reported to the ~~inspector~~ [division] director daily on both water quality and piezometric head for the first 30 days of geothermal production. Thereafter, quarterly tests for piezometric head and for water quality shall be reported to the ~~inspector~~ [division] director.

3. The monitoring of groundwater shall meet the following conditions:

a. A minimum of one monitoring well per production or injection well is required. Monitoring wells shall monitor those significant potable aquifers through which the well passes as required by the department.

b. The monitoring wells shall be located within the first 50% of the projected cone of depression for the geothermal production well.

c. The well(s) shall be constructed to measure variations in piezometric head and water quality. Groundwater shall be chemically analyzed for the following parameters: mineral content (alkalinity, chloride, dissolved solids, fluoride, calcium, sodium, potassium, carbonate, bicarbonate, sulfate, nitrate, boron, and silica); metal content (cadmium, arsenic, mercury, copper, iron, nickel, magnesium, manganese, and zinc); and general parameters (pH, conductivity, dissolved solids, and hardness).

d. The department may require additional analyses if levels of the above parameters indicate their necessity to protect groundwater supplies.

B. 1. Chemical analyses of geothermal fluids shall be filed with the ~~inspector~~ [division] director on an annual basis.

2. Samples for the chemical fluid analysis shall be taken from fluid as measured at the discharge point of the production well at the conclusion of a two-hour production test.

3. The production fluid shall be chemically analyzed for the following parameters: mineral content (alkalinity, chloride, dissolved solids, fluoride, calcium, sodium, potassium, carbonate, bicarbonate, sulfate, nitrate, boron, and silica); metal content (cadmium, arsenic, mercury, copper, iron, nickel, magnesium, manganese, and zinc); gas analyses (hydrogen sulfide, ammonia, carbon dioxide, and gross alpha); and general parameters (pH, conductivity, and dissolved solids).

4. The department may require additional analyses if levels of the above parameters indicate follow-up tests are necessary.

C. 1. Subsidence shall be monitored by the annual surveys of a certified surveyor from vertical benchmarks located above the projected cone of depression, as well as points outside its boundaries. The surveys shall be filled with the ~~inspector~~ [division] director by the operator or designated agent.

2. The department may order micro-earthquake monitoring, if surveys indicate the occurrence of subsidence.

D. 1. The operator, owner, or designated agent shall maintain records of any monitoring activity required in his permit or by this chapter. All records of monitoring samples shall include:

- a. The well identification number.
- b. The date the sample was collected.
- c. Time of sampling.
- d. Exact place of sampling.
- e. Person or firm performing analysis.
- f. Date analysis of the sample was performed.
- g. The analytical method or methods used.
- h. Flow-point at which sample was taken.
- i. The results of such analysis.

2. The operator, owner, or designated agent shall retain for a period of five years any records of monitoring activities and results, including all original strip chart recordings of continuous monitoring installations. The period of retention will automatically be extended during the course of any litigation regarding the discharge of contaminants by the permittee until such time as the litigation has ceased or when requested by the ~~inspector~~ [division] director. This requirement shall apply during the five-year period following abandonment of a well.

4VAC25-170-80. Abandonment and plugging of wells.

A. Notification of intent to abandon any exploration, production, or injection well must be received by the ~~inspector~~ [division] director during working hours at least one day before the beginning of plugging operations. When notification of intent to abandon an exploratory, production, or injection well is received, the ~~inspector~~ [division] director may send a departmental representative to the location specified and at the time stated to witness the plugging of the well.

B. 1. Any drilling well completed as a dry hole from which the rig is to be removed shall be cemented unless authorization to the contrary has been given by the ~~inspector~~ [division] director.

2. The bottom of the hole shall be filled to, or a bridge shall be placed at the top of, each producing formation

open to the well bore. Additionally, a cement plug not less than 50 feet in length shall be placed immediately above each producing formation.

3. A continuous cement plug shall be placed through all freshwater-bearing aquifers and shall extend at least 50 feet above and 50 feet below said aquifers.

4. A plug not less than 20 feet in length shall be placed at or near the surface of the ground in each hole.

5. The interval between plugs shall be filled with a nonporous medium.

6. The method of placing cement in the holes shall be by any method approved by the ~~inspector~~ [division] director in advance of placement.

7. The exact location of each abandoned well shall be marked by a piece of pipe not less than four inches in diameter securely set in concrete and extending at least four feet above the general ground level. A permanent sign of durable construction shall be welded or otherwise permanently attached to the pipe, and shall contain the well identification information required by 4VAC25-170-50.

8. When drilling operations have been suspended for 60 days, the well shall be plugged and abandoned unless written permission for temporary abandonment has been obtained from the ~~inspector~~ [division] director.

9. Within 20 days after the plugging of any well, the responsible operator, owner, or designated agent who plugged or caused the well to be plugged shall file a notice with the department indicating the manner in which the well was plugged.

VA.R. Doc. No. R08-1316; Filed September 4, 2012, 12:57 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Fast-Track Regulation

Title of Regulation: 4VAC50-20. Impounding Structure Regulations (amending 4VAC50-20-30, 4VAC50-20-40, 4VAC50-20-52, 4VAC50-20-54, 4VAC50-20-177, 4VAC50-20-200, 4VAC50-20-340; adding 4VAC50-20-45, 4VAC50-20-101, 4VAC50-20-102, 4VAC50-20-103, 4VAC50-20-104, 4VAC50-20-195, 4VAC50-20-375, 4VAC50-20-395).

Statutory Authority: § 10.1-605 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 24, 2012.

Effective Date: November 8, 2012.

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

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Basis: The Virginia Dam Safety Act (§ 10.1-604 et seq. of the Code of Virginia) ensures public safety through the proper and safe design, construction, operation, and maintenance of impounding structures in the Commonwealth. This is accomplished through the effective administration of the Virginia Dam Safety Program. Authority for the program rests with the Virginia Soil and Water Conservation Board and it is administered on behalf of the board by the Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management. The program focuses on enhancing public safety through bringing all impounding structures of regulated size under Regular Operation and Maintenance Certificates. Pursuant to § 10.1-605, the board is directed to promulgate regulations for impounding structures. Further, the board reserves the sole right to promulgate regulations.

The three items that the board directed the department and the regulatory advisory panel to consider in the regulatory action were as follows:

1. Develop regulations (considering existing guidance) that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure;
2. Develop regulations that provide a method to conduct a simplified dam break inundation zone analysis; and
3. Develop regulations that set out the necessary requirements to obtain a general permit for a low hazard impounding structure.

These actions were predicated on the following legislation and information that was closely considered in the development of the regulations:

Item 1:

- Chapter 270 of the 2010 Virginia Acts of Assembly (HB438 - Delegate David J. Toscano) amended § 10.1-605 C of the Code of Virginia to direct that "[t]he Board shall consider the impact of limited-use or private roadways with low traffic volume and low public safety risk that are downstream from or across an impounding structure in the determination of the hazard potential classification of an impounding structure."
- Chapter 41 of the 2010 Virginia Acts of Assembly (SB244 - Senator John C. Watkins) resulted in the codification of § 10.1-605.2 of the Code of Virginia that stipulates "[t]hat the Virginia Soil and Water Conservation Board shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ 10.1-604 et seq.)."

- During 2010, in partial response to these legislative directives, the Director of the Department approved on November 30, 2010, a "Guidance Document on Roadways On or Below Impounding Structures." The guidance was strongly considered in the construct of the regulations.

Item 2:

- Chapter 637 of the 2011 Virginia Acts of Assembly (SB1060 - Senator Ryan T. McDougle) created § 10.1-604.1 titled "Determination of hazard potential class" with a subsection C that specifies that "[t]he Board may adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis."

Item 3:

- Chapter 637 of the 2011 Virginia Acts of Assembly (SB1060 - Senator Ryan T. McDougle) created § 10.1-605.3 titled "General permit for certain impounding structures" with a subsection A that specifies that "[t]he Board shall develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605."

Purpose: The changes being advanced by this regulatory action are largely in response to requirements placed in the Code of Virginia during the last several General Assembly Sessions that directed the board to:

1. Adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ 10.1-604 et seq.).
2. Adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis.
3. Develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605.

Accordingly, the provisions of the regulations being advanced will result in reduced and streamlined compliance requirements that will provide less costly services for mapping, provide additional mechanisms through which a hazard potential classification and related spillway design flood may be reduced through new provisions including low volume roadway and expanded incremental damage analysis considerations, as well as provide for a streamlined general permit process for the regulation of low hazard potential impounding structures. The provisions of this regulatory action are intended to provide true economic and regulatory relief for all low hazard potential dam owners and additional opportunities for regulatory relief for high and significant hazard potential dam owners while remaining mindful of the Commonwealth's public safety obligations.

Rationale for Using Fast-Track Process: This rulemaking is expected to be noncontroversial as the majority of the provisions included in these regulations largely incorporate requirements set out in the Code where limited discretion is offered and are being advanced to provide true economic and regulatory relief to those regulated. Where limited latitude was available in developing regulatory provisions, there was general consensus regarding the language included from a regulatory advisory panel composed of private, local, and state dam owners and engineers that was assembled to provide sound recommendations to the department and board regarding these regulatory improvements.

Substance: The key substantive changes included in this regulatory action involve the following:

1. Amending the hazard potential classification section (4VAC50-20-40) to:
 - a. Exclude roadways with an annual average daily traffic volume of 400 vehicles or less from consideration as major roadways or secondary roadways that traditionally lead to hazard classifications of high or significant respectively.
 - b. Establish that the department may be requested by a dam owner in specified situations to conduct a simplified dam break inundation zone analysis to determine whether the impounding structure has a low hazard potential classification.
 - c. Specify that if the department finds that an impounding structure appears to have a low hazard potential classification that the owner may be eligible for general permit coverage.
 - d. Specify that an incremental damage analysis may be utilized as part of hazard potential classification by the owners engineer.
2. Establishing a new section (4VAC50-20-45) on low volume roadways that tracks the guidance previously approved by the director and specifically:
 - a. Sets out the analysis methods by which a determination may be made whether a road is impacted by a dam failure.
 - b. Specifies that an incremental damage analysis may be utilized to refine what roadways should be considered impacted.
 - c. Establishes that an impounding structure may qualify for low hazard potential classification based on annual average daily traffic (AADT) volume if other downstream factors do not exist that would otherwise raise the hazard classification.
 - d. Establishes accepted methodologies for determining a road's AADT.
 - e. Sets an AADT volume of 400 vehicles or less as the number where a roadway may be considered "limited

use" and how an impounding structure may qualify for low hazard potential classification.

- f. Requires that the Emergency Preparedness Plan consider these "limited use" roadways regarding proper notifications during emergency conditions.
3. Amending the incremental damage analysis section (4VAC50-20-52) to establish processes by which the potential hazard potential classification of an impounding structure may be lowered based on the results of an incremental damage analysis.
4. Amending the dam break inundation zone mapping section (4VAC50-20-54) to:
 - a. Clarify that the department may complete for a dam owner a simplified dam break inundation zone map and analysis in accordance with this section.
 - b. Specify that Emergency Action and Emergency Preparedness Plans shall include maps for the sunny day dam failure and a probable maximum flood with a dam failure.
 - c. Specify the general deliverables and administrative processes associated with the department conducting a simplified dam break inundation zone analysis.
5. Establishing a new section (4VAC50-20-101) on general permit requirements for low hazard potential impounding structures that specifies that the owner shall be subject to the following requirements:
 - a. The dam has a spillway design able to safely pass a 100-year flood.
 - b. The owner shall develop and maintain an emergency preparedness plan.
 - c. The owner shall perform an annual inspection and maintain such records and make them available to the department upon request.
 - d. The owner shall ensure that the impounding structure is properly maintained and operated and shall have operation and maintenance plans and schedules available to the department for inspection upon request.
 - e. The owner shall file a dam break inundation zone map with the department and the locality or localities.
 - f. The owner shall notify the specified authorities in the event of a failure or imminent failure of the impounding structure.
6. Establishing a new section (4VAC50-20-102) regarding registering for coverage under the general permit for low hazard potential impounding structures that specifies that the owner shall submit a complete and accurate registration statement and sets out the eight components of that submittal.

Issues: The regulations being advanced provide advantages (reduced and streamlined compliance requirements) to those impounding structure owners regulated under the Virginia Dam Safety Act and its attendant regulations by providing

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less costly services for mapping, providing additional mechanisms through which a hazard potential classification and related spillway design flood may be reduced through new provisions including low volume roadway and expanded incremental damage analysis considerations, as well as providing for a streamlined general permit process for the regulation of low hazard potential impounding structures. The provisions of this regulatory action are intended to provide true economic and regulatory relief for all low hazard potential dam owners and additional opportunities for regulatory relief for high and significant hazard potential dam owners while remaining mindful of the Commonwealth's public safety obligations. Downstream residents and property owners below regulated dams should not be disadvantaged or their safety affected by these actions as they largely provide for streamlined processes, provide for less costly services, and reduce dam standards only where risks are low and reasonable to do such.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Soil and Water Conservation Board (Board) proposes changes to these regulations in response to requirements placed in the Code of Virginia during the last several General Assembly Sessions that directed the Board to: 1) adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ 10.1-604 et seq.), 2) adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis, and 3) develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605.

The proposed regulations contain provisions that address these Code requirements and offer a balance between public safety and the reduced risks associated with low hazard impounding structures. The key elements of the proposed amendments to these regulations include: 1) provisions to allow for the use of incremental damage analyses to modify hazard potential classifications, 2) the use of an annual average daily traffic (AADT) volume of 400 vehicles or less as the number where a roadway may be considered "limited use" and processes by which such an impounding structure may qualify for low hazard potential classification, 3) the implementation of a streamlined general permit process with reduced requirements, and 4) the ability for the Department to assist specified dam owners by conducting simplified dam break inundation zone analyses for them.

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

Estimated Economic Impact. Overall, public and private dam owners will be positively affected as some will benefit from

reduced dam safety compliance costs associated with proposed mechanisms through which hazard potential classification may be reduced. Proposed new provisions including low volume roadway and expanded incremental damage analysis considerations. The Department of Conservation and Recreation does not believe that the safety of downstream residents and property owners will be negatively affected by the proposed amendments as they largely provide for streamlined processes, provide for less costly services, and reduce required dam standards only where risks are low.

Businesses and Entities Affected. The proposed changes affect regulated public and private dam owners that are subject to these regulations as well as downstream residents and property owners who would be potentially affected upon a dam failure. Approximately 1600 dams across the Commonwealth could be affected by this regulatory action. Of these dams, as of December 2011, slightly over 220 were classified as high hazard, almost 400 as significant hazard, and over 940 as low hazard. The low hazard dam owners will benefit the most from the proposed new provisions of these regulations. A number of these dam owners may be small businesses.

Localities Particularly Affected. Dams exist throughout the Commonwealth. The proposal to classify some impounding structures as low hazard due partially to low traffic volume would likely affect less densely populated localities more than relatively congested portions of Virginia.

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

Effects on the Use and Value of Private Property. The proposed amendments will likely reduce dam safety compliance costs and consequently somewhat increase the net value of private property that includes impounding structures.

Small Businesses: Costs and Other Effects. The proposed amendments will likely reduce dam safety compliance costs for some small businesses that own dams.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely impact small businesses.

Real Estate Development Costs. The proposed amendments will potentially reduce development costs for qualifying properties that include impounding structures.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected,

the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Department of Conservation and Recreation concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the Impounding Structure Regulations (4VAC50-20).

Summary:

The amendments address the Code of Virginia requirements of the board to (i) adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ 10.1-604 et seq.); (ii) adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis; and (iii) develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605.

The key elements of the regulations include:

- 1. Provisions to allow for the use of incremental damage analyses to modify hazard potential classifications;*
- 2. The use of an annual average daily traffic (AADT) volume of 400 vehicles or less as the number where a roadway may be considered limited use and processes by which such an impounding structure may qualify for low hazard potential classification;*
- 3. The implementation of a streamlined general permit process with reduced requirements for low hazard dams; and*
- 4. The ability for the department to assist specified dam owners by conducting simplified dam break inundation zone analyses for them.*

4VAC50-20-30. Definitions.

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

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons (equivalent to one foot of depth over one acre of area).

"Agricultural purpose" means the production of an agricultural commodity as defined in ~~§ 3-1 249.27~~ § 3.2-3900 of the Code of Virginia that requires the use of impounded waters.

"Agricultural purpose dams" means impounding structures which are less than 25 feet in height or which create a maximum impoundment smaller than 100 acre-feet, and operated primarily for agricultural purposes.

"Alteration" means changes to an impounding structure that could alter or affect its structural integrity. Alterations include, but are not limited to, changing the height or otherwise enlarging the dam, increasing normal pool or principal spillway elevation or physical dimensions, changing the elevation or physical dimensions of the emergency spillway, conducting necessary structural repairs or structural maintenance, or removing the impounding structure. Structural maintenance does not include routine maintenance.

"Alteration permit" means a permit required for any alteration to an impounding structure.

"Annual average daily traffic" or "AADT" means the total volume of vehicle traffic of a highway or road for a year divided by 365 days and is a measure used in transportation planning and transportation engineering of how busy a road is.

"Board" means the Virginia Soil and Water Conservation Board.

"Conditional Operation and Maintenance Certificate" means a certificate required for impounding structures with deficiencies.

"Construction" means the construction of a new impounding structure.

"Construction permit" means a permit required for the construction of a new impounding structure.

"Dam break inundation zone" means the area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.

"Department" means the Virginia Department of Conservation and Recreation.

"Design flood" means the calculated volume of runoff and the resulting peak discharge utilized in the evaluation, design, construction, operation and maintenance of the impounding structure.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Drill" means a type of emergency action plan exercise that tests, develops, or maintains skills in an emergency response procedure. During a drill, participants perform an in-house exercise to verify telephone numbers and other means of

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communication along with the owner's response. A drill is considered a necessary part of ongoing training.

"Emergency Action Plan or EAP" means a formal document that recognizes potential impounding structure emergency conditions and specifies preplanned actions to be followed to minimize loss of life and property damage. The EAP specifies actions the owner must take to minimize or alleviate emergency conditions at the impounding structure. It contains procedures and information to assist the owner in issuing early warning and notification messages to responsible emergency management authorities. It shall also contain dam break inundation zone maps as required to show emergency management authorities the critical areas for action in case of emergency.

"Emergency Action Plan Exercise" means an activity designed to promote emergency preparedness; test or evaluate EAPs, procedures, or facilities; train personnel in emergency management duties; and demonstrate operational capability. In response to a simulated event, exercises should consist of the performance of duties, tasks, or operations very similar to the way they would be performed in a real emergency. An exercise may include but not be limited to drills and tabletop exercises.

"Emergency Preparedness Plan" means a formal document prepared for Low Hazard impounding structures that provides maps and procedures for notifying owners of downstream property that may be impacted by an emergency situation at an impounding structure.

"Existing impounding structure" means any impounding structure in existence or under a construction permit prior to July 1, 2010.

"Freeboard" means the vertical distance between the maximum water surface elevation associated with the spillway design flood and the top of the impounding structure.

"Height" means the hydraulic height of an impounding structure. If the impounding structure spans a stream or watercourse, height means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the impounding structure to the top of the impounding structure. If the impounding structure does not span a stream or watercourse, height means the vertical distance from the lowest elevation of the downstream limit of the barrier to the top of the impounding structure.

"Impounding structure" or "dam" means a man-made structure, whether a dam across a watercourse or structure outside a watercourse, used or to be used to retain or store waters or other materials. The term includes: (i) all dams that are 25 feet or greater in height and that create an impoundment capacity of 15 acre-feet or greater, and (ii) all dams that are six feet or greater in height and that create an impoundment capacity of 50 acre-feet or greater. The term "impounding structure" shall not include: (a) dams licensed by the State Corporation Commission that are subject to a

safety inspection program; (b) dams owned or licensed by the United States government; (c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet; (d) water or silt retaining dams approved pursuant to § 45.1-222 or § 45.1-225.1 of the Code of Virginia; or (e) obstructions in a canal used to raise or lower water.

"Impoundment" means a body of water or other materials the storage of which is caused by any impounding structure.

"Life of the impounding structure" and "life of the project" mean that period of time for which the impounding structure is designed and planned to perform effectively, including the time required to remove the structure when it is no longer capable of functioning as planned and designed.

"Maximum impounding capacity" means the volume of water or other materials in acre-feet that is capable of being impounded at the top of the impounding structure.

"New construction" means any impounding structure issued a construction permit or otherwise constructed on or after July 1, 2010.

"Normal or typical water surface elevation" means the water surface elevation at the crest of the lowest ungated outlet from the impoundment or the elevation of the normal pool of the impoundment if different than the water surface elevation at the crest of the lowest ungated outlet. For calculating sunny day failures for flood control impounding structures, stormwater detention impounding structures, and related facilities designed to hold back volumes of water for slow release, the normal or typical water surface elevation shall be measured at the crest of the auxiliary or emergency spillway.

"Operation and Maintenance Certificate" means a certificate required for the operation and maintenance of all impounding structures.

"Owner" means the owner of the land on which an impounding structure is situated, the holder of an easement permitting the construction of an impounding structure and any person or entity agreeing to maintain an impounding structure. The term "owner" may include the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities, any public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this Commonwealth or any other state or country, as well as any person or group of persons acting individually or as a group.

"Planned land use" means land use that has been approved by a locality or included in a master land use plan by a locality, such as in a locality's comprehensive land use plan.

"Spillway" means a structure to provide for the controlled release of flows from the impounding structure into a downstream area.

"Stage I Condition" means a flood watch or heavy continuous rain or excessive flow of water from ice or snow melt.

"Stage II Condition" means a flood watch or emergency spillway activation or impounding structure overtopping where a failure may be possible.

"Stage III Condition" means an emergency spillway activation or impounding structure overtopping where imminent failure is probable.

"Sunny day dam failure" means the failure of an impounding structure with the initial water level at the normal reservoir level, usually at the lowest ungated principal spillway elevation or the typical operating water level.

"Tabletop Exercise" means a type of emergency action plan exercise that involves a meeting of the impounding structure owner and the state and local emergency management officials in a conference room environment. The format is usually informal with minimum stress involved. The exercise begins with the description of a simulated event and proceeds with discussions by the participants to evaluate the EAP and response procedures and to resolve concerns regarding coordination and responsibilities.

"Top of the impounding structure" means the lowest point of the nonoverflow section of the impounding structure.

"Watercourse" means a natural channel having a well-defined bed and banks and in which water normally flows.

4VAC50-20-40. Hazard potential classifications of impounding structures.

A. Impounding structures shall be classified in one of three hazard classifications as defined in subsection B of this section and Table 1.

B. For the purpose of this chapter, hazards pertain to potential loss of human life or damage to the property of others downstream from the impounding structure in event of failure or faulty operation of the impounding structure or appurtenant facilities. Hazard potential classifications of impounding structures are as follows:

1. High Hazard Potential is defined where an impounding structure failure will cause probable loss of life or serious economic damage. "Probable loss of life" means that impacts will occur that are likely to cause a loss of human life, including but not limited to impacts to residences, businesses, other occupied structures, or major roadways. Economic damage may occur to, but not be limited to, building(s), industrial or commercial facilities, public utilities, major roadways, railroads, personal property, and agricultural interests. "Major roadways" include, but are not limited to, interstates, primary highways, high-volume urban streets, or other high-volume roadways, except those having an AADT volume of 400 vehicles or less in accordance with 4VAC50-20-45.

2. Significant Hazard Potential is defined where an impounding structure failure may cause the loss of life or

appreciable economic damage. "May cause loss of life" means that impacts will occur that could cause a loss of human life, including but not limited to impacts to facilities that are frequently utilized by humans other than residences, businesses, or other occupied structures, or to secondary roadways. Economic damage may occur to, but not be limited to, building(s), industrial or commercial facilities, public utilities, secondary roadways, railroads, personal property, and agricultural interests. "Secondary roadways" include, but are not limited to, secondary highways, low-volume urban streets, service roads, or other low-volume roadways, except those having an AADT volume of 400 vehicles or less in accordance with 4VAC50-20-45.

3. Low Hazard Potential is defined where an impounding structure failure would result in no expected loss of life and would cause no more than minimal economic damage. "No expected loss of life" means no loss of human life is anticipated.

~~C. The hazard potential classification shall be proposed by the owner and shall be subject to approval by the board. To support the appropriate hazard potential classification, dam break analysis shall be conducted by the owner's engineer or the department in accordance with one of the following alternatives and utilizing procedures set out in 4VAC50-20-54. Present and planned land use for which a development plan has been officially approved by the locality in the dam break inundation zones downstream from the impounding structure shall be considered in determining the classification.~~

1. The owner of an impounding structure that does not currently hold a regular or conditional certificate from the board, or the owner of an impounding structure that is already under certificate but the owner believes that a condition has changed downstream of the impounding structure that may reduce its hazard potential classification, may request in writing that the department conduct a simplified dam break inundation zone analysis to determine whether the impounding structure has a low hazard potential classification. The owner shall pay a fee to the department in accordance with 4VAC50-20-395 for conducting each requested analysis. The department shall address requests in the order received and shall strive to complete analysis within 90 days; or

2. The owner may propose a hazard potential classification that shall be subject to approval by the board. To support the proposed hazard potential classification, an analysis shall be conducted by the owner's engineer and submitted to the department. The hazard potential classification shall be certified by the owner.

D. Findings of the analysis conducted pursuant to subsection C of this section shall result in one of the following actions:

1. For findings by the department resulting from analyses conducted in accordance with subdivision C 1 of this section:

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a. If the department finds that the impounding structure appears to have a low hazard potential classification, the owner may be eligible for general permit coverage in accordance with 4VAC50-20-103.

b. If the department finds that the impounding structure appears to have a high or significant hazard potential classification, the owner's engineer shall provide further analysis in accordance with the procedures set out in 4VAC50-20-54 and this chapter. The owner may be eligible for grant assistance from the Dam Safety, Flood Prevention and Protection Assistance Fund in accordance with Article 1.2 (§ 10.1-603.16 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

2. For findings by the owner's engineer resulting from analyses conducted in accordance with subdivision C 2 of this section:

a. If the engineer finds that the impounding structure has a low hazard potential classification, the owner may be eligible for general permit coverage in accordance with 4VAC50-20-103; or

b. If the engineer finds that the impounding structure appears to have a high or significant hazard potential classification, then the owner shall comply with the applicable certification requirements set out in this chapter.

E. An incremental damage analysis in accordance with 4VAC50-20-52 may be utilized as part of a hazard potential classification by the owner's engineer.

F. Impounding structures shall be subject to reclassification by the board as necessary.

4VAC50-20-45. Hazard potential classifications based on low volume roadways.

A. All impacted public and private roadways downstream or across an impounding structure shall be considered in determining hazard potential classification. To determine whether a road is impacted by a dam failure, one of the following methodologies shall be utilized:

1. Section IV, Part D of the United States Department of Interior, Bureau of Reclamation's ACER Technical Memorandum No. 11, 1988;

2. An approach to determining impacts to roadways found in any document that is on the list of acceptable references set out in 4VAC50-20-320. The owner's engineer shall reference the methodology utilized in their submittal to the department; or

3. An approach to determine any roadway that would be overtopped, at any depth, by a dam failure under any flood or nonflood condition, including but not limited to probable maximum flood, spillway design flood, or flood from sunny day dam failure, as determined using analysis procedures set out in 4VAC50-20-54.

In all cases, an owner may use an incremental damage analysis conducted in accordance with 4VAC50-20-52 to further refine what roads should be considered impacted.

B. In certain cases, an impounding structure may qualify for a low hazard potential classification in spite of a potential impact to a downstream public or private roadway. If a roadway is found to be impacted in accordance with subsection A of this section, and other factors such as downstream residences, businesses, or other concerns as set forth in this chapter that would raise the hazard potential classification do not exist, such classification may be adjusted in accordance with this section dependent on vehicle traffic volume, based on AADT.

C. For the purposes of determining AADT volume, one of the following techniques may be utilized using data obtained within the last year except as otherwise set out in subdivision 1 of this subsection:

1. The AADT volumes available in the most recent published Daily Traffic Volume Estimates from the Virginia Department of Transportation (VDOT) for the road segment nearest the impounding structure may be utilized. This information is available from VDOT at <http://www.virginiadot.org/info/ct-TrafficCounts.asp>;

2. Data developed by a local government may be utilized where the locality conducts its own traffic counts;

3. Where AADT volumes are not available from VDOT or a locality, an Average Daily Traffic trip rate that meets the standards set forth in the Institute for Traffic Engineers (ITE) Trip Generation information report, 8th Edition, 2008 (available for ordering online at <http://www.ite.org/emodules/scriptcontent/orders/ProductDetail.cfm?pc=IR-016F>) may be utilized if practicable; or

4. In all cases, average daily traffic volumes may also be established by a traffic count that meets VDOT standards and is conducted or overseen by the owner's engineer or otherwise approved by the department's regional engineer.

D. Where it can be demonstrated that a public or private roadway has limited usage and that the hazard potential classification is being determined based solely upon impacts to roadways, the roadway may be considered to be "limited use" and the impounding structure may be considered a low hazard potential impounding structure despite the presence of the roadway. Such roadways, located either across or below an impounding structure, are those that result in an AADT volume of 400 vehicles or less.

Where a downstream analysis finds that multiple limited use roadways may be impacted by an impounding structure failure, the traffic volumes of those limited use roadways, determined in accordance with subsection B of this section, shall be combined for the purposes of determining the impounding structure's hazard potential classification unless it can be demonstrated that the traffic using each of the roadways is composed of substantially the same vehicle trips.

such that the combined number of individual vehicle trips utilizing all of the roadways would result in an AADT of 400 or less.

E. Although a roadway may be considered to have a "limited use" in accordance with subsection D of this section, the Emergency Preparedness Plan for the low hazard impounding structure shall clearly outline a reliable and timely approach for notification of the proper local emergency services by the dam owner regarding the hazards of continued use of the road during an emergency condition.

4VAC50-20-52. Incremental damage analysis.

A. When appropriate, the spillway design flood requirement may be reduced by the board in accordance with this section. The proposed potential hazard classification for an impounding structure may be lowered based on the results of an incremental damage analysis utilizing one of the following methodologies:

1. Section III of the United States Department of Interior, Bureau of Reclamation's ACER Technical Memorandum No. 11, 1988. An impact shall be deemed to occur where there are one or more lives in jeopardy as a result of a dam failure; or

2. An approach to determining hazard classification found in any document that is on the list of acceptable references set out in 4VAC50-20-320. The owner's engineer shall reference the methodology utilized in the submittal to the department.

B. The owner's engineer may proceed with an incremental damage analysis. The proposed spillway design flood for the impounding structure may be lowered based on the results of an incremental damage analysis. Once the owner's engineer has determined the required spillway design flood through application of Table 1, further analysis may be performed to evaluate the limiting flood condition for incremental damages. Site-specific conditions should be recognized and considered. This analysis may be used to lower the spillway design flood. In no situation shall the allowable reduced level be less than the level at which the incremental increase in water surface elevation downstream due to failure of an impounding structure is no longer considered to present an additional downstream threat. This engineering analysis will need to present water surface elevations at each structure that may be impacted downstream of the dam. An additional downstream threat to persons or property is presumed to exist when water depths exceed two feet or when the product of water depth (in feet) and flow velocity (in feet per second) is greater than seven.

C. The spillway design flood shall also not be reduced below the minimum threshold values as determined by Table 1.

D. C. The proposed potential hazard classification for the impounding structure and the required spillway design flood shall be subject to reclassification by the board as necessary

to reflect the incremental damage assessment, changed conditions at the impounding structure, and changed conditions in the dam break inundation zone.

4VAC50-20-54. Dam break inundation zone mapping.

A. Dam break inundation zone maps and analyses shall be provided to the department, except as provided for in 4VAC50-20-51, to meet the requirements set out in Hazard Potential Classifications of Impounding Structures (4VAC50-20-40) 4VAC50-20-40, Emergency Action Plan for High and Significant Potential Hazard Impounding Structures (4VAC50-20-175) 4VAC50-20-175, and Emergency Preparedness for Low Hazard Potential Impounding Structures (4VAC50-20-177) 4VAC50-20-177, as applicable. In accordance with subsection G of this section, a simplified dam break inundation zone map and analysis may be completed by the department and shall be provided to the impounding structure's owner to assist such owner in complying with the requirements of this chapter. All analyses shall be completed in accordance with 4VAC50-20-20 D.

B. The location of the end of the inundation mapping should be indicated where the water surface elevation of the dam break inundation zone and the water surface elevation of the spillway design flood during an impounding structure nonfailure event converge to within one foot of each other. The inundation maps shall be supplemented with water surface profiles showing the peak water surface elevation prior to failure and the peak water surface elevation after failure.

C. All inundation zone map(s), except those utilized in meeting the requirements of Emergency Preparedness for Low Hazard Potential Impounding Structures (4VAC50-20-177), shall be signed and sealed by a licensed professional engineer.

D. Present and planned land-use for which a development plan has been officially approved by the locality in the dam break inundation zones downstream from the impounding structure shall be considered in determining the classification.

E. For determining the hazard potential classification, an analysis including, but not limited to, those hazards created by flood and nonflood dam failures shall be considered. At a minimum, of the following shall be provided to the department:

1. A sunny day dam break analysis utilizing the volume retained at the normal or typical water surface elevation of the impounding structure;
2. A dam break analysis utilizing the spillway design flood with a dam failure;
3. An analysis utilizing the spillway design flood without a dam failure; and
4. For the purposes of future growth planning, a A dam break analysis utilizing the probable maximum flood with a dam failure.

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E. To meet the requirements of Emergency Preparedness set out in 4VAC50-20-177, all Low Hazard Potential impounding structures shall provide a simple map, acceptable to the department, demonstrating the general inundation that would result from a dam failure. Such maps do not require preparation by a professional licensed engineer, however, it is preferred that the maps be prepared by a licensed professional engineer.

F. To meet the Emergency Action Plan requirements set out in 4VAC50-20-175 and the Emergency Preparedness Plan requirements set out in 4VAC50-20-177, all owners of ~~High and Significant Hazard Potential~~ impounding structures shall provide dam break inundation zone map(s) representing the impacts that would occur with both a sunny day dam failure and a spillway design flood probable maximum flood with a dam failure.

1. The map(s) shall be developed at a scale sufficient to graphically display downstream inhabited areas and structures, roads, public utilities that may be affected, and other pertinent structures within the identified inundation area. In coordination with the local organization for emergency management, a list of downstream inundation zone property owners and occupants, including telephone numbers may be plotted on the map or may be provided with the map for reference during an emergency.

2. Each map shall include the following statement: "The information contained in this map is prepared for use in notification of downstream property owners by emergency management personnel."

Should the department prepare a dam break inundation zone map and analysis in response to a request received pursuant to 4VAC50-20-40 C, the owner shall utilize this map to prepare a plan in accordance with this subsection.

G. Upon receipt of a written request in accordance with 4VAC50-20-40 C and receipt of a payment in accordance with 4VAC50-20-395, the department shall conduct a simplified dam break inundation zone analysis. In conducting the analysis, a model acceptable to the department shall be utilized. The analysis shall result in maps produced as Geographic Information System shape files for viewing and analyzing and shall meet the other analysis criteria of this section.

Upon completion of the analysis, the department shall issue a letter to the owner communicating the results of the analysis including the dam break inundation zone map, stipulating the department's finding regarding hazard potential classification based on the information available to the department, and explaining what the owner needs to do procedurally with this information to be compliant with the requirements of the Dam Safety Act (§ 10.1-604 et seq.) and this chapter.

4VAC50-20-101. General permit requirements for low hazard potential impounding structures.

Any impounding structure owner whose registration statement is approved by the board will receive the following permit and shall comply with the requirements in it. If the failure of a low hazard potential impounding structure is not expected to cause loss of human life or economic damage to any property except property owned by the owner, the owner may follow the special criteria established for certain low hazard impounding structures in accordance with 4VAC50-20-51 in lieu of coverage under the general permit.

General Permit No.: Dam Safety 1

Effective Date: (Date of Issuance of Coverage)

Expiration Date: (6 years following Date of Issuance of Coverage)

GENERAL PERMIT FOR OPERATION OF A LOW HAZARD POTENTIAL IMPOUNDING STRUCTURE

In compliance with the provisions of the Dam Safety Act and attendant regulations, owners of an impounding structure covered by this permit are authorized to operate and maintain a low hazard potential impounding structure. The owner shall be subject to the following requirements as set forth herein.

1. The spillway design of the owner's impounding structure shall be able to safely pass a 100-year flood. When appropriate, the spillway design flood requirement may be further reduced to the 50-year flood in accordance with an incremental damage analysis conducted by the owner's engineer.

2. The owner shall develop and maintain an emergency preparedness plan in accordance with 4VAC50-20-177. The owner shall update and resubmit the emergency preparedness plan immediately upon becoming aware of necessary changes to keep the plan workable.

3. The owner shall perform an annual inspection of the impounding structure. The owner shall maintain such records and make them available to the department upon request. The department also shall conduct inspections as necessary in accordance with 4VAC50-20-180.

4. The owner shall ensure that the impounding structure is properly and safely maintained and operated and shall have the following documents available for inspection upon request of the department:

a. An operating plan and schedule including narrative on the operation of control gates and spillways and the impoundment drain;

b. For earthen embankment impounding structures, a maintenance plan and schedule for the embankment, principal spillway, emergency spillway, low-level outlet, impoundment area, downstream channel, and staff gages; and

c. For concrete impounding structures, a maintenance plan and schedule for the upstream face, downstream

face, crest of dam, galleries, tunnels, abutments, spillways, gates and outlets, and staff gages.

Impounding structure owners shall not permit growth of trees and other woody vegetation and shall remove any such vegetation from the slopes and crest of embankments and the emergency spillway area, and within a distance of 25 feet from the toe of the embankment and abutments of the dam.

5. The owner shall file a dam break inundation zone map developed in accordance with 4VAC50-20-54 with the department and with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides.

6. The owner shall notify the department immediately of any change in circumstances that would cause the impounding structure to no longer qualify for coverage under the general permit. In the event of a failure or an imminent failure of the impounding structure, the owner shall immediately notify the local emergency services coordinator, the Virginia Department of Emergency Management, and the department. The department shall take actions in accordance with § 10.1-608 or 10.1-609 of the Code of Virginia, depending on the degree of hazard and the imminence of failure caused by the unsafe condition.

4VAC50-20-102. Registering for coverage under the general permit for low hazard potential impounding structures.

A. Pursuant to § 10.1-605.3, an impounding structure owner may seek general permit coverage from the board for a low hazard potential impounding structure in lieu of obtaining a Low Hazard Potential Regular Operation and Maintenance Certificate in accordance with 4VAC50-20-105 or a Conditional Operation and Maintenance Certificate for Low Hazard Potential impounding structures in accordance with 4VAC50-20-150.

B. An owner shall submit a complete and accurate registration statement in accordance with the requirements of this section prior to the issuance of coverage under the general permit. A complete registration statement shall include the following:

1. The name and address of the owner;
2. The location of the impounding structure;
3. The height of the impounding structure;
4. The volume of water impounded;
5. An Emergency Preparedness Plan prepared in accordance with 4VAC50-20-101;
6. The applicable fee for the processing of registration statements as set out in 4VAC50-20-375;
7. A dam break inundation zone map completed in accordance with 4VAC50-20-54 and evidence that such

map has been filed with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides; and

8. A certification from the owner that the impounding structure (i) is classified as low hazard pursuant to a determination by the department or the owner's professional engineer in accordance with § 10.1-604.1 and this chapter; (ii) is, to the best of his knowledge, properly and safely constructed and currently has no observable deficiencies; and (iii) shall be maintained and operated in accordance with the provisions of the general permit.

4VAC50-20-103. Transitioning from regular or conditional certificates to general permit coverage for low hazard potential impounding structures.

A. Holders of a regular certificate to operate a low hazard potential impounding structure shall be eligible for general permit coverage upon the expiration of their regular certificate. In lieu of a regular certificate renewal, registration coverage materials pursuant to 4VAC50-20-102 shall be submitted to the department 90 days prior to the expiration of the regular certificate.

B. Holders of a conditional certificate to operate a low hazard potential impounding structure shall be eligible for general permit coverage upon satisfying the registration requirements for a general permit pursuant to 4VAC50-20-102.

4VAC50-20-104. Maintaining general permit coverage for low hazard potential impounding structures.

Provided that an impounding structure's hazard potential classification does not change, an owner's coverage under the general permit shall be for a six-year term after which time the owner shall reapply for coverage by filing a new registration statement and paying the necessary fee. No inspection of the impounding structure by a licensed professional engineer shall be required if the owner certifies at the time of general permit coverage renewal that conditions at the impounding structure and downstream are unchanged. If such certification is made, the owner is not required to submit an updated dam break inundation zone map.

4VAC50-20-177. Emergency Preparedness Plan for Low Hazard impounding structures.

Low Hazard impounding structures shall provide information for emergency preparedness to the department, the local organization for emergency management and the Virginia Department of Emergency Management. A form for the submission is available from the department (Emergency Preparedness Plan for Low Hazard Virginia Regulated Impounding Structures). The information shall include, but not be limited, to the following:

1. Name ~~of~~ and location information for the impounding structure, ~~inventory number~~, including city or county, and latitude; and longitude;

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~~2. Owner's name, mailing address, Name of owner and operator and associated contact information including residential and business telephone numbers; and other means of communication. Contact information shall provide for 24-hour telephone contact capability;~~

~~3. Impounding structure operator's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability. Contact information for relevant emergency responders including the following:~~

- ~~a. Local dispatch center or centers governing the impounding structure's dam break inundation zone; and~~
- ~~b. City or county emergency services coordinator's name or names;~~

~~4. Rainfall and staff gage observer's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability. Procedures for notifying downstream property owners or occupants potentially impacted by the impounding structure's failure;~~

~~5. Contact information for alternate operator and alternate rainfall and staff gage observer, if applicable; A dam break inundation zone map completed in accordance with 4VAC50-20-54 and evidence that:~~

- ~~a. Such map has been filed with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides; and~~
- ~~b. Required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management; and~~

~~6. Contact information for the local dispatch center nearest impounding structure including address and 24-hour telephone number;~~

~~7. City or county emergency services coordinator's name, mailing address, residential and business telephone numbers, and other means of communication;~~

~~8. A procedure and the responsible parties for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by the impounding structure's failure;~~

~~9. A discussion of the procedures for timely and reliable detection, evaluation, and classification of emergency situations considered to be relevant to the project setting and impounding features. Each relevant emergency situation is to be documented to provide an appropriate course of action based on the urgency of the situation;~~

~~10. A simple dam break inundation map acceptable to the director, demonstrating the general inundation that would result from an impounding structure failure. Such maps~~

~~required pursuant to this section do not require preparation by a professional licensed engineer; however, maps prepared by a licensed professional engineer are preferred;~~

~~11. Identification of public roads downstream noting the highway number and distance below the impounding structure. If roads exist, contact information for the resident Virginia Department of Transportation engineer or city or county engineer including address and 24-hour telephone numbers;~~

~~12. Amount of rainfall that will initiate a Stage II Condition in inches per six hours, inches per 12 hours, and inches per 24 hours and a Stage III Condition in inches per six hours, inches per 12 hours, and inches per 24 hours;~~

~~13. Amount of flow in the emergency spillway that will initiate a Stage II Condition in feet (depth of flow) and a Stage III Condition in feet (depth of flow);~~

~~14. Staff gage location and description; the frequency of observations by the rainfall or staff gage observer under a Stage I Condition, and Stage II Condition, and a Stage III Condition; and a clear description of an access route and means of travel during flood conditions to the impounding structure;~~

~~15. Evacuation procedures including notification, monitoring, evacuation, and reporting processes and responsibilities;~~

~~16. Evidence that the required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management; and~~

~~17. 6. Certification of the accuracy of the plan by the owner.~~

4VAC50-20-195. Judicial review.

Any owner aggrieved by a decision of the director, department, or board regarding the owner's impounding structure shall have the right to judicial review of the final decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

4VAC50-20-200. Enforcement.

The provisions of this chapter may be enforced by the board, the director, or both in any manner consistent with the provisions of the Dam Safety Act (§ 10.1-604 et seq. of the Code of Virginia). Failure to comply with the provisions of the general permit issued in accordance with 4VAC50-20-103 may result in enforcement actions, including penalties assessed in accordance with §§ 10.1-613.1 and 10.1-613.2.

Part VI Fees

4VAC50-20-340. Authority to establish fees.

Under § 10.1-613.5 of the Code of Virginia, the board is authorized to establish and collect application fees to be used for the administration of the dam safety program, administrative review, certifications, and the repair and

maintenance of impounding structures including actions taken in accordance with §§ 10.1-608, 10.1-609, and 10.1-613 of the Code of Virginia. The fees will be deposited into the Dam Safety, Flood Prevention and Protection Assistance Administrative Fund.

4VAC50-20-375. Fee for coverage under the general permit for low hazard impounding structures.

The fee for processing registration statements from impounding structure owners seeking to obtain coverage under the general permit for low hazard impounding structures shall be \$300.

4VAC50-20-395. Simplified dam break inundation zone analysis fee.

Pursuant to authority provided in § 10.1-604.1 A 1 and in accordance with 4VAC50-20-40 C, when the department receives a request from the owner of a dam to conduct a simplified dam break inundation zone analysis, the owner shall submit a fee of \$2,000 prior to the department conducting such analysis. The fee shall be submitted in accordance with 4VAC50-20-350 B and C as applicable. The fee shall be deposited into the Dam Safety Administrative Fund to be used to cover the partial cost of such analysis. Once the analysis has commenced, no analysis fee remitted to the department shall be subject to refund.

If the department attains additional efficiencies in its analysis process, the department is authorized to reduce this fee to a level commensurate with the costs.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-20)

[ACER Technical Memorandum No. 11, Downstream Hazard Classification Guidelines, December 1988, U.S. Department of the Interior, Bureau of Reclamation.](#)

[Trip Generation, 8th Ed., 2008, Institute of Transportation Engineers, 1627 Eye Street, NW, Suite 600, Washington, DC 20006.](#)

VA.R. Doc. No. R13-3054; Filed September 4, 2012, 6:34 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Reproposed Regulation

Title of Regulation: 6VAC20-171. Regulations Relating to Private Security Services (amending 6VAC20-171-10, 6VAC20-171-20, 6VAC20-171-30, 6VAC20-171-50 through 6VAC20-171-130, 6VAC20-171-160 through 6VAC20-171-200, 6VAC20-171-215 through 6VAC20-171-320, 6VAC20-171-350 through 6VAC20-171-400, 6VAC20-171-420, 6VAC20-171-445, 6VAC20-171-500, 6VAC20-171-550, 6VAC20-171-560; adding 6VAC20-171-

71, 6VAC20-171-72, 6VAC20-171-111, 6VAC20-171-115, 6VAC20-171-116, 6VAC20-171-117, 6VAC20-171-135, 6VAC20-171-305, 6VAC20-171-308, 6VAC20-171-375, 6VAC20-171-376, 6VAC20-171-395; repealing 6VAC20-171-245, 6VAC20-171-430, 6VAC20-171-440).

Statutory Authority: § 9.1-141 of the Code of Virginia.

Public Hearing Information:

December 6, 2012 - 9 a.m. - House Room D, General Assembly Building, 910 Capitol Street, Richmond, VA

Public Comment Deadline: October 24, 2012.

Agency Contact: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

Basis: The legal authority to review, amend, or revise regulations relating to private security services is found in § 9.1-141 of the Code of Virginia.

Purpose: The purpose of this regulatory action is a comprehensive review and amendment of existing regulations. This review and recommended amendments are based on legislative actions that require development of regulations for locksmiths as well as further development of regulations relating to detective canine handlers. In addition to recent legislative actions, a comprehensive review will amend and revise the rules mandating and prescribing standards, requirements, and procedures that serve to protect the citizens of the Commonwealth from unqualified, unscrupulous, and incompetent persons engaging in the activities of private security services.

This regulatory action is essential to protect the health, safety, and welfare of citizens who utilize the various categories of private security services by establishing the regulatory requirements for locksmiths and detector canine handlers. These regulations ensure they have a criminal background check, meet minimum training standards, and are held to prescribed standards of conduct. Knowing that locksmiths and detector canine handlers have met these regulatory requirements increases the public trust and brings credibility to the industry. The revised firearms training requirements directly increases the level of competence for individuals who utilize firearms in a private security defined field. The additional training should have a direct impact in the reduction of accidental discharges of firearms.

Substance: While all areas of the regulations will be subject to this comprehensive review, the substance of this review is to include a permanent regulatory scheme for locksmiths and detector canine handlers, examiners, and teams operating within the Commonwealth. This review will focus on reevaluating the existing licensure, registration, certification, and training requirements; procedures; fees; administrative requirements; and standards of conduct.

6VAC20-171-10 – Definitions: Definitions have been inserted or amended in regard to the regulatory program

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established for locksmiths and detector canine handlers and examiners in accordance with § 9.1-138 et seq. of the Code of Virginia. Other amendments to the definitions are based on terminology related to firearms training and variances in methods of conducting training.

6VAC20-171-20 – Fees. Amendments to the fee structure include an option for businesses to obtain a one-year or two-year initial license, an increase in the firearms endorsement fee, an additional category fee for training schools and instructors, and a separation of certification applications fees and required regulatory compliance training fees. The electronic roster submittal fee has been deleted and instructor training development fees have been removed from the regulation. There is also a new manual processing service fee for applications not submitted by available electronic methods. Other amendments involve a restructuring of the fee schedule for clarity.

6VAC20-171-30 – Fingerprint processing. Amendments are included to reflect the current criminal history records search process utilized by the department.

6VAC20-171-50 – Initial business license application. The amendments incorporate the new categories of locksmith and detector canine business as well as clarify what constitutes a legal entity change thus requiring a new license.

6VAC20-171-70 – Compliance agent. This section has been amended to clarify the application process and requirements for a compliance agent. Two new sections have been inserted (6VAC20-171-71 – Compliance Agent Certification Renewal Requirements and 6VAC20-171-72 – Compliance Agent Regulatory Compliance Training Requirements). The amendments do not make any major changes to the requirements but provide clarity for the process and make the process inclusive in one article of the regulations compared to being spread throughout the document.

6VAC20-171-80 to 6VAC20-171-90 – Training school certification. The proposed regulations establish the categories of training in which schools will be required to submit a category of training fee depending on the number of training categories provided by the training school. Language is included to clarify what constitutes a legal entity change.

6VAC20-171-100 to 6VAC20-171-111 – Instructor Certification. Amendments include a new category of training fee, range qualification requirements for firearms instructors, and new training requirements to include regulatory compliance training and continuing education. Inserting a new section 6VAC20-171-111 provides clarity and makes the process inclusive in one article of the regulations.

6VAC20-171-115 to 6VAC20-171-117 – Detector Canine Handler Examiner Certification. The new sections establish the initial, renewal, and training requirements for certification.

6VAC20-171-120 to 6VAC20-171-130 – Private Security Services Registration. The amendments include the new

categories of registration for locksmiths and detector canine handlers and include the requirement of a photo submission by the applicant.

6VAC20-171-135 – Firearms endorsements. This new section clarifies the process of obtaining a firearms endorsement and makes the process inclusive within one article of the regulations. It also establishes a timeframe in which retraining must be taken.

6VAC20-171-180 – Reinstatement. Amendments to the reinstatement procedures have been inserted that allow a company to continue to operate during the reinstatement period and establish continued authority by the department.

6VAC20-171-190 – Renewal extension. Amendments include a broader description of emergency temporary assignments to include purposes of natural disaster, homeland security, or document threat. Language has been inserted that allows the department to waive the requirement of submittal prior to expiration with justification and establishes the timeframe for which an exemption may be issued.

6VAC20-171-200 – Denial, probation, suspension and revocation. This section includes an amendment in which the last known employing business or training school will be notified if an employee of the company is subject to disciplinary action by the department.

6VAC171-220 to 6VAC20-171-280 – Administrative requirements and standards of conduct. Amendments reflect new administrative requirements and standards of conduct for businesses, compliance agents, training schools, training school directors, and instructors. These amendments include the removal of a provision that a business license or training school certification is null and void due to a lapse of insurance and inserts a clause that each day of uninsured activity would be construed as an individual violation. New provisions have been inserted for reporting requirements upon termination of a compliance agent or training school director. Administrative requirements to maintain (i) a use of force policy, (ii) records for employees carrying intermediate weapons, and (iii) records in regard to detector canine handler teams have been added for businesses.

Additional standards of conduct have been included to prohibit acting as an ostensible licensee for undisclosed persons; providing false or misleading information; refusing to cooperate with an investigation; or for providing materially incorrect, misleading, incomplete, or untrue information to the department.

A provision has been added to establish standards of conduct pertaining to authorized access to the department's licensing database, and additional reporting requirements have been added for training schools and school personnel regarding range qualification failures.

Other minor amendments ensure concise language for clarity and consistency.

6VAC20-171-305 – Online service training programs. This new section establishes the requirements for a school to offer online in-service training sessions.

6VAC20-171-308 – Detector canine handler examiners. This new section establishes the administrative requirements and standards of conduct for detector canine handler examiners.

6VAC20-171-310 through 6VAC20-171-320 – Registered personnel administrative requirements and standards of conduct. The proposed regulations add a requirement that personnel who carry or have access to a patrol rifle while on duty must have written authorization from their employer and include additional standards of conduct to prohibit providing false or misleading information or providing materially incorrect, misleading, incomplete, or untrue information to the department.

6VAC20-171-350 – Entry-level training. The entry-level training has been restructured to include specific courses and hours for clarity. In addition, the minimum course and hour requirements for locksmiths and detector canine handlers have been added. The compulsory minimum training standards for armed security officers has increased from 40 hours to 50 hours due to an increase in firearms training hours and the hours for shotgun entry-level training have increased from two to three hours. Entry-level training was amended to include The Seven Signs of Terrorism to the minimum training standards. This is a direct result of a recommendation from the Commonwealth Preparedness Panel in order to strengthen the support role of private security practitioners in the Commonwealth's Critical Infrastructure Protection and Resiliency Strategic Plan.

The course content has been amended to reflect minor changes to the content for armed security officer classroom training, and the hour requirements for each individual section of a course has been removed. The proposed regulations reflect the course content for locksmiths and detector canine handler examiners and all training provisions for compliance agents has been deleted and added to 6VAC20-171-70 through 6VAC20-171-72.

6VAC20-171-360 – In-service training. The amendments include in-service training requirements for locksmiths and detector canine handlers and combines the course content and minimum hour requirements within one section.

6VAC20-171-365 through 6VAC20-171-400 – Firearms training. The entry-level firearms training compulsory minimum training standards have been amended. An enhanced firearms training for armed security officers/couriers and personal protection specialists has been inserted (6VAC20-171-375) and reflects an increase of eight hours of training compared to the entry-level firearms training for all other armed registered categories. The entry-level handgun range qualification has been moved to a new section for clarity purposes (6VAC20-171-376) and a new course of fire has been inserted.

The advanced firearms training compulsory minimum training standards for personal protection specialists have been amended. The topics have been amended to address concealed carry laws and use of force. The hours are reduced due to the removal of duplicate training objectives already addressed in the basic firearms training requirements, which is a prerequisite for the advanced handgun training.

The shotgun minimum training standards and course of fire have been amended, which increases the classroom training by two hours.

A new section has been created to address entry-level patrol rifle training (6VAC20-171-395) and includes the classroom training and course of fire.

Amendments to firearms retraining increases the classroom hours to four hours for all armed registered personnel with the exception of personal protection specialists who must complete advanced firearms retraining. This is a new requirement for the armed security officers.

6VAC20-171-430-440 – Entry-level security canine handler training. This section has been repealed and the provisions are now included in the entry-level and in-service training sections for registered personnel under 6VAC20-171-350 and 6VAC20-171-360.

6VAC20-171-500 – Disciplinary action; sanctions; publication of records. An additional sanction - the use of conditional agreements - has been added to the list of sanctions that the department may impose for a violation or noncompliance.

Issues: The primary advantage of implementing the new provisions presented in the repropoed regulation is to provide necessary public protection tasked through existing statutes. Advantages to the public and the Commonwealth are to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in activities of private security services in the Commonwealth. The goal of these amended regulations is to ensure that (i) eligible individuals in the private security services industry receive compulsory minimum training and abide by established standards of conduct and (ii) individuals with certain criminal history records, or who are in violation of rules established for public safety, are prohibited from performing private security services.

The establishment of these regulations does not pose any disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to requirements for periodic review, the Board of Criminal Justice Services (Board) proposes to amend its Regulations Relating to Private Security Services. Amongst the substantive changes in this regulatory action, the Board proposes to replace emergency regulations that govern locksmiths (pursuant to Chapter 638 of the 2008 Acts of the

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Assembly) and add new regulations for detector canine handlers and detector canine handler examiners (pursuant to Chapter 470 of the 2004 Acts of the Assembly). The Board also proposes to:

- Rewrite firearms endorsement requirements to include three levels of handgun training and increase training requirements for security officers/couriers to include 10 more hours of firearms training,
- Increase the hours of training needed for a shotgun endorsement from two to three,
- Increase the hours needed for renewal of other types of firearms endorsement from two to four,
- Add new requirements for patrol rifle training,
- Allow businesses that are applying for initial licensure to choose to be licensed for one or two years before they must renew,
- Add a \$5 manual processing fee for applications not submitted through available electronic means,
- Increase the firearms endorsement fee from \$10 to \$15 per year,
- Charge training schools a \$50 fee for each training category rather than the flat \$500 fee they currently pay for approval of training materials and charge instructors \$10 per category for each addition certification category,
- Decrease fees for initial compliance agent certification and compliance agent certification renewal and
- Require instructors and examiners to complete regulatory compliance entry level and in-service training (fees added for these categories).

Result of Analysis. The benefits likely exceed the costs for some of these proposed changes. The costs likely exceed the benefits for at least one of these proposed changes. For several other regulatory changes, there is insufficient information to ascertain whether benefits outweigh costs. All benefits and costs are discussed below.

Estimated Economic Impact. Pursuant to Chapter 638 of the 2008 Acts of the Assembly, the Board promulgated emergency regulations for registration of locksmiths in July 2008. The Board now proposes permanent regulation to replace the emergency regulations that expired on December 30, 2009.

Under these proposed regulations, locksmiths will have to complete 20 hours of initial training (2 hours of training on applicable Virginia law and 18 hours on subject matter training), pass an exam, and pay a \$25 initial registration fee for a registration that is valid for two years. Fees for initial training range between \$200 and \$325, depending on which private training school is offering it. Every biennium, registered locksmiths will have to complete four hours of continuing education and pay a \$20 fee to renew their registration. Fees for continuing education range between \$89 and \$125. As provided by Chapter 638, locksmiths who have

actively and continuously provided locksmith services for two or more years prior to July 1, 2008 are exempt from the initial training requirements.

In order to get an initial business license, locksmith businesses will have to 1) provide fingerprints for each principal owner and supervisor of the applying business (\$50 per fingerprint card), 2) show evidence of a surety bond of at least \$100,000 or a liability insurance policy with minimum coverages of \$100,000 and \$300,000, 3) complete an irrevocable consent form for the Department of Criminal Justice Services (DCJS) to serve as service agent for all actions filed in any court in the Commonwealth, 4) designate an employee as a compliance agent who will make sure the business complies with applicable laws and regulations and 5) pay a fee of either \$550 for an initial license valid for one year or \$800 for an initial license valid for two years. This fee covers business licensure for one category; each additional category adds \$50 to the cost of the business license. Businesses will have to pay \$500 for renewal of licensure at the time their initial license expires.

DCJS reports that the legislature recently required registration of locksmiths in order to protect the public from incompetent or unqualified persons who were in the locksmith trade. To the extent that regulation achieves this goal, the public will benefit from locksmiths being required to register. Locksmiths who choose to become registered will benefit from a likely decrease in the number of individuals who practice this trade in direct competition with them. It is not entirely clear that these benefits outweigh the costs, both direct and indirect, that will be accrued by licensed locksmith businesses and registered locksmiths. Direct costs include fees for licensure and/or registration and fees for classes. Indirect costs include the value of time spent attending classes and studying for and taking exams. In particular, the costs of business licensure may prove too onerous for some single proprietor locksmiths. The number of individuals who work as locksmiths is very likely to fall on account of licensure requirements.

Currently, these regulations do not include provisions for registration of detector canine handlers and certification of detector canine handler examiners. Pursuant to Chapter 470 of the 2004 Acts of the Assembly, the Board now proposes to add provisions that will govern registration, certification, and licensure for these groups.

The Board proposes to require detector canine handlers to complete 160 hours of initial training (2 hours of training on applicable Virginia law and 158 hours on subject matter training), pass an exam, and pay a \$25 for initial registration. DCJS reports that this training will cost approximately \$1,000 per 40 hour week of training. Detector canine handlers who have already completed training that would be equivalent to that required by the Board will be able to pay an entry level partial-training exemption fee of \$25 and the initial registration fee in order to gain their registration. DCJS staff

believes that most individuals who would seek registration already have national certification that is at least equivalent to the initial training required in these proposed regulations.

These training requirements seem to be approximately equivalent to what is required for police detector canine handlers. Given the nature of the relationship that must be fostered between a canine and its handler, and the repetition of exercises that is necessary to teach an animal to reliably perform a task, the benefits of requiring training before registration likely outweigh the costs of that training (and registration).

If detector canine handlers are business proprietors rather than employees of a business, they will need to meet the Board's requirements for business licensure (see explanation of locksmith business licensure above) and must complete regulatory compliance agent certification training (\$50 initial certification fee). These individuals will have to renew their licenses at the end of the initial licensure term (\$500 fee) and will have to complete compliance agent in-service (continuing education) every two years (\$25 fee).

Under the Board's proposal, detector canine handler examiners must 1) be at least 18 years old, 2) have a high school diploma or GED, 3) have a minimum of five years of experience as a detector canine handler and a minimum of two years experience as a detector canine trainer, 4) be certified as a detector canine handler examiner by a Board recognized national certification organization, a division of the United States military or other formal entity or by a certified DCJS private security services detector canine handler examiner, 5) pass an exam, 6) provide fingerprints to DCJS (\$50 fee) and 7) pay the initial certification fee of \$50 in order to get a certification that is valid for two years. Within 12 months of initial certification, examiners will have to satisfactorily complete regulatory compliance training (\$75 fee). In order to renew certification, these examiners must either have maintained certification under these regulations or complete 16 hours of continuing education before they recertify every two years (application fee \$25) and complete regulatory compliance in-service training (\$50 fee). No costs for continuing education are available but, given the number of hours required for those who have not maintained their certification, these costs will likely be more than several hundred dollars.

To the extent that requiring detector canine handler examiners to be certified improves the quality of the services they offer, the public will benefit from these regulatory changes. There is insufficient information to gauge whether these benefits outweigh the costs listed above.

Nothing in these proposed regulations would explicitly prohibit examiners from forming a business rather than working for another business or training school. There does appear to be an oblique assumption, in the regulations' Administrative Requirements and Behavior Standards, that examiners will be working for a business or training school

licensed by the Board. These regulations as currently proposed would appear not to require examiner businesses to be licensed by the Board.

Current regulations include provision for two levels of firearms training in order to gain a firearms endorsement. All registrants, except for personal protection specialists, must currently complete entry-level handgun training (14 hours training). Personal protection specialists must currently complete both entry-level handgun training and advanced handgun training (24 hours training) in order to gain a firearms endorsement. An endorsement that allows the registrant to use a shotgun requires two extra hours of training. There currently is no specifically required training for patrol rifles.

The Board proposes to modify these firearms training requirements so that handgun training is separated into three classes. All registrants but armed security officers, armed couriers, and personal protection specialists who are seeking a firearms endorsement must complete fundamental handgun training (14 hours training). Armed security officers and armed couriers who are seeking a firearms endorsement have to complete basic handgun training (24 hours training). Personal protection specialists must complete both basic and advanced handgun training (14 hours training). The Board proposes to increase the training required to carry a shotgun from two to three hours and increase the hours needed annually to renew other firearms endorsements from two to four. The Board also proposes to add a 16 hour training requirement for patrol rifles.

These changes will increase the hours of handgun training needed by armed security officers and armed couriers for firearms endorsement by ten but will leave the hours of handgun training needed for other registrants unchanged. Any individuals who will seek an initial shotgun endorsement in the future will have to complete three hours of training rather than the currently required two hours. Individuals seeking to renew any other category of firearms endorsement will see the hours of training needed double from two to four hours. Any individuals who have been able to carry patrol rifles under current endorsement requirements will now have to pay for, and complete, 16 extra hours of training.

Estimates found online for firearms training indicate that training for each category of firearm will likely cost between \$100 and \$200 (but will likely be less for the additional two hours of retraining per category that will be required). Registrants will incur direct costs for additional training as well as indirect costs for the time spent on training. DCJS staff reports that the Board believes additional training for armed security officers and armed couriers is needed to ensure the safety of the public that these individuals work around. There is insufficient information to ascertain whether the benefits of additional public safety outweighs the costs of the 10 extra training hours required.

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The Board proposes to require 16 hours of training for the additional patrol rifle endorsement (as compared to the three hours of training required for the additional shotgun endorsement). It also proposes to require a higher accuracy for range qualification than is required for either handguns or shotguns (85% versus 75%-79% and 70% respectively). The differential 13 hours of classroom training would likely only be justified if there was little or no carryover value from entry-level handgun training to patrol rifle training that could be assumed to exist for the required shotgun training (or if patrol rifles are much harder weapons to learn and operate). Although Board staff reports that experts on the Board believe the additional hours of training are necessary, there does not appear to be any quantifiable evidence that would support requiring more than five times as much training for patrol rifles. Although the Board has relaxed the range standard for patrol rifles from the initially proposed 100% accuracy, this standard still exceeds the standard imposed by surveyed local police departments (which ranged between 70% and 80%). Because the Board is imposing much more stringent standards for patrol rifles than other weapons, costs likely outweigh benefits for these proposed changes.

Currently, private security firms pay \$800 for a business license that is valid for two years and \$500 for renewal of that license every two years, thereafter. The Board proposes to allow firms the option of getting an initial license for \$550 that will be valid for a year or paying \$800 for a two year license. The biennial license renewal fee would remain \$500. While the average annual cost over time would be the same no matter which initial license is chosen, firms will benefit from the ability to defer costs. The proposed change will give firms greater flexibility to plan expenses.

The Board proposes to add a \$5 fee for applications that are not submitted through available electronic means and to increase the firearms endorsement fee from \$10 to \$15. The manual processing service fee is being proposed to encourage applicants to use Board resources that are less costly and more efficient. Since the fee will only apply if there are available electronic submission means, regulated entities are unlikely to incur this cost unless they feel that they benefit from doing so.

Currently, training schools pay a fee of \$800 for initial licensure and a fee of \$500 for electronic roster submittal authorization. The Board proposes to eliminate the electronic roster submittal authorization and instead charge training schools a \$50 fee for each category of training offered past the first one (which is included in the licensure fee). There are nine categories of training so training schools would incur costs of only \$400 if they taught all categories. Training schools will save between \$100 and \$500 on account of this proposed regulatory change.

Similarly, the Board proposes to cut the fees for instructor certification and compliance agent certification in half and implement an instructor certification category fee of \$10.

Initial instructor certification will decrease from \$100 to \$50 and instructor certification renewal will decrease from \$50 to \$25. Instructors will pay a \$10 fee for each training category past the first for which certification is sought. Initial compliance agent certification will also decrease from \$100 to \$50 and compliance agent renewal will decrease from \$50 to \$25 but training will no longer be included in these fees. Compliance agent certification and training are being separated because private firms can now offer DCJS training online. Compliance agents will get a net benefit from this change only if training costs do not exceed what they will be saving in certification fees. This proposed change will likely save most instructors money.

Businesses and Entities Affected. These proposed changes will affect all entities that are subject to the Regulations Relating to Private Security Services. DCJS reports that these entities include 2,000 private security services businesses, 41,000 individual registrants (9,750 of which have firearms endorsements), 2,416 compliance officers, 488 instructors and 128 private security services training schools.

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

Projected Impact on Employment. The number of locksmiths practicing in the Commonwealth will likely be smaller on account of the costs imposed by these proposed regulations.

Effects on the Use and Value of Private Property. The value of locksmith businesses will likely decrease on account of these proposed regulations.

Small Businesses: Costs and Other Effects. Small business locksmiths, detector canine handlers, and detector canine handler examiners will incur costs for initial registration, registration renewal, Board business licensure and business licensure renewal as listed above. Armed security officers and armed couriers will incur costs for completing 10 extra hours of firearms training, and two extra hours of firearms retraining (for each category of firearm). Instructors and detector canine handler examiners will incur costs for regulatory compliance training.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Instead of requiring instructors and examiners to complete a regulatory compliance course and then pass a test, the Board might allow these entities to just take the test. The Board might also allow these entities to attest on their applications that they have read and understand relevant regulations and laws, as is allowed by several other regulatory boards in the Commonwealth. The Board also might consider alternate, less expensive, requirements for private security businesses where the registrant is the only employee.

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

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

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis of the Department of Planning and Budget.

Summary:

The repropoed regulation establishes a licensure, registration, and certification process for locksmiths pursuant to Chapter 638 of the 2008 Acts of Assembly and for detector canine handlers and detector canine handler examiners pursuant to Chapter 470 of the 2004 Acts of Assembly. The regulation establishes a regulatory fee structure; compulsory minimum entry-level training standards, including firearms training and qualifications; standards of conduct; and administration of the regulatory system.

Additionally, amendments (i) rewrite firearms endorsement requirements to include three levels of handgun training and increase training requirements for security officers/couriers to include 10 more hours of firearms training, (ii) increase the hours of training needed for a shotgun endorsement from two to three, (iii) increase the hours needed for renewal of other types of firearms endorsement from two to four, (iv) add new requirements for patrol rifle training, (v) allow businesses that are applying for initial licensure to choose to be licensed for one or two years before they must renew, (vi) add a \$5.00 manual processing fee for applications not submitted through available electronic means, (vii) increase the

firearms endorsement fee from \$10 to \$15 per year, (viii) charge training schools a \$50 fee for each training category rather than the flat \$500 fee they currently pay for approval of training materials and charge instructors \$10 per category for each addition certification category, (ix) decrease fees for initial compliance agent certification and compliance agent certification renewal, and (x) require instructors and examiners to complete regulatory compliance entry level and in-service training (fees added for these categories).

Part I
Definitions

6VAC20-171-10. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Alarm respondent" means a natural person who responds to the signal of an alarm for the purpose of detecting an intrusion of the home, business or property of the end user.

"Armed" means a private security registrant who carries or has immediate access to a firearm in the performance of his duties.

"Armed security officer" means a natural person employed to (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect, and who carries or has access to a firearm in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another money, negotiable instruments or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

"Assistant [training] school director" means a certified instructor designated by a private security training school director to submit training school session notifications and training rosters and perform administrative duties in lieu of the director.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Business advertising material" means display advertisements in telephone directories, letterhead, business cards, local newspaper advertising and contracts.

"Central station dispatcher" means a natural person who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; used to prevent or detect intrusion; or used primarily to summon aid for other emergencies.

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"Certification" means a the method of regulation indicating that qualified persons have met the minimum requirements as private security services training schools, private security services instructors, ~~or~~ compliance agents, or certified detector canine handler examiners.

"Certified training school" means a training school that is certified by the department for the specific purpose of training private security services business personnel in at least one category of the compulsory minimum training standards.

"Class" means a block of instruction no less than 50 minutes in length on a particular subject.

"Classroom training" means instruction conducted by an instructor in person to students in an organized manner utilizing a lesson plan.

~~"Combat loading" means tactical loading of shotgun while maintaining coverage of threat area.~~

"Compliance agent" means a natural person who is an owner of, or employed by, a licensed private security services business. The compliance agent shall assure the compliance of the private security services business with all applicable requirements as provided in § 9.1-139 of the Code of Virginia.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

~~["Cruiser safe" means the chamber is empty, the action of the shotgun is closed and locked, and magazine tube is loaded.]~~

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

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

"Detector canine" means any dog that detects drugs or explosives.

"Detector canine handler" means any individual who uses a detector canine in the performance of private security services.

"Detector canine handler examiner" means any individual who examines the proficiency and reliability of detector canines and detector canine handlers in the detection of drugs or explosives.

"Detector canine team" means the detector canine handler and his detector canine performing private security duties.

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

~~"Electronic roster submittal" means the authority given to the training director or assistant training director of a private security training school, after they have submitted an application and the required nonrefundable fee, to submit a~~

~~training school roster to the department electronically through the department's online system.~~

"Electronic images" [~~mean means~~] an acceptable method of maintaining required documentation [~~for private security services licensed businesses and certified training schools~~] through the scanning, storage, and maintenance of verifiable electronic copies of original documentation.

"Electronic security business" means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user; (ii) respond to or cause a response to electronic security equipment for an end user; or (iii) have access to confidential information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security employee" means a natural person who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security equipment" means electronic or mechanical alarm signaling devices, including burglar alarms or holdup alarms or cameras used to detect intrusion, concealment or theft to safeguard and protect persons and property. This shall not include tags, labels, and other devices that are attached or affixed to items offered for sale, library books, and other protected articles as part of an electronic article surveillance and theft detection and deterrence system.

"Electronic security sales representative" means a natural person who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means a natural person who installs, services, maintains or repairs electronic security equipment.

"Electronic security technician's assistant" means a natural person who works as a laborer under the supervision of the electronic security technician in the course of his normal duties, but who may not make connections to any electronic security equipment.

"Employed" means an employer/employee relationship where the employee is providing work in exchange for compensation and the employer directly controls the employee's conduct and pays taxes on behalf of the employee. The term "employed" shall not be construed to include independent contractors.

"Employee" means a natural person employed by a licensee to perform private security services that are regulated by the department.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Engaging in the business of providing or undertaking to provide private security services" means any person who

solicits business within the Commonwealth of Virginia through advertising, business cards, submission of bids, contracting, public notice for private security services, directly or indirectly, or by any other means.

["Entry-level training" means the compulsory initial training for registered categories and basic or intermediate firearms training standards adopted by the board for private security services business personnel who are either new registrants or failed to timely complete in-service within the prescribed time period.]

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in this chapter.

"Firearms training verification" means verification of successful completion of ~~either~~ initial or retraining requirements for handgun, ~~or~~ shotgun, ~~or~~ patrol rifle training, ~~or both~~.

"Firm" means a business entity, regardless of method of organization, applying for ~~a~~ an initial or renewal private security services business license or ~~for the renewal or reinstatement of same~~ private security services training school certification.

"Incident" means an event that exceeds the normal extent of one's duties.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"Intermediate weapon" means a tool not fundamentally designed to cause deadly force with conventional use. This would exclude all metal ammunition firearms or edged weapons. These weapons include but are not limited to baton/collapsible baton, chemical irritants, electronic restraining devices, projectiles, and other less-lethal weapons as defined by the department.

"Job-related training" means training specifically related to the daily job functions of a given category of registration or certification as defined in this chapter. [Certifiable job-related training may include a maximum of one hour of instruction dedicated to the review of regulations.]

"Key cutting" means making duplicate keys from an existing key and includes no other locksmith services.

"License number" means the official number issued to a private security services business licensed by the department.

"Licensed firm" means a business entity, regardless of method of organization, which holds a valid private security services business license issued by the department.

"Licensee" means a licensed private security services business.

~~"Locksmith security equipment" means mechanical, electrical or electro mechanical locking devices for the control of ingress or egress that do not primarily detect intrusion, concealment and theft.~~

"Locksmith" means any individual that performs locksmith services, or advertises or represents to the general public that the individual is a locksmith even if the specific term locksmith is substituted with any other term by which a reasonable person could construe that the individual possesses special skills relating to locks or locking devices, including use of the words lock technician, lockman, safe technician, safeman, boxman, unlocking technician, lock installer, lock opener, physical security technician, or similar descriptions.

"Locksmith services" mean selling; servicing; rebuilding; repairing; rekeying; repining; changing the combination to an electronic or mechanical locking device; programming either keys to a device or the device to accept electronic controlled keys; originating keys for locks or copying keys; adjusting or installing locks or deadbolts, mechanical or electronic locking devices, egress control devices, safes, and vaults; or opening, defeating or bypassing locks or latching mechanisms in a manner other than intended by the manufacturer with or without compensation for the general public or on property not his own nor under his own control or authority.

["Network administrator" means an individual designated by a certified training school that provides online training who serves as the technical contact between the department and the certified training school.]

"Official documentation" means personnel records; DD214; copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive compensation for employment for which a registration or certification is required.

"On-line training" means training approved by the department and offered via the Internet or an Intranet for the purpose of remote access on-demand or long distance training that meets all requirements for compulsory minimum training standards.

["~~Open breach loading" means a method of loading or reloading an empty shotgun with the bolt open.~~]

"Performance of his duties" means on duty in the context of this chapter.

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"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Personal protection specialist" means any natural person who engages in the duties of providing close protection from bodily harm to any person.

"Physical address" means the location of the building that houses a private security services business or training school, or the location where the individual principals of a business reside. A post office box is not a physical address.

"Principal" means any sole proprietor, individual listed as an officer or director with the Virginia State Corporation Commission, board member of the association, or partner of a licensed firm or applicant for licensure.

"Private investigator" means any natural person who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, security officers, personal protection specialists, private investigators, couriers, security canine handlers, security canine teams, detector canine handlers, detector canine teams, alarm respondents, locksmiths, central station dispatchers, electronic security employees, electronic security sales representatives or electronic security technicians and their assistants to another person under contract, express or implied.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, security canine handler, detector canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security employee, electronic security sales representative, electronic security technician or electronic security technician's assistant.

"Private security services instructor" means any natural person certified by the department to provide mandated instruction in private security subjects for a certified private security services training school.

"Private security services registrant" means any qualified individual who has met the requirements under Article 6 (6VAC20-171-120 et seq.) of Part III of this chapter to perform the duties of alarm respondent, locksmith, armored car personnel, central station dispatcher, courier, electronic security sales representative, electronic security technician, electronic security technician's assistant, personal protection specialist, private investigator, security canine handler,

detector canine handler, unarmed security officer or armed security officer.

"Private security services training school" means any person certified by the department to provide instruction in private security subjects for the training of private security services business personnel in accordance with this chapter.

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth or providence as established by agreements approved by the board.

"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth or providence as established by agreements approved by the board.

"Registration" means a method of regulation which identifies individuals as having met the minimum requirements for a particular registration category as set forth in this chapter.

"Registration category" means any one of the following categories: (i) unarmed security officer and armed security officer/courier, (ii) security canine handler, (iii) armored car personnel, (iv) private investigator, (v) personal protection specialist, (vi) alarm respondent, (vii) central station dispatcher, (viii) electronic security sales representative, ~~or~~ (ix) electronic security technician, ~~or~~ (x) electronic security technician's assistant, (xi) detector canine handler or (xii) locksmith.

["Related field" means any field with training requirements, job duties, and experience similar to those of the private security services field in which the applicant wishes to be licensed, certified, or registered. This includes, but is not limited to, law enforcement and certain categories of the military.]

"Security canine" means a dog that has attended, completed, and been certified as a security canine by a certified security canine handler instructor in accordance with approved department procedures and certification guidelines. "Security canine" shall not include detector dogs.

"Security canine handler" means any natural person who utilizes his security canine in the performance of private security duties.

"Security canine team" means the security canine handler and his security canine performing private security duties.

"Session" means a group of classes comprising the total hours of mandated compulsory minimum training standards in any of the following categories: ~~unarmed security officer, armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, electronic security technician's assistant or compliance agent of licensure, registration, or certification in accordance with this article and in accordance with §§ 9.1-150.2, 9.1-185.2 and 9.1-186.2 of the Code of Virginia.~~

"Supervisor" means any natural person who directly or indirectly supervises registered or certified private security services business personnel.

"This chapter" means the Regulations Relating to Private Security Services (6VAC20-171) as part of the Virginia Administrative Code.

"Training certification" means verification of the successful completion of any training requirement established in this chapter.

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

"Training school director" means a natural person designated by a principal of a certified private security services training school to assure the compliance of the private security services training school with all applicable requirements as provided in the Code of Virginia and this chapter.

"Unarmed security officer" means a natural person who performs the function of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect, and who does not carry or have access to a firearm in the performance of his duties.

"Uniform" means any clothing with a badge, patch or lettering which clearly identifies persons to any observer as private security services business personnel, not law-enforcement officers.

Part II
Application Fees

6VAC20-171-20. Fees.

A. Schedule of fees. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing, registration, certification and other administrative requests for services relating to private security services.

CATEGORIES	FEEES
<u>CRIMINAL HISTORY RECORDS CHECK</u>	
<u>Fingerprint Processing Application</u>	<u>\$50</u>
Initial business license	\$800
<u>1 Year License</u>	<u>\$550</u>
<u>2 Year License</u>	<u>\$800</u>
Business license renewal (<u>2 Year License</u>)	\$500
Business license category fee	\$50
<u>CERTIFICATIONS</u>	
Initial compliance agent certification	\$100 <u>\$50</u>

(includes training)	
Compliance agent certification renewal (includes training)	\$50 <u>\$25</u>
Initial registration	\$25
Registration renewal	\$20
Firearms endorsement (annual)	\$10
Initial training school	\$800
Training school renewal	\$500
<u>Training school category fee</u>	<u>\$50</u>
Training school electronic roster submittal authorization	\$500
Initial instructor certification	\$100 <u>\$50</u>
Instructor certification renewal	\$50 <u>\$25</u>
<u>Instructor certification category fee</u>	<u>\$10</u>
<u>Initial Detector Canine Handler Examiner certification</u>	<u>\$50</u>
<u>Detector Canine Handler Examiner Certification renewal</u>	<u>\$25</u>
Initial certification	\$25
Certification renewal	\$20
REGISTRATION	
<u>Initial registration</u>	<u>\$25</u>
<u>Registration renewal</u>	<u>\$20</u>
<u>Additional registration category form</u>	<u>\$20</u>
<u>Replacement photo identification</u>	<u>\$20</u>
TRAINING RELATED	
<u>Firearm Endorsement</u>	[\$30 <u>\$15</u>]
Application for <u>Entry-level partial-training exemption</u>	<u>\$25</u>
<u>In Service Training Alternative Credit Evaluation</u>	<u>\$25</u>
<u>Regulatory Compliance entry-level training</u>	<u>\$75</u>
<u>Regulatory Compliance In-service training</u>	<u>\$50</u>
Fingerprint card processing	\$50
<u>Additional registration category form</u>	<u>\$20</u>
Replacement photo identification letter	\$15

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[Training completion roster form	\$30]
General instructor development course	\$300
General instructor in service training	\$50
Firearms instructor development course	\$300
Firearms instructor in service training	\$50
Technical assistant training	\$50

B. Reinstatement fee.

1. The department shall collect a reinstatement fee for registration, license, or certification renewal applications not received on or before the expiration date of the expiring registration, license, or certification pursuant to 6VAC 20-171-180.

2. The reinstatement fee shall be 50% above and beyond the renewal fee of the registration, license, certification, or any other credential issued by the department wherein a fee is established and renewal is required.

C. Dishonor of fee payment due to ~~non~~sufficient insufficient funds.

1. The department may suspend the registration, license, certification, or authority it has granted any person, ~~licensee or registrant~~ who submits a check or similar instrument for payment of a fee required by statute or regulation which is not honored by the financial institution upon which the check or similar instrument is drawn.

2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the person, registrant or licensee may request that the suspended registration, license, certification, or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation [~~accompany~~ accompanies] the request. Suspension under this provision shall be exempt from the Administrative Process Act.

D. Manual processing service fee. The department shall collect a [~~\$20~~ \$5.00] service fee for any applications under this chapter that are submitted to the department by other means than the available electronic methods established by the department.

Part III

Applications Procedures and Requirements

Article 1

Criminal History Records Search

6VAC20-171-30. Fingerprint processing.

A. On or before the first date of hire, each person applying for licensure as a private security services business, including principals, supervisors, and electronic security employees; certification as a private security services training school;

certification as a compliance agent, detector canine handler examiner or instructor; or a private security registration ~~or private security certification~~ shall submit to the department:

1. ~~Two~~ One completed fingerprint ~~cards~~ card provided by the department or another electronic method approved by the department;
2. A fingerprint processing application;
3. The applicable, nonrefundable fee; and
4. All criminal history conviction information on a form provided by the department.

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual or individuals have a record of conviction.

C. Fingerprints cards found to be unclassifiable will ~~be returned to the applicant. Action on the application will be suspended~~ suspend all action on the application pending the ~~resubmittal~~ resubmission of a classifiable fingerprint ~~cards~~ card. The applicant shall be so notified in writing and ~~shall~~ must submit a new fingerprint ~~cards~~ card and the applicable, ~~nonrefundable fee to the department~~ card within 30 days of notification before the processing of his application shall resume. ~~However, no such fee may be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted and the department is not assessed additional processing fees. If a fingerprint card is not submitted within the 30 days, the initial fingerprint application process will be required to include applicable application fees.~~

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial. The compliance agent will also be notified in writing by DCJS that the applicant has been denied.

E. Fingerprint applications will be [~~only~~] active for 120 days from [the date of] submittal. Application for licenses, registrations, and certifications must be submitted within that 120-day period or initial fingerprint submittal will be required.

Article 2

Private Security Services Business License

6VAC20-171-50. Initial business license application.

A. Prior to the issuance of a business license, the applicant shall meet or exceed the requirements of licensing and application submittal to the department as set forth in this section.

B. Each person seeking a license as a private security services business shall file a completed application provided by the department including:

1. For each principal and supervisor of the applying business, their fingerprints pursuant to 6VAC20-171-30; for each electronic security employee of an electronic

security services business, their fingerprints pursuant to 6VAC20-171-30;

2. Documentation verifying that the applicant has secured a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 [per individual occurrence] and \$300,000 [general aggregate] issued by an insurance company authorized to do business in Virginia;

3. For each nonresident applicant for a license, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for a license as a private security services business except sole proprietor or partnership, ~~on a form provided by the department~~ [shall submit on the license application,] the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

~~5. A physical address in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical address;~~

~~6.~~ 5. On the license application, designation of at least one individual as compliance agent who is not designated as compliance agent for any other licensee, and who is certified or eligible for certification pursuant to 6VAC20-171-70;

~~7.~~ 6. The applicable, nonrefundable license application fee; and

~~8.~~ 7. Designation on the license application of the type of private security business license the applicant is seeking. The initial business license fee includes one category. A separate fee will be charged for each additional category. The separate categories are identified as follows: security officers/couriers (armed and unarmed), private investigators, electronic security personnel, armored car personnel, personal protection specialists, locksmiths, detector canine handlers and security canine handlers. Alarm respondents crossover into both the security officer and electronic security category; therefore, if an applicant is licensed in either of these categories, he can provide these services without ~~purchasing~~ an additional category fee.

C. Upon completion of the initial license application requirements, the department may issue an initial license for a period not to exceed 24 months.

D. The department may issue a letter of temporary licensure to businesses seeking licensure under § 9.1-139 of the Code of Virginia for not more than 120 days while awaiting the

results of the state and national fingerprint search conducted on the principals and compliance agent of the business, provided the applicant has met the necessary conditions and requirements.

E. A new license is required whenever there is any change in the ownership or type of organization of the licensed entity that results in the creation of a new legal entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

F. Each license shall be issued to the legal business entity named on the application, whether it [be is] a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity, ~~with the exception of a sole proprietorship or partnership that incorporates to form a new corporate entity where the initial licensee remains as a principal in the newly formed corporation. This exception shall not apply to any existing corporation that purchases the business or assets of an existing sole proprietorship.~~

G. Each licensee shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

H. Each licensee shall be a United States citizen or legal resident alien of the United States.

6VAC20-171-60. Renewal license application.

A. Applications for license renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the licensee. However, if a renewal notification is not received by the licensee, it is the responsibility of the licensee to ensure renewal requirements are filed with the department. License renewal applications must be received by the department and all license requirements must be completed prior to the expiration date or shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Licenses will be renewed for a period not to exceed 24 months.

C. The department may renew a license when the following are received by the department:

1. A properly completed renewal application;

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2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 [per individual occurrence] and \$300,000 [general aggregate] issued by an insurance company authorized to do business in Virginia;

3. Fingerprint records for any new or additional principals submitted to the department within 30 days of their hire date pursuant to 6VAC20-171-30 provided, however, that any change in the ownership or type of organization of the licensed entity has not resulted in the creation of a new legal entity pursuant to 6VAC-20-171-50;

4. On the application, designation of at least one compliance agent who has satisfactorily completed all applicable training requirements;

5. The applicable, nonrefundable license renewal fee and applicable category of service fees; [and]

6. On the first day of employment, each new and additional supervisor's fingerprints submitted to the department pursuant to § 9.1-139 H of the Code of Virginia- [; and]

[7. A completed business license self audit form issued by the department.]

D. Each ~~principal and compliance agent listed on the business applying for a license renewal application~~ shall be in good standing in every jurisdiction where licensed, registered or certified in a private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification.

E. Any renewal application received after the expiration date of a license shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

F. On the renewal application the licensee must designate the type of private security business license he wishes to renew. The fee will be based upon the category or categories selected on the renewal application pursuant to 6VAC20-171-20.

Article 3

Compliance Agent Certification

6VAC20-171-70. Compliance agent training and certification requirements.

A. Each person applying for certification as compliance agent shall meet the minimum requirements for eligibility:

1. Be a minimum of 18 years of age;
2. Have (i) three years of managerial or supervisory experience in a private security services business, a federal, state, or local law-enforcement agency, or in a related field or (ii) five years experience in a private security services

business, with a federal, state or local law-enforcement agency, or in a related field; and

3. Be a United States citizen or legal resident alien of the United States.

B. Each person applying for certification as compliance agent shall file with the department:

1. A properly completed application provided by the department;

2. Fingerprint ~~cards~~ card pursuant to 6VAC20-171-30;

3. Official documentation verifying that the individual has (i) three years of managerial or supervisory experience in a private security services business, a federal, state, or local law-enforcement agency, or in a related field or (ii) five years experience in a private security services business, with a federal, state or local law-enforcement agency, or in a related field; and

4. The applicable, nonrefundable application fee.

~~C. Following review of all application requirements, the department shall assign the applicant to an entry level compliance agent training session provided by the department, at which the applicant must successfully complete the applicable entry level compliance agent training requirements pursuant to this chapter and achieve a passing score of 80% on the compliance agent examination. The department may issue a certification for a period not to exceed 24 months when the following are received by the department:~~

1. A properly completed application provided by the department;

2. The applicable, nonrefundable certification fee;

3. Verification of eligibility pursuant to § 9.1-139 A of the Code of Virginia; and

4. Verification of satisfactory completion of department regulatory compliance entry-level training requirements pursuant to 6VAC20-171-72 of this chapter.

~~D. Following completion of the entry level training requirements, the compliance agent must complete in-service training pursuant to the compulsory minimum training standards set forth by this chapter.~~

~~E. D.~~ Each compliance agent shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-71. Compliance agent certification renewal requirements.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address or email address provided by the certified compliance agent. However, if a renewal notification is not received by the compliance agent, it is the responsibility of the compliance agent to ensure renewal

requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for compliance agent certification renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully apply on an application provided by the department, and complete the in-service regulatory compliance agent classroom training session provided by the department, or successfully complete an approved online in-service training session pursuant to 6VAC20-171-72. Training must be completed within the 12 months immediately preceding the expiration date of the current certification pursuant to the certification training standards in 6VAC20-171-72; and

2. Be in good standing in every jurisdiction where licensed, registered, or certified in private security services or related field. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application provided by the department;

2. The applicable, nonrefundable certification renewal fee; and

3. Verification of satisfactory completion of department regulatory compliance agent in-service training pursuant to 6VAC20-171-72.

E. Any renewal application received after the expiration date of a certification shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

6VAC20-171-72. Compliance agent regulatory compliance training requirements.

A. Each eligible person applying to attend a regulatory compliance entry-level or in-service training session provided by the department shall file with the department:

1. A properly completed application provided by the department; and

2. The applicable, nonrefundable application fee.

Upon receipt of the training enrollment application the department will assign the applicant to a training session provided by the department. Applicants for initial certification as a compliance agent must achieve a minimum passing score of 80% on the entry-level regulatory compliance training examination.

B. Department entry-level regulatory compliance training must be completed within 12 months of approval of application for an initial compliance agent certification.

C. Each person certified by the department to act as a compliance agent shall complete the department in-service regulatory compliance training within the last 12-month period of certification.

Article 4

Private Security Services Training School Certification

6VAC20-171-80. Initial training school application.

A. Prior to the issuance of a training school certification, the applicant shall meet or exceed the requirements of certification and application submittal to the department as set forth in this section.

B. Each person seeking certification as a private security services training school shall file a completed application provided by the department to include:

1. For each principal of the applying training school, their fingerprints pursuant to 6VAC20-171-30;

2. Documentation verifying that the applicant has secured a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 [per individual occurrence] and \$300,000 [general aggregate] issued by an insurance company authorized to do business in Virginia;

3. For each nonresident applicant for a training school, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for certification as a private security services training school except sole proprietor and partnership, on a ~~form~~ certification application provided by the department, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

~~5. A physical location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical location;~~

~~6.~~ 5. On the training school certification application, designation of at least one individual as training director who is not designated as training director for any other training school, and who is certified as an instructor pursuant to Article 5 (6VAC20-171-100 et seq.) of this part. A maximum of four individuals may be designated as an assistant [training] school director;

~~7.~~ 6. A copy of the curriculum in course outline format for each category of training to be offered, including the hours of instruction with initial and in-service courses on separate documents;

~~8.~~ 7. A copy of the training school regulations;

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9. ~~[8. A copy of the training completion certificate to be used by the training school;]~~

~~10. [9. 8.]~~ A copy of the range regulations to include the assigned DCJS range identification number if firearms training will be offered; ~~[and]~~

~~11. [10. The applicable, nonrefundable training school certification application fee.~~

~~11. 9.]~~ On the certification application, selection of the category of training the applicant is seeking to provide. The initial training school certification [application] fee includes one category. A separate fee will be charged for each additional category of training. The separate categories are identified as follows: (i) security officers/couriers/alarm respondent (armed and unarmed) to include arrest authority [and firearms training], (ii) private investigators, (iii) locksmiths, electronic security personnel to include central station dispatchers, (iv) armored car personnel, (v) personal protection specialists, (vi) detector canine handlers, security canine handlers, (vii) special conservators of the peace pursuant to § 9.1-150 of the Code of Virginia, [and] (viii) bail bondsmen pursuant to § 9.1-185 of the Code of Virginia, bail enforcement agents pursuant to § 9.1-186 of the Code of Virginia [, and (ix) firearms;

10. The applicable, nonrefundable category fee; and

11. The applicable, nonrefundable training school certification application fee.]

C. When the department has received and processed a completed application and accompanying material, the department ~~shall may~~ inspect the training facilities ~~to ensure conformity with department policy,~~ including an inspection of the firearms range, if applicable, to ensure conformity with the minimum requirements set forth by this chapter.

D. Upon completion of the initial training school application requirements, the department may issue an initial certification for a period not to exceed 24 months.

E. The department may issue a letter of temporary certification to training schools for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and training director of the business, provided the applicant has met the necessary conditions and requirements.

F. A new certification is required whenever there is any change in the ownership or type of organization of the certified entity that results in the creation of a new legal entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business

entity recognized under the laws of the Commonwealth of Virginia.

G. Each certification shall be issued to the legal entity named on the application, whether it ~~[be is]~~ a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the certification. No certification shall be assigned or otherwise transferred to another legal entity, ~~with the exception of a sole proprietorship or partnership that incorporates to form a new corporate entity where the initial licensee remains as a principal in the newly formed corporation. This exception shall not apply to any existing corporation that purchases the training school or assets of an existing sole proprietorship.~~

H. Each certified training school shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-90. Renewal training school application.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address ~~of or~~ email address provided by the certified training school. However, if a renewal notification is not received by the training school, it is the responsibility of the training school to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Upon completion of the renewal training school application requirements, the department may issue a renewal certification for a period not to exceed 24 months.

C. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application;

2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 ~~[per individual occurrence]~~ and \$300,000 ~~[general aggregate]~~ issued by an insurance company authorized to do business in Virginia;

3. On the application, designation of at least one certified instructor as training director who has satisfactorily completed all applicable training requirements; ~~[and]~~

4. Fingerprints for each new and additional principal pursuant to § 9.1-139 H of the Code of Virginia [;]

5. The applicable, nonrefundable certification renewal fee ~~[and category fees;]~~

~~6. Any documentation required pursuant to 6VAC20-171-80 for any new categories of training [; and~~

~~7. A completed training school certification self audit form issued by the department] .~~

~~D. Each principal and instructor listed on the license training school applying for a certification renewal application shall be in good standing in every jurisdiction where licensed, registered or certified in private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification.~~

~~E. Any renewal application received after the expiration date of a certification shall be subject to the requirements set forth by the reinstatement provisions of this chapter pursuant to 6VAC20-171-180.~~

Article 5

Private Security Services Instructor Certification

6VAC20-171-100. Initial instructor application.

A. Each person applying for certification as an instructor shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;
2. Have a high school diploma or equivalent (GED);
3. Have either (i) successfully completed a DCJS instructor development course within the three years immediately preceding the date of the application or submitted a waiver application for an instructor development course that meets or exceeds standards established by the department; or (ii) successfully completed an approved DCJS instructor development program longer than three years prior to the date of application, and provided documented instruction during the three years immediately preceding or provided documented instruction in a related field at an institution of higher learning;
4. Have a minimum of (i) three years management or supervisory experience with a private security services business or with any federal, military police, state, county or municipal law-enforcement agency, or in a related field; or (ii) five years general experience in a private security services business, with a federal, state or local law-enforcement agency, or in a related field; or (iii) one year experience as an instructor or teacher at an accredited educational institution or agency in the subject matter for which certification is requested, or in a related field; ~~and~~

~~5. Have previous training and a minimum of two years work experience for those subjects in which certification is requested; and~~

~~5. 6. Be a United States States citizen or legal resident alien of the United States.~~

B. Each person applying for certification as an instructor shall file with the department:

1. A properly completed application provided by the department;
2. Fingerprint ~~cards card~~ pursuant to 6VAC20-171-30;
3. Official documentation verifying that the applicant meets the minimum eligibility requirements pursuant to this section;
4. ~~Official documentation verifying previous instructor experience, training, work experience and education for those subjects in which certification is requested. The department will evaluate qualifications based upon the justification provided;~~

~~[4. On the certification application, selection of the category of training the applicant is seeking to provide. The initial instructor certification fee includes one category. A separate fee will be charged for each additional category of training. The separate categories are identified as follows: (i) security officers/couriers/alarm respondent (armed and unarmed) to include arrest authority, (ii) private investigators, (iii) locksmiths, electronic security personnel to include central station dispatchers, (iv) armored car personnel, (v) personal protection specialists, (vi) detector canine handlers, security canine handlers, (vii) special conservators of the peace pursuant to § 9.1-150 of the Code of Virginia, (viii) bail bondsmen pursuant to § 9.1-185 of the Code of Virginia, bail enforcement agents pursuant to § 9.1-186 of the Code of Virginia, and (ix) firearms;]~~

~~[5. 4.] The [applicable,] nonrefundable [instructor certification] application fee [and category fee or fees if applicable]; and~~

~~[6. 5.] Evidence of status as a United States citizen or legal resident alien of the United States.~~

~~C. Following review of all application requirements, the department shall verify eligibility and authorize the applicant to submit a regulatory compliance training enrollment application for an entry-level instructor regulatory compliance classroom training session provided by the department, or approve the applicant for taking the approved online training session pursuant to 6VAC20-171-111, at which the applicant must successfully complete the applicable entry-level regulatory compliance training requirements pursuant to this chapter and achieve a passing score of 80% on the regulatory compliance examination.~~

~~€. D. In addition to the instructor qualification requirements described in subsections A and B through C of this section, each applicant for certification as a firearms instructor shall submit to the department:~~

1. Official documentation that the applicant has successfully completed a DCJS firearms instructor school or a waiver application with supporting documentation demonstrating completion of a firearms instructor school specifically designed for law-enforcement or private security personnel that meets or exceeds standards

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established by the department within the three years immediately preceding the date of the instructor application.

2. Official documentation in the form of a signed, dated range sheet [~~identifying the type, caliber, and action, along~~] with the qualification score and course of fire that the applicant has successfully qualified, with a minimum range qualification of 85%, with each of the following:

- a. A revolver;
- b. A semi-automatic handgun; and
- c. A shotgun.

3. Firearms instructors applying to provide patrol rifle training in accordance with 6VAC20-171-395 must submit official documentation in the form of a signed, dated range sheet that the applicant has successfully qualified, with a minimum range qualification of 85%, with a patrol rifle.

4. Range qualifications must have been completed within the 12 months immediately preceding the instructor application date and have been completed at a Virginia criminal justice agency, training academy, correctional facility, or [a department approved range utilized by a] certified private security training school. The qualifications must be documented by another instructor certified as a law-enforcement firearms instructor or private security services firearms instructor.

~~3.~~ 5. The firearms instructor training must have been completed within the three years immediately preceding the date of the instructor application; or in the event that the school completion occurred prior to three years, the applicant shall have provided firearms instruction during the three years immediately preceding the date of the instructor application.

~~D.~~ E. Upon completion of the initial instructor application requirements, the department may issue an initial certification for a period not to exceed 24 months.

~~E.~~ F. The department may issue a letter of temporary certification to instructors for not more than 120 days while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.

~~F.~~ G. Each certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No certification shall be assigned or otherwise transferred to another individual.

~~G.~~ H. Each instructor shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-110. Renewal instructor application.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last

known mailing address ~~or~~ or email address provided by the certified instructor. However, if a renewal notification is not received by the instructor, it is the responsibility of the instructor to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for instructor certification renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully complete the in-service ~~training regulatory compliance classroom [or online] training session provided by the department [, or successfully complete an approved online in-service training session pursuant to 6VAC20-171-11]~~ within the 12 months immediately preceding the expiration date of the current certification pursuant to the compulsory minimum training standards in 6VAC20-171-360; and;

2. Successfully complete a minimum of 4 hours of continuing education in instructor development. Training must be completed within the 12 months immediately preceding the expiration date of the current certification; [and]

~~[3. Successfully complete a minimum of 2 hours of professional development for topics related to each category of instructor certification during the certification period; and]~~

~~2.~~ [4. 3.] Be in good standing in every jurisdiction where licensed, registered or certified in a private security services or related field. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application provided by the department; ~~and~~

2. The ~~applicable~~, nonrefundable certification renewal fee; [and applicable category fees];

~~[3. Any documentation required pursuant to 6VAC20-171-100 for any new categories of training;]~~

~~[3. 4.]~~ Verification of satisfactory completion of regulatory compliance in-service training provided by the department;

~~[4. 5.]~~ Verification of satisfactory completion of instructor development continuing education requirements;

~~[5. Verification of 2 hours of professional development training in each category of certification taken during the certification period; and]~~

6. For firearms instructors, official documentation in the form of a signed, dated range sheet [~~identifying the type, caliber, and action,~~] along with the qualification score and course of fire, with a minimum range qualification of 85%, with each of the following:

- a. A revolver;
- b. A semi-automatic handgun; and
- c. A shotgun.

7. Firearms instructors applying to provide patrol rifle training in accordance with 6VAC20-171-395 must submit official documentation in the form of a signed, dated range sheet that the applicant has successfully qualified, with a minimum range qualification of 85%, with a patrol rifle.

8. Range qualifications must have been completed within the 12 months immediately preceding the instructor application date and have been completed at a Virginia criminal justice agency, training academy, correctional facility, [or a department approved range utilized by a] certified private security training school. The qualifications must be documented by another instructor certified as a law-enforcement firearms instructor or private security services firearms instructor.

E. Any instructor renewal application received by the department shall meet all renewal requirements prior to the expiration date of a certification or shall be subject to the requirements set forth by the reinstatement provisions [~~of this chapter~~ pursuant to 6VAC20-171-180].

6VAC20-171-111. Instructor regulatory compliance training requirements.

A. Each eligible person applying to attend a regulatory compliance entry-level or in-service training session provided by the department shall file with the department:

1. A properly completed application provided by the department; and
2. The applicable, nonrefundable application fee.

Upon receipt of the training enrollment application the department will assign the applicant to a regulatory compliance training session provided by the department. Applicants for initial certification as an instructor must achieve a minimum passing score of 80% on the entry-level regulatory compliance examination.

B. Department entry-level regulatory compliance training must be completed within 12 months of approval of application for an initial instructor certification.

6VAC20-171-115. Initial detector canine handler examiner certification.

A. Each person applying for certification as a detector canine handler examiner shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;
2. Have a high school diploma or equivalent (GED);

3. Have a minimum of five years experience as a detector canine handler and a minimum of two years experience as a detector canine trainer;

4. Have an active certification as a detector canine handler examiner or equivalent credential from a department approved national organization, unit of the United States military, or other formal entity; or be sponsored by a certified DCJS private security services detector canine handler examiner;

5. Successfully pass a written examination and performance evaluations according to department guidelines; and

6. Be a United States citizen or legal resident alien of the United States.

B. Each person applying for certification as a detector canine handler examiner shall file with the department:

1. A properly completed application provided by the department;
2. Fingerprint card pursuant to 6VAC20-171-30;
3. Official documentation according to subdivisions A 3 and 4 of this section; and
4. The applicable, nonrefundable application fee.

C. Following review of all application requirements, the department shall verify eligibility and authorize the applicant to submit a regulatory compliance training enrollment application pursuant to 6VAC20-171-117 for an entry-level classroom training session provided by the department, or approve the applicant for taking the approved online training session pursuant to 6VAC20-171-117, at which the applicant must successfully complete the applicable entry-level regulatory compliance training requirements pursuant to this chapter and achieve a passing score of 80% on the examination.

D. Upon completion of the initial detector canine handler examiner application requirements, the department may issue an initial certification for a period not to exceed 24 months.

E. The department may issue a letter of temporary certification to detector canine handler examiners for not more than 120 days while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.

F. Each certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No certification shall be assigned or otherwise transferred to another individual.

G. Each detector canine handler examiner shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

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6VAC20-171-116. Renewal detector canine handler examiner certification.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the certified examiner. However, if a renewal notification is not received by the examiner, it is the responsibility of the examiner to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for examiner certification renewal shall meet the minimum requirements for eligibility as follows:

1. Have maintained certification as a detector canine handler examiner or equivalent credential according to 6VAC20-171-115 A 4 [~~or~~ and] demonstrate the completion of a minimum of 16 hours of continuing education during the previous certification period;

[2. Successfully complete the in-service regulatory compliance classroom or online training session provided by the department within the 12 months immediately preceding the expiration date of the current certification;] and

[3.] Be in good standing in every jurisdiction where licensed, registered, or certified. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application provided by the department;

2. The applicable, nonrefundable certification renewal fee; and

3. Official documentation according to subsection B [~~1~~] of this section.

E. Any examiner renewal application received by the department shall meet all renewal requirements prior to the expiration date of a certification or shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

6VAC20-171-117. Detector canine handler examiner regulatory compliance training enrollment.

A. Each eligible person applying to attend a regulatory compliance entry-level [or in-service] training session provided by the department shall file with the department:

1. A properly completed application provided by the department; and

2. The applicable, nonrefundable application fee.

Upon receipt of the training enrollment application the department will assign the applicant to a regulatory compliance examiner training session provided by the department, at which the applicant must successfully complete the applicable training requirements. Applicants for initial certification as an examiner must achieve a minimum passing score of 80% on the entry-level examination.

B. Department entry-level regulatory compliance training must be completed within 12 months of approval of application for an initial examiner certification.

Article 6

Private Security Services Registration

6VAC20-171-120. Initial registration application.

A. Individuals required to be registered, pursuant to § 9.1-139 C of the Code of Virginia, in the categories of armored car personnel, courier, unarmed security officer, armed security officer, security canine handler, explosives detector canine handler, narcotics detector canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant shall meet all registration requirements in this section. Prior to the issuance of a registration, the applicant shall meet or exceed the requirements of registration and application submittal to the department as set forth in this section. Individuals who carry or have access to a firearm while on duty must have a valid registration with a firearm endorsement pursuant to 6VAC20-171-140. If carrying a handgun concealed, the individual must also have a valid concealed handgun permit and the written permission of his employer pursuant to § 18.2-308 of the Code of Virginia.

B. Each person applying for registration shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 18 years of age;

2. Successfully complete all initial training requirements for each registration category requested, including firearms endorsement if applicable, ~~requested~~ pursuant to the compulsory minimum training standards in ~~6VAC20-171-360~~ 6VAC20-171-350; [~~and~~]

3. Be a United States citizen or legal resident alien of the United States [; and

4. Have a digital photo taken by a certified private security services training school or other site approved by the department.]

C. Each person applying for registration shall file with the department:

1. A properly completed application provided by the department;

2. On the application, his mailing address;

3. Fingerprint ~~cards~~ card pursuant to 6VAC20-171-30; and

~~[4. A photo taken by a certified private security services training school or other site approved by the department; and]~~

~~[5. 4.]~~ The applicable, nonrefundable application fee.

D. Each person seeking or required to seek registration as unarmed security officer, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant may be employed for a period not to exceed 90 consecutive days in any categories listed above while completing the compulsory minimum training standards, provided:

1. ~~Fingerprint cards~~ Fingerprints have been submitted pursuant to 6VAC20-171-30;
2. The individual is not employed in excess of 120 days without having been issued a registration from the department; and
3. The individual did not fail to timely complete the required training with previous employer(s).

E. Upon completion of the initial registration application requirements, the department may issue an initial registration ~~letter~~ for a period not to exceed 24 months. ~~This registration letter shall be submitted by the applicant to the Virginia Department of Motor Vehicles or other specified entity for a state issued photo identification card.~~

F. The department may issue a letter of temporary registration [valid] for not more than 120 days while awaiting the results of the state and national fingerprint search, provided the applicant has met the necessary conditions and requirements.

G. Each registration shall be issued to the individual named on the application and shall be valid only for use by that individual. No registration shall be assigned or otherwise transferred to another individual.

H. Each registered individual shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-171-130. Renewal registration application.

A. Applications for registration renewal shall meet all renewal requirements and should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address ~~of~~ or email address provided by the registered individual. However, if a renewal notification is not received by the individual, it is the responsibility of the individual to ensure renewal requirements are filed with the department. Registration renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for registration renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully complete the in-service training, and firearms retraining if applicable, pursuant to the compulsory minimum training standards set forth by this chapter; [~~and~~]
2. Be in good standing in every jurisdiction where licensed, registered or certified. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration or certification [~~; and~~]

~~[3. Upon the request of the department, have a new digital photo taken by a certified private security services training school or other site approved by the department.]~~

C. The department may renew a registration when the following are received by the department:

1. A properly completed renewal application provided by the department;
2. For individuals applying for renewal with the category of armored car personnel, fingerprint ~~cards~~ card submitted pursuant to 6VAC20-171-30;
3. The applicable, nonrefundable registration renewal fee; ~~and~~
4. For individuals with firearms endorsements, evidence of completion of annual firearms retraining in accordance with ~~6VAC20-171-400, Part V, Article 2 (6VAC20-171-365 et seq.)~~ of this chapter [~~; and.~~]

~~[5. Upon the request of the department, a new photo taken by a certified private security services training school or other site approved by the department.]~~

D. Upon completion of the renewal registration application requirements, the department may issue a registration ~~letter~~ for a period not to exceed 24 months. ~~This registration letter shall be submitted by the applicant to the Virginia Department of Motor Vehicles or other specified entity for a state issued photo identification card.~~

E. Any renewal application received by the department shall meet all renewal requirements prior to the expiration date of a registration or shall be subject to the requirements set forth by the reinstatement provisions ~~of this chapter~~ pursuant to 6VAC20-171-180.

6VAC20-171-135. Firearms endorsement.

A. [~~Firearms training~~ A firearms] endorsement is required for all private security services business personnel who carry or have [~~immediate~~] access to a firearm while on duty. Each person who carries or has [~~immediate~~] access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

B. Each person applying for a firearms endorsement shall meet the minimum requirements for eligibility as follows:

1. Must be registered in a regulated category.

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2. Must complete [entry-level] handgun, and if applicable, shotgun and patrol rifle training as described in Part V, Article 2 [6VAC20-171-365] et seq.) of this chapter.

C. All armed private security services business personnel with the exception of personal protection specialist must satisfactorily complete firearms retraining prescribed in 6VAC20-171-400.

D. All armed personal protection specialist must satisfactorily complete firearms retraining prescribed in 6VAC20-171-420.

E. Firearms endorsements are issued for a period not to exceed 12 months. Individuals must complete firearms retraining within the [120 90] days prior to the expiration of their current firearm endorsement or will be required to complete entry-level training requirements prior to applying for an active endorsement.

[Article 7

Additional Categories/Replacement Identification

6VAC20-171-160. Additional category application.

A. Individuals may apply for multiple registration or certification categories during the initial application process by completing the applicable training requirements for each category.

B. Registered or certified individuals seeking to add categories to a current registration or certification must:

1. Successfully complete all initial training requirements for each additional registration or certification category requested pursuant to the compulsory minimum training standards in Part V (6VAC20-171-350 et seq.) of this chapter;
2. Submit a properly completed application provided by the department; and
3. Submit the applicable, nonrefundable application fee.

C. Individuals may avoid paying a separate fee for additional registration ~~or certification~~ categories when the categories are requested on the application for renewal.]

6VAC20-171-170. Replacement state issued photo identification [~~letter card~~].

Registered [~~or certified~~] individuals seeking a replacement state issued photo identification ~~letter card~~ shall submit to the department:

1. A properly completed application provided by the department; and
2. The applicable, nonrefundable application fee.

Article 8

Reinstatement and Renewal Extension

6VAC20-171-180. Reinstatement.

A. Any business license, training school, instructor, compliance agent, detector canine handler examiner certification, ~~instructor certification~~ or registration not renewed on or before the expiration date shall become null

and void. Pursuant to the Code of Virginia, all such persons must currently be licensed, registered or certified with the department to provide private security services.

B. A renewal application must be received by the department within 60 days following the expiration date of the license, ~~certification~~ or registration in order to be reinstated by the department providing all renewal requirements have been met. Prior to reinstatement the following shall be submitted to the department:

1. The appropriate renewal application and completion of renewal requirements including required training pursuant to this chapter; and
2. The applicable, nonrefundable reinstatement fee pursuant to this chapter and in accordance with 6VAC20-171-20 B.

The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid registration, ~~certification~~, or license including during reinstatement period.

~~The department shall not reinstate business licenses or training school certifications that have become null and void due to not maintaining required insurance or surety bond coverage.~~

C. No license, registration or certification shall be renewed or reinstated when all renewal application requirements are received by the department more than 60 days following the expiration date of the license. After that date, the applicant shall meet all initial application requirements, including applicable training requirements.

D. Following submittal of all reinstatement requirements, the department will process and may approve any application for reinstatement pursuant to the renewal process for the application.

E. When a license, certification, or registration is reinstated, the applicant shall continue to have the same DCJS number and shall be assigned an expiration date two years from the previous expiration date of the license, certification, or registration.

F. An applicant who reinstates shall be regarded as having been continuously licensed, certified, or registered without interruption. Therefore, the applicant shall remain under the disciplinary authority of the department during this entire period and may be held accountable for his activities during this period.

G. A person who fails to reinstate his license, certification, or registration shall be regarded as unlicensed, uncertified, or unregistered from the expiration date of the license, certification, or registration forward.

H. Nothing in this chapter shall divest the department of its authority to discipline a person for a violation of the law or regulations during the period of time for which the person was licensed, certified, or registered.

[I. Firearms endorsements are not eligible for reinstatement. If renewal requirements are not met pursuant to 6VAC20-171-135, the applicant shall meet all initial application requirements, including applicable initial firearms training requirements.]

6VAC20-171-190. Renewal extension.

A. An extension of the time period to meet renewal requirements may be approved only under specific circumstances which do not allow private security personnel, businesses, or training schools to complete the required procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness;
2. Extended injury;
3. Military or foreign service; or
4. Any emergency temporary assignment of private security personnel for purposes of (i) natural disaster, (ii) homeland security or (iii) documented threat, by the private security services business or training school for which he is employed.

B. A request for extension shall:

1. Be submitted in writing, dated and signed by the individual or principal of a licensed entity prior to the expiration date of the time limit required for completion of the requirements. This requirement may be waived by the department based on an evaluation of the justification for waiver.
2. Indicate the projected date the person, business, or training school will be able to comply with the requirements; and
3. Include a copy of the physician's record of the injury or illness, ~~or~~ a copy of the government orders or documentation of emergency temporary assignment.

~~C. No extension will be approved for registrations, certifications, or business licenses that have expired.~~

~~D. C.~~ Applications for additional extensions may be approved upon written request of the person, business, or training school.

D. The total time for renewal extension, including additional extensions, shall not exceed 12 months beyond the original expiration date. If renewal requirements are not met during the period of extension, the individual must complete all initial training requirements to include applicable entry-level training.

E. The private security services person, business, or training school shall be nonoperational during the period of extension [unless otherwise issued a temporary exemption and has been authorized by the department pursuant to § 9.1-139 of the Code of Virginia].

Article 9

Application Sanctions; Exemptions, Recognition/Reciprocity
6VAC20-171-200. Denial, probation, suspension and revocation.

A. The department may deny a license, registration or certification in which any person or principal of an applying business has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction.

B. The department may deny a license, registration or certification in which any person or principal of an applying business or training school has not maintained good standing in every jurisdiction where licensed, registered or certified in a private security services or related field; or has had his license, registration or certification denied upon initial application, suspended, revoked, surrendered, or not renewed; or has otherwise been disciplined in connection with a disciplinary action prior to applying for licensing, registration or certification in Virginia.

C. Any false or misleading statement on any state application or supporting documentation is grounds for denial or revocation and may be subject to criminal prosecution.

D. The department may deny licensure ~~to a firm,~~ certification, or registration for other just cause.

E. A licensee, training school, compliance agent, instructor, detector canine handler examiner, or registered individual shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or this chapter. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension or revocation.

F. If a registrant or certified person is subject to disciplinary action for violations or noncompliance with the Code of Virginia or this chapter, the department will notify the last known licensed or certified private security services business or training school [by which they were employed or affiliated].

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Part IV

Administrative Requirements/Standards of Conduct

Article 1

[~~Private Security Services Businesses~~ General Requirements]

6VAC20-171-215. General requirements.

All private security services registered and certified personnel, licensed businesses and certified training schools are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this chapter.

[Article 2

Private Security Services Businesses]

6VAC20-171-220. Business administrative requirements.

A licensee shall:

1. Maintain at all times with the department its [~~email address and~~] physical location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department address [and email address if applicable]. A post office box is not a physical location address. [~~Such notification~~ Notification of any change] shall be in writing and received by the department no later than 10 days after the effective date of the change.
2. Maintain at all times with the department its current operating name and all fictitious names. Any name change reports shall be submitted in writing within 10 days after the occurrence of such change and accompanied by certified true copies of the documents that establish the name change.
3. Report in writing to the department any change in its ownership or principals that does not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change to include fingerprint cards pursuant to this chapter.
4. Report in writing to the department any change in the entity of the licensee that results in continued operation requiring a license. Such written report shall be received by the department within 10 days after the occurrence of such change.
5. Maintain at all times current liability coverage at least in the minimum amounts prescribed by the application requirements of this chapter. ~~Failure of the business to do so shall result in the license becoming null and void. Each day of uninsured activity would be construed as an individual violation of this requirement.~~
6. Maintain at all times with the department a completed irrevocable consent for service if the licensee is not a resident of the Commonwealth of Virginia. Licensees that move their business from the Commonwealth shall file a

completed irrevocable consent for services within 15 days of the change in location.

7. Employ at all times at least one individual designated as compliance agent who is in good standing and is certified pursuant to 6VAC20-171-70 and who is not currently designated as compliance agent for another licensee. In the event there is more than one compliance agent designated for the business, designate one as the primary compliance agent and point of contact.

8. Maintain at all times and for a period of not less than three years from the date of termination of employment the following documentation concerning all regulants: documentation or electronic images of the date of hire in the regulated category, documentation that the fingerprint processing application was submitted on the date of hire, verification that the employee is a U.S. citizen or legal resident alien and is properly registered/certified and trained, current physical and mailing addresses for all regulated employees and telephone numbers if applicable.

9. Upon termination of employment of a certified compliance agent, notify the department in writing within 10 calendar days. This notification shall include the name of the individual responsible for the licensee's adherence to applicable administrative requirements and standards of conduct during the period of replacement.

10. Within 90 days of termination of employment of the sole remaining compliance agent, submit the name of a new compliance agent who is eligible for certification pursuant to this chapter and who is not currently designated for another licensee. Individuals not currently eligible may pursue certification pursuant to Part III (6VAC20-171-30 et seq.) of this chapter. [~~Such~~ This] notification shall be in writing and signed by a principal of the business and the designated compliance agent.

11. Prominently display at all times for public inspection, in a conspicuous place where the public has access, the business license issued by the department.

12. Ensure that all individuals submit fingerprint cards pursuant to 6VAC20-171-30 as required by the Code of Virginia.

13. Inform the department in writing within 10 days of receiving knowledge of any principal, partner, officer, compliance agent or employee regulated or required to be regulated by this chapter [~~being arrested for a crime in any jurisdiction.~~] pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

14. Inform the department in writing within 10 days of receiving knowledge of any principal, licensee, subsidiary, partner, officer, compliance agent or employee regulated or required to be regulated by this chapter, having been found guilty by any court or administrative body of competent

jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

15. On a form provided by the department and within 10 calendar days of receiving knowledge of ~~the~~ an incident, submit a report of any incident in which any registrant has discharged a firearm while on duty, excluding any training exercise.

16. In the event a complaint against the licensee is received by the department, be required to furnish documentary evidence (written agreement) of the terms agreed to between licensee and client, which shall include at a minimum the specific scope of services and fees assessed for such services. The licensee shall retain a copy for a period of not less than three years from completion of said agreement.

17. Not fail to honor the terms and conditions of a warranty or written agreement.

18. In the event a licensee sells or otherwise transfers the ownership of a monitoring agreement of an electronic security customer [in Virginia], notify the end user, in writing, within 30 days of the transfer of monitoring services. No licensee shall sell or otherwise transfer to an entity not licensed in Virginia.

19. Ensure that all regulated employees carry ~~a state~~ [the department issued the] photo identification [registration] card ~~along with their registration or certification card, unless the card is one in the same~~ [issued by the department while on duty or temporary registration letter along with a photo ID while on duty].

20. [Ensure that all regulated employees authorized to provide private security services while completing compulsory minimum training standards pursuant to § 9.1-139 H of the Code of Virginia carry a photo ID along with an authorization form provided by the department while on duty.

21.] Maintain a written use of force policy dictating the business' policy for using deadly force and for use of less lethal force. A statement certifying that the employee has read and understands the business' use of force policy must be signed by each employee who is permitted to carry firearms or intermediate weapons and maintained in the employee's file.

[~~21.~~ 22.] Maintain records for individual employees permitted to carry intermediate weapons while on duty to verify training in the use of the permitted intermediate weapons.

[~~22.~~ 23.] Maintain at all times and for a period of not less than three years from the date of termination, decertification or other separation, records of detector canine handler team certifications to include a photo of

detector canine teams utilized to provide regulated private security services as defined in this chapter.

6VAC20-171-230. Business standards of conduct.

A licensee shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Ensure that all employees regulated, or required to be regulated, by this chapter conform to all application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.
3. Not direct any employee regulated, or required to be regulated, by this chapter to engage in any acts prohibited by the Code of Virginia and this chapter.
4. Employ individuals regulated, or required to be regulated, as follows:
 - a. A licensee shall employ or otherwise utilize individuals possessing a valid registration issued by the department showing the registration categories required to perform duties requiring registration pursuant to the Code of Virginia;
 - b. A licensee shall not allow individuals requiring registration as armored car personnel, armed security officers/couriers, armed alarm respondents with firearm endorsement, private investigators, personal protection specialists, detector canine handlers or security canine handlers to perform private security services until such time as the individual has been issued a registration by the department;
 - c. A licensee may employ individuals requiring registration as unarmed alarm respondent ~~without firearm endorsement, locksmith,~~ central station dispatcher, electronic security sales representative, electronic security technician, [unarmed] armored car driver, unarmed security officer or electronic security technician's assistant for a period not to exceed 90 consecutive days in any registered category listed above while completing the compulsory minimum training standards provided:
 - (1) The individual's fingerprint [~~cards have~~ card has] been submitted pursuant to Article 1 (6VAC20-171-30 et seq.) of Part III of this chapter;
 - (2) The individual is not employed in excess of 120 days without having been issued a registration from the department; and
 - (3) The individual did not fail to timely complete the required training with previous employer(s).
 - d. A licensee shall not employ any individual carrying or having access to a firearm in the performance of his duties who has not obtained a valid registration and firearms endorsement from the department; and
 - e. A licensee shall maintain appropriate documentation to verify compliance with these requirements. A licensee

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shall maintain these documents after employment is terminated for a period of not less than three years.

5. Not contract or subcontract any private security services in the Commonwealth of Virginia to a person not [~~required to be~~] licensed by the department. Verification of a contractor's or subcontractor's license issued by the department shall be maintained for a period of not less than three years.

6. Ensure that the compliance agent conforms to all applicable application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.

7. Permit the department during regular business hours to inspect, review, or copy those documents, electronic images, business records or training records that are required to be maintained by the Code of Virginia and this chapter.

8. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

9. Not commit any act or omission that results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

10. [Not have ~~Ensure that regulated employees of the business have not~~] been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

11. Not obtain or aid and abet others to obtain a license, license renewal, registration, registration renewal, certification, certification renewal, or firearms endorsement through any fraud or misrepresentation.

12. Include the business license number issued by the department on all business advertising materials pursuant to the Code of Virginia. Business advertising materials containing information regarding more than one licensee must contain the business license numbers of each licensee identified.

13. Not conduct a private security services business in such a manner as to endanger the public health, safety and welfare.

14. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration or certification.

15. Not represent as one's own a license issued to another private security services business.

16. When providing central station monitoring services, attempt to verify the legitimacy of a burglar alarm activation by calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch. (This shall not apply if the alarm user has provided written authorization requesting immediate or one call dispatch to both their local police department and their dealer of record). This shall not apply to duress or hold-up alarms.

17. Not perform any unlawful or negligent act resulting in loss, injury or death to any person.

18. Utilize vehicles for private security services using or displaying a an amber flashing light only as specifically authorized by § 46.2-1025.9 of the Code of Virginia.

19. Not use or display the state seal of Virginia or the seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision of the Commonwealth, or any portion thereof, as a part of any logo, stationery, letter, training document, business card, badge, patch, insignia or other form of identification or advertisement.

20. Not provide information obtained by the firm or its employees to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

21. Not engage in acts of unprofessional conduct in the practice of private security services.

22. Not engage in acts of negligent or incompetent private security services.

23. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

24. Not violate any state or local ordinances.

25. Satisfy all judgments to include binding arbitrations related to private security services not provided.

26. Not publish or cause to be published any ~~written business~~ material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.

27. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist or otherwise prohibited under federal law.

28. Not act as or be an ostensible licensee for undisclosed persons who do or will control directly or indirectly the operations of the licensee's business.

29. Not provide false or misleading information to representatives of the department.

~~[30. Not refuse to cooperate with an investigation being conducted by the department.~~

~~31. 30.]~~ Not provide materially incorrect, misleading, incomplete, or untrue information on ~~[a license application, renewal any email,]~~ application, or any other document filed with the department.

6VAC20-171-240. Compliance agent administrative requirements and standards of conduct.

A compliance agent shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Maintain at all times with the department his mailing address and email address [if applicable]. Written notification of any change of address shall be ~~in writing~~ and received by the department no later than 10 days after the effective date of the change.
3. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.
4. Not commit any act or omission which results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.
5. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

6. Inform the department, and the licensee for which the individual is designated as compliance agent if applicable, in writing within 10 days after [~~being arrested for a crime in any jurisdiction,~~] pleading guilty or nolo contendere [or ~~and after~~] being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

7. Inform the department, and the licensee for which the individual is designated as compliance agent if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

8. Not obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.

9. Only be designated with the department and acting as a compliance agent for one licensed entity.

10. Be designated with the department as compliance agent for a licensee and shall:

- a. Ensure that the licensee and all employees regulated, or required to be regulated, by this chapter conform to all application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter;
- b. Maintain documentation for all employees or persons otherwise utilized that verifies compliance with requirements pursuant to the Code of Virginia and this chapter;
- c. Notify the department in writing within 10 calendar days following termination of his employment as compliance agent for the licensee; ~~and~~]
- d. Ensure that all regulated employees carry [~~a state the department~~] issued photo identification card [~~unless the card is one in the same along with their registration~~] ~~or certification~~ [card or temporary registration letter along with a photo ID while on duty; and
- e. Ensure that all regulated employees authorized to provide private security services while completing compulsory minimum training standards pursuant to § 9.1-139 H of the Code of Virginia carry a photo ID along with an authorization form provided by the department while on duty.]

11. Not engage in acts of unprofessional conduct in the practice of private security services.

12. Not engage in acts of negligent and/or incompetent private security services.

13. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

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14. Satisfy all judgments to include binding arbitrations related to private security services not provided.

15. Not publish or cause to be published any ~~written business~~ material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive or misleading.

16. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist [or otherwise prohibited under federal laws].

17. Not violate any state or local ordinances related to private security services.

18. Not provide false or misleading information to representatives of the department.

~~[19. Not refuse to cooperate with an investigation being conducted by the Department.~~

20. 19.] Not use access to the department's database information for any other purpose than verifying employee's application status.

~~[21. 20.] Not allow another to use access granted to the department's database for any purpose.~~

~~[22. 21.] Not provide materially incorrect, misleading, incomplete, or untrue information on [~~a certification application, certification renewal~~ any email,] application, or any other document filed with the department.~~

~~[23. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.]~~

Article 2

Private Security Services Training Schools

6VAC20-171-245. General requirements. (Repealed.)

~~All training schools are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this chapter.~~

Article 3

Private Security Services Training Schools

6VAC20-171-250. Administrative Training school administrative requirements.

A training school shall:

1. Maintain at all times with the department its [~~email address and~~] physical location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department address [and email address if applicable]. A post office box is not a physical location address. [~~Such notification~~ Notification of any change] shall be in writing and received by the department no later than 10 days after the effective date of the change.

2. Employ at all times one individual designated as training director who is currently certified as an instructor pursuant to this chapter and who is not currently designated as training director for another training school. A training school may designate a maximum of four individuals as assistant [training] school directors.

3. Upon termination of the services of a certified instructor, notify the department in writing within 10 calendar days. Should the instructor also be designated as the training director for the training school, this notification shall include the name of the instructor responsible for the training school's adherence to applicable administrative requirements and standards of conduct during the period of training director replacement.

4. Within 90 days of termination of employment of the sole remaining training director, submit the name of a new instructor eligible for designation pursuant to this chapter and who is not currently designated for another training school. Individuals not currently eligible may pursue certification pursuant to Part III (6VAC20-171-30 et seq.) of this chapter. Such notification shall be in writing and signed by a principal of the training school and the designated training director.

5. Notify the department in writing of any certified instructors or subject matter specialists eligible to provide instruction at the training school. The notification shall be received by the department prior to the individual conducting any training for the training school and signed by the training school director and the designated instructor or subject matter specialist.

6. Prominently display at all times, in a conspicuous place where the public has access, the training school certification issued by the department.

7. Maintain at all times current liability coverage at least in the minimum amounts prescribed by the application requirements of this chapter. ~~Failure of the training school to do so shall result in the certification becoming null and void. Each day of uninsured activity would be construed as an individual violation of this requirement.~~

8. Inform the department in writing within 10 days, for any principal, partner, officer, instructor or employee regulated or required to be regulated by this chapter [~~being arrested for a crime in any jurisdiction,~~] pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

9. Inform the department in writing within 10 days, for any principal, partner, officer, instructor or employee regulated or required to be regulated by this chapter having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

10. Report in writing to the department any change in its ownership or principals that does not result in the creation of a new legal entity. Such written report shall be received by the department within 10 days after the occurrence of such change to include fingerprint cards submitted pursuant to 6VAC20-171-30.

11. Maintain at all times with the department its current operating name and fictitious names. Any name change reports shall be submitted in writing within 10 days after the occurrence of such change and accompanied by certified true copies of the documents that establish the name change.

12. Report in writing to the department any change in the entity of the training school that results in continued operation requiring a certification. Such written report shall be received by the department within 10 days after the occurrence of such change.

13. Maintain written authorization from the department for any subject matter specialists being used to provide instruction.

14. Develop lesson plans for each training curriculum and subject being offered in accordance with the topical outlines submitted to the department to include hours of instruction.

15. Maintain comprehensive and current lesson plans for each entry level training curriculum and subject being offered.

16. Maintain comprehensive and current lesson plans for each in-service training curriculum and subject being offered.

17. Maintain comprehensive and current lesson plans for each firearms training curriculum and subject being offered.

18. Date all lesson plans and handout material, including the initial date of development and subsequent revisions.

19. Ensure that current copies of the following requirements are provided to and maintained with the department, including:

- a. A list of all training locations used by the training school, excluding hotel/motel facilities;
- b. A list of all firing range names and locations;
- c. A list of all subject matter specialists currently employed, or otherwise utilized; and
- d. Copies of current topical outlines for all lesson plans and curriculums. The lesson plans and subsequent course outlines shall include (i) specific reference to the course content involving the Code of Virginia and this chapter and (ii) the hours of instruction.

20. Ensure that range qualification for all firearms training is completed pursuant to this chapter except with written authorization from the department.

21. On a form provided by the department and within 10 calendar days of ~~the~~ an incident, submit a report of any incident in which any instructor, student or employee has discharged a firearm while on duty, excluding any training exercise.

22. Not act as or be a certified training school for undisclosed persons who directly or indirectly control the operation of the training school.

23. Inform the department and compliance agent of the employing business if applicable, in a format prescribed by the department within seven days of any person regulated under this chapter who fails to requalify with a minimum passing score on the range.

6VAC20-171-260. Training school standards of conduct.

A training school shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Ensure that the owners, principals, training director and all instructors employed by the training school conform to all applicable application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.
3. Utilize only certified instructors, or other individuals eligible to provide instruction pursuant to this chapter in the conduct of private security training sessions.
4. Maintain current files that include copies or electronic images of attendance records, a master final examination, pass/fail recording of examination and firearms qualification scores, training completion rosters, and training completion forms for each student for three years from the date of the training session in which the individual student was enrolled.
5. Permit the department during regular business hours to inspect, review, or copy those documents, electronic images, business records or training records that are required to be maintained by the Code of Virginia and this chapter.
6. Permit the department to inspect and observe any training session. Certified training schools that conduct training sessions not located within Virginia may be required to pay the expenses of inspection and review.
7. Include the training school certification number issued by the department on all business advertising materials pursuant to the Code of Virginia.
8. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.
9. Not commit any act or omission that results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

Regulations

10. Ensure that the owner, principals, training director and all instructors employed by the training school have not been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

11. Not obtain or aid and abet others to obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.

12. Conduct [~~entry-level~~ entry-level] and in-service training sessions separately. In-service subjects and curriculums may not be incorporated or included as a part of the entry-level subjects and curriculums [unless otherwise authorized by the department].

13. Not conduct a private security services training school in such a manner as to endanger the public health, safety and welfare.

14. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director or instructor.

15. Not represent as one's own a certification issued to another private security services training school.

16. Not perform any unlawful or negligent act resulting in loss, injury or death to any person.

17. Not use or display the state seal of Virginia, or any portion thereof, as a part of any logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement.

18. Not use or display the state seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision [of the Commonwealth], or any portion thereof, as a part of the training school's logo, stationery, letter, training document, business card, badge, patch, insignia or other form of identification or advertisement.

19. Not engage in acts of unprofessional conduct in the practice of private security services.

20. Not engage in acts of negligent or incompetent private security services.

21. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

22. Not violate any state or local ordinances related to private security services.

23. Satisfy all judgments to include binding arbitrations related to private security services not provided.

24. Not publish or cause to be published any ~~written business~~ material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.

25. Not provide false or misleading information to representatives of the department.

~~[26. Not refuse to cooperate with an investigation being conducted by the department.~~

27. 26.] Not act as or be an ostensible certified training school for undisclosed persons who do or will control directly or indirectly the operations of the training school.

~~[28. 27.] Not provide materially incorrect, misleading, incomplete, or untrue information on [a certification application, renewal any email,] application, or any other document filed with the department.~~

6VAC20-171-270. Private security services training Training school director administrative requirements and standards of conduct.

A training school director shall:

1. Ensure that the certified training school and all employees regulated, or required to be regulated, by this chapter conform to all application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.

2. Conform to all application requirements, administrative requirements and standards of conduct as a certified instructor pursuant to the Code of Virginia and this chapter.

3. Maintain documentation for all employees or persons otherwise utilized that verifies compliance with requirements pursuant to the Code of Virginia and this chapter.

4. Notify the department in writing within 10 calendar days following termination of his employment as training director for the certified training school.

5. Not engage in acts of unprofessional conduct in the practice of private security services.

6. Not engage in act of negligent or incompetent private security services.

7. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

8. Not violate any state or local ordinances relating to private security services.

9. Satisfy all judgments to include binding arbitrations relating to private security services not provided.

10. Not publish or cause to be published any ~~written business~~ material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.

11. Use access to the department's database information only for the purpose of verifying employed instructors' or students' application status.

12. Not allow another to use access granted to the department's database for any purpose.

13. Inform the department and compliance agent of the employing business if applicable, in a format prescribed by the department within seven days of any person regulated under this chapter who fails to requalify with a minimum passing score on the range.

6VAC20-171-280. Private security services instructor administrative requirements and standards of conduct.

An instructor shall:

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

2. Maintain at all times with the department his [~~email address and~~] mailing address [and email address if applicable]. Written notification of any address change shall be in writing and received by the department no later than 10 days after the effective date of the change.

3. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

4. Inform the department, and the training school for which the individual is designated as an instructor if applicable, in writing within 10 days after [~~being arrested for a crime in any jurisdiction~~] pleading guilty or nolo contendere [~~or and after~~] being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

5. Inform the department, and the training school for which the individual is designated as instructor, if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction

to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

6. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

7. Not commit any act or omission that results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

8. Not obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.

9. Conduct training sessions pursuant to requirements established in this chapter.

10. Notify the department within 10 calendar days following termination of his employment as instructor for the training school.

11. Not engage in acts of unprofessional conduct in the practice of private security services.

12. Not engage in acts of negligent or incompetent private security services.

13. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

14. Not violate any state or local ordinances relating to private security services.

15. [Maintain documentation of successful completion of a minimum of two hours of professional development for topics related to each category of instructor certification as established in 6VAC20-171-100 B 6 during each certification period or successful completion of compulsory in-service training by another private security services certified instructor if also registered in the same categories.

16.] Not publish or cause to be published any material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive, or misleading.

[~~16. 17.] Not provide false or misleading information to representatives of the department.~~

[~~17. Not refuse to cooperate with an investigation being conducted by the department.]~~

18. Not provide materially incorrect, misleading, incomplete, or untrue information [~~in a certification application, renewal on any email,] application, or any other document filed with the department.~~

[~~19. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.~~

Regulations

~~20.~~ 19.] Transport, carry, and utilize firearms while on duty only in a manner that does not endanger the public health, safety, and welfare.

[~~21.~~ 20.] Report in writing to the training school director within 24 hours of any person regulated under this chapter who fails to requalify with a minimum passing score on the range.

[~~22.~~ 21.] Provide any person who fails to requalify with a minimum passing score on the range with a failure to requalify notice provided by the department.

6VAC20-171-290. ~~Instruction—exceptions~~ Instructor alternatives.

A. Subject matter specialist.

1. Training schools may employ or otherwise utilize individuals as subject matter specialists to provide instruction in specific areas of a training curriculum. During the approved portions of training, a certified instructor is not required to be present.

2. The training school shall obtain written authorization from the department prior to any subject matter specialist providing instruction. Written authorization may be requested by submitting on a form provided by the department:

- a. A written request for authorization specifically outlining the requested subject matter; and
- b. Documentation that supports the individual's credentials for instructing in the proposed subject matter.

3. The department may issue a written authorization for a period not to exceed 24 months.

B. Guest lecturer. Training schools may employ or otherwise utilize individuals as guest lecturer in specific areas of a training curriculum. A certified instructor is required to be present during all portions of training conducted by a guest lecturer.

6VAC20-171-300. Private security services training session.

A. Training sessions will be conducted in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance and standards of conduct are the responsibility of the training school, training school director and instructor of the training session.

B. Administrative requirements.

1. In a manner approved by the department, a notification to conduct a training session shall be submitted to the department. [All notifications shall be received by the department, or postmarked if mailed, no less than seven calendar days prior to the beginning of each training session to include the date, time, instructors and location of the training session. The department may allow a session to be conducted with less than seven calendar days of notification with prior approval. Session notifications require no fee from the training school. A notification to

conduct a training session shall be deemed to be in compliance unless the training school director is notified by the department to the contrary.

2. Notification of any changes to the dates, times, location or cancellation of a future training session must be submitted to the department in writing and received by the department at least 24 hours in advance of the scheduled starting time of the class. In the event that a session must be cancelled on the scheduled date, the department must be notified immediately followed by a cancellation in writing as soon as practical.]

[~~2. All current training material to include course 3. Course~~] outline and training objectives must be approved by the department prior to offering a course of instruction for enrollment.

[~~3. 4.~~] On a form provided by the department, the Training school director shall issue an original training completion form and training certificate [provided by the department] to each student who satisfactorily completes a training session no later than five business days following the training completion date. [~~The training completion form shall include the following:~~

~~a. A unique training completion number;~~

~~b. The name, a unique identification number, and address of the individual;~~

~~c. The name of the particular course that the individual completed;~~

~~d. The dates of course completion/test passage;~~

~~e. An expiration date. Training completion forms shall expire 12 months from the date of course completion;~~

~~f. The name, address, telephone number, and training school certification number; and~~

~~g. The name, signature, and DCJS identification number of the school director and primary instructor.]~~

[~~4. 5.~~] In a manner approved by the department, the training school director shall submit an original training completion roster to the department affirming each student's successful completion of the session. [The training completion roster shall be received by the department within seven calendar days, or postmarked if mailed, no later than five business days following the training completion date]-The training completion roster for each session [and] must be accompanied by the applicable, nonrefundable processing fee.]

[~~5. 6.~~] A written examination shall be administered at the conclusion of each entry level training session. The examination shall be based on the applicable learning objectives. The student must attain a minimum grade of 80% for compliance agent entry-level training or 70% for all other entry-level training examinations and [pass] any applicable practical exercises, to satisfactorily complete the training session.

[~~6. 7.~~] Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

[~~7. 8.~~] Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

~~8. 9.~~] To successfully complete the handgun or shotgun firearms range training, the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

~~9. To successfully complete the private investigator entry level training session, the individual must:~~

- ~~a. Successfully complete each of the four graded practical exercises required; and~~
- ~~b. Pass the written examination with a minimum score of 70%.~~

~~10. To successfully complete the personal protection specialist entry level training session, the individual must:~~

- ~~a. Complete each of the five graded practical exercises required under protective detail operations pursuant to 6VAC20-171-350 E 6 (the practical exercises must be successfully completed prior to the written examination); and~~
- ~~b. Pass the written examination with a minimum score of 70%.~~

~~11. The unarmed security officer must:~~

- ~~a. Complete the required training; and~~
- ~~b. Successfully pass the written examination with a minimum score of 70%.~~

[~~9. 10.~~] To successfully complete the advanced firearms range training, the individual must achieve a minimum qualification score of 92% of the scoring value of the target.

[~~10. 11.~~] To successfully complete the patrol rifle firearms range training, the individual must achieve a minimum qualification score of 85% of the scoring value of the target.

C. Attendance.

1. Private security services business personnel enrolled in an approved training session are required to be present for the hours required for each training session unless they have been granted a partial exemption to training from the department.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. ~~Such~~ All training must be completed within ~~60 days after the completion of the training session or at the next available session offered by the training school~~ the 12 months prior to application of a registration or certification. Individuals not completing the

required training within this period are required to complete the entire training session.

3. Individuals ~~that~~ who do not successfully complete the compulsory minimum training standards of the training session shall not be ~~reported to the department except where required pursuant to this chapter~~ issued a training completion form or training certificate.

4. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the training school. If the training school director or instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on examinations, the training school director or instructor may expel the individual from the school. Notification of such action shall immediately be reported to the employing firms and the department.

D. Standards of conduct.

1. The training school, training school director and instructor shall at all times conform to the application requirements, administrative requirements and standards of conduct established for certification as a training school and instructor.

2. Training sessions will be conducted by certified instructors or other individuals authorized to provide instruction pursuant to this chapter and [they] must be present for all periods of instruction [unless otherwise authorized by the department].

3. Training sessions will be conducted utilizing lesson plans developed including at a minimum the compulsory minimum training standards established pursuant to this chapter.

4. Instruction shall be provided in no less than 50-minute classes.

5. Training sessions ~~may~~ shall not exceed nine hours of classroom instruction per day. Range qualification and practical exercises shall not be considered classroom instruction; however, total training, including the maximum allotment of nine hours classroom instruction and applicable range qualification and practical exercises, shall not exceed 12 hours per day. This does not include time allotted for breaks, meals and testing.

6. All audio-visual training aids must be accompanied by a period of instruction where the instructor reviews the content of the presentation and the students are provided the opportunity to ask questions regarding the content.

7. A training session must adhere to the minimum compulsory training standards and must be presented in its entirety. Training school directors may require additional hours of instruction, testing or evaluation procedures.

8. A training session must provide accurate and current information to the students.

Regulations

9. Mandated training conducted not in accordance with the Code of Virginia and this chapter is null and void.

10. A duplicate set of instructor course materials, including all student materials, shall be made available to any department inspector during the training session, if requested.

11. [Certifiable in-service training may include a maximum of one hour of instruction dedicated to the review of regulations unless otherwise authorized by the department.

12.] There will be no live ammunition permitted in the classroom.

Article 3

Private Security Services Registered Personnel

6VAC20-171-305. ~~General requirements~~ On-line in-service training programs.

~~All registered personnel are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this chapter.~~

On-line training programs may only be offered for compulsory minimum in-service training requirements. On-line training programs shall meet the following requirements:

1. All on-line schools shall maintain a private security services training school certification in good standing and meet all of the administrative requirements and standards of conduct specified in this chapter.

2. All current on-line training material to include complete course content and performance objectives of mandated compulsory training requirements must be approved by the department prior to offering a course of instruction for enrollment.

3. Students enrolled in an on-line training program shall successfully complete all course material within 30 days of the first log-on to the training school website or prior to the registration or certification expiration date or final reinstatement date, whichever comes first.

4. Training schools offering on-line courses that accept credit card payments shall subscribe to an e-commerce solution service to protect the security and integrity of the monetary transaction.

5. The training software programs used by a certified training school shall allow the department auditing access to the training system. Such auditing access shall be available 24 hours a day, seven days a week.

6. The training software program shall be capable of generating a unique electronic notification of training completion for each student completing the course requirements and each course of instruction on a 24-hour a day basis.

7. The training of completion shall include the following:

a. A unique training completion number;

b. The name, a unique identification number, and address of the individual;

c. The name of the particular course that the individual completed;

d. Dates of course completion/test passage;

e. Name, address, telephone number, and license number of the training school; and

f. Name, signature, and DCJS identification number of the school director and primary instructor.

8. The training software program shall be capable of generating a training certificate for each student and each course of instruction that can be printed by the student's computer and printer. This training certificate shall only be made available to the student upon successful completion of all course material.

9. The training software program shall be capable of capturing and archiving student information for a period of not less than three years.

10. Training schools offering on-line training courses will designate one individual as the network administrator for that school's network server. The network administrator will be the technical contact between the department and the training school. Upon termination of the services of the designated network administrator, a new administrator shall be designated and notification made to the department within 10 days after effective date of the change.

6VAC20-171-308. Detector canine handler examiners administrative requirements and standards of conduct.

A. Administrative requirements. An examiner shall:

1. Maintain at all times with the department his [~~email address and~~] mailing address [and email address if applicable]. Written notification of any address change shall be in writing and received by the department no later than 10 days after the effective date of the change.

2. Inform the department, and the business or training school for which the individual is employed, if applicable, in writing within 10 days after [~~being arrested for a crime by any court,~~] pleading guilty or nolo contendere, and after being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

3. Inform the department, and the licensed business or training school for which the individual is employed [~~if applicable~~ or utilized], in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

4. Satisfy all judgments to include binding arbitrations related to private security services not provided.

5. Notify the department within 10 calendar days following termination of his employment as an examiner for a business or training school.

6. Conduct examinations pursuant to the requirements established by the department.

7. Notify the department within 10 calendar days following termination of any certification as a detector canine handler examiner or equivalent with any national organization, unit of the United States military, or other formal entity involved with certifying, training or setting standards for detection canines.

8. Notify the department in writing within 10 calendar days of determining that a detector canine handler or detector canine fails to successfully complete the certification examination.

9. Maintain documentation and a photograph of the examined detector canine team for three years for all examinations conducted that verifies compliance with requirements pursuant to the Code of Virginia and this chapter.

10. Utilize only department-approved certification examinations for the testing and certification of detector canine teams.

B. Standards of conduct. An examiner shall:

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

2. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

3. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

4. Not commit any act or omission that results in a private security license, registration, or certification being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

5. Not obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.

6. Not engage in acts of unprofessional conduct in the practice of private security services.

7. Not engage in acts of negligent or incompetent private security services.

8. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

9. Not violate any state or local ordinances relating to private security services.

10. Not publish or cause to be published any material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive, or misleading.

11. Not provide false or misleading information to representatives of the department.

~~[12. Not refuse to cooperate with an investigation being conducted by the department.~~

~~13. Not provide materially incorrect, misleading, incomplete, or untrue information in a certification application, renewal application, or any other document filed with the department.~~

~~14. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.~~

~~12. Not provide materially incorrect, misleading, incomplete, or untrue information on any email, application, or any other document filed with the department.]~~

6VAC20-171-310. Registered personnel administrative requirements.

A registered individual shall:

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

2. Maintain at all times with the department his mailing address, e-mail address and phone number, if applicable. Written notification of any change in mailing address, e-mail address or phone number shall be in writing and received by the department no later than 10 days after the effective date of the change.

3. Inform the department, and the business for which the individual is employed if applicable, in writing within 10 days after [~~being arrested for a crime in any jurisdiction~~] pleading guilty or nolo contendere [or ~~and after~~] being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

4. Inform the department, and the business for which the individual is employed if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

Regulations

5. Inform the department, and the compliance agent of the licensee if employed by a private security services business, of any incident in which any registrant has discharged a firearm while on duty, excluding any training exercise. This report shall be made within 24 hours of the incident.

6VAC20-171-320. Registered personnel standards of conduct.

A registered individual shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.
3. Not commit any act or omission that results in a private security license, registration or certification being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.
4. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.
5. Not obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.
6. Not solicit or contract to provide any private security services without first having obtained a private security services business license with the department.
7. [Carry ~~Be in possession of~~] a valid registration card or valid temporary ~~authorization~~ registration letter at all times while on duty. Individuals requiring registration as an unarmed security officer, an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative or an electronic security technician may be employed for not more than 90 consecutive days in any category listed above while completing the compulsory minimum training standards and may not be employed in excess of 120 days without having been issued a registration or an exception from the department [and must carry a photo ID and authorization from their

employer on a form provided by the department at all times while on duty].

8. [Carry ~~Be in the possession of~~] the private security state issued photo registration identification card at all times while on duty once the authorization has been approved from the department, except those individuals operating outside the Commonwealth of Virginia who shall obtain the state issued photo identification card prior to providing services when physically located in the Commonwealth.

9. Perform those duties authorized by his registration only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is registered as an armed security officer from being employed by a nonlicensee as provided for in § 9.1-140 of the Code of Virginia.

10. Possess a valid firearms training endorsement if he carries or has access to firearms while on duty and then only those firearms by type of action and caliber to which he has been trained on and is qualified to carry. Carry or have access to a patrol rifle while on duty only with the expressed written authorization of the licensed private security services business employing the registrant.

11. Carry a firearm concealed while on duty only with the expressed written authorization of the licensed private security services business employing the registrant and only in compliance with § 18.2-308 of the Code of Virginia.

12. Transport, carry and utilize firearms while on duty only in a manner that does not endanger the public health, safety and welfare.

13. If authorized to make arrests, make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest.

14. Engage in no conduct which shall mislead or misrepresent through word, deed or appearance ~~suggests~~ that a registrant is a law-enforcement officer, or other government official.

15. Display one's [photo identification] registration [or temporary registration along with a photo ID] while on duty in response to the request of a law-enforcement officer, department personnel [] or client. [Individuals providing private security services as authorized pursuant to subdivision 7 of this section who have not received their registration must display a state issued photo identification and authorization while on duty in response to the request of a law-enforcement officer, department personnel, or client.]

16. Not perform any unlawful or negligent act resulting in a loss, injury or death to any person.

17. If a uniform is required, wear the uniform required by his employer. If wearing a uniform while employed as an

armed security officer, unarmed security officer, alarm respondent or armored car personnel, that uniform must:

a. Include at least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a name plate or tape bearing, as a minimum, the individual's last name attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. Include no patch or other writing (i) containing the word "police" or any other word suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the word "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. ~~This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words that accurately represent that distinction.~~

18. When providing [central station monitoring] services [~~as a central station dispatcher~~], attempt to verify the legitimacy of a burglar alarm activation by [~~contacting an authorized individual at the site where an alarm signal originated before dispatching authorities~~ calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch]. This shall not apply if the alarm user has provided written authorization requesting immediate dispatch [or one call dispatch to both their local police department and their dealer of record.] This shall not apply to duress or hold-up alarms.

19. Act only in such a manner that does not endanger the public health, safety and welfare.

20. Not represent as one's own a registration issued to another individual.

21. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director or instructor.

22. Not provide information obtained by the registrant or his employing firm to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or from the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

23. Not engage in acts of unprofessional conduct in the practice of private security services.

24. Not engage in acts of negligent or incompetent private security services.

25. Not make any misrepresentation or make a false promise to a private security services business client or potential private security services business client.

26. Satisfy all judgments to include binding arbitrations related to private security services not provided.

27. Not provide false or misleading information to representatives of the department.

~~[28. Not refuse to cooperate with an investigation being conducted by the department.~~

29. 28.] Not provide materially incorrect, misleading, incomplete, or untrue information on a registration application, renewal application, or any other document filed with the department.

~~[30. Not have an arrest that the prima facie evidence would indicate the propensity for harming the public.]~~

Part V

Compulsory Minimum Training Standards for Private Security Services ~~Business Personnel~~ Registrations

Article 1

~~Registration/Certification~~ Registration Category Requirements

6VAC20-171-350. Entry level training.

A. Each person employed by a private security services business or applying to the department for registration as an unarmed security officer, armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, explosives detector canine handler, narcotics detector canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant as defined by § 9.1-138 of the Code of Virginia, ~~or for certification as a compliance agent as required by § 9.1-139 of the Code of Virginia, who has not met the compulsory minimum training standards prior to July 13, 1994,~~ must meet the compulsory minimum training standards herein established, unless provided for otherwise in accordance with this chapter.

B. Training will be credited only if application for registration ~~or certification~~ is submitted to received by the department within 12 months of completion of training.

C. ~~Hour~~ Course and minimum hour requirement. The compulsory minimum entry level training courses and specific minimum hour requirement by category, excluding examinations, practical exercises and range qualification, shall be:

1. Unarmed security officer - 18 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

b.] 01E: Security Officer Core Subjects - [16 hours 18 hours]

2. Armed security officer/courier ~~—40 hours - 50 hours~~ [(54 hours (53 hours) including shotgun training)

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~~*There are 8 hours of Arrest Powers, Policies, Procedures that are included in the Armed Security Officer Training. These 8 hours are mandatory for armed security officers only.~~

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a.] 01E: Security Officer Core Subjects - [16 hours 18 hours]~~

~~[e. b.] 05E: Armed Security Officer Arrest Authority - 8 hours~~

~~[d. c.] 075E: [Basic Security Officer] Handgun - 24 hours~~

~~[e. d.] 08E: Entry-level Shotgun - [4 hours 3 hours] (if applicable*) * To also have access to a shotgun while on duty, the additional shotgun course is required.~~

3. Armored car personnel - [~~26 hours (30 hours 28 hours 31 hours)~~ with shotgun)

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a.] 03E: Armored Car Procedures - [10 hours 12 hours]~~

~~[e. b.] 07E: [Fundamental Entry-level] Handgun - [14 hours 16 hours]~~

~~[d. c.] 08E: Entry-level Shotgun - [4 hours 3 hours] (if applicable*) * To also have access to a shotgun while on duty, the additional shotgun course is required.~~

4. Security canine handler - 30 hours (excluding basic obedience training)

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a.] 01E: Security Officer Core Subjects - [16 hours 18 hours] (prerequisite for 04ES)~~

~~[e. b.] Prerequisite for 04ES - Basic Obedience Training~~

~~[d. c.] 04ES: Security Canine Handler - 12 hours~~

5. Private investigator - 60 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b.] 02E: Private Investigator Subjects - [58 hours 60 hours]~~

6. Personal protection specialist - 60 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a. 02E 32E] : Personal Protection Specialist - [58 hours 60 hours]~~

~~[e. b. 075E 07E: Basic Entry-level] Handgun - [24 hours 16 hours] (prerequisite for 09E Advanced Handgun)~~

~~[d. c.] 09E: Advanced Handgun - 14 hours (for armed personal protection specialists)~~

7. Alarm respondent - 18 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b.] 01E: Security Officer Core Subjects - [16 hours 18 hours]~~

8. Central station dispatcher - 8 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a.] 30E: Electronic Security Core Subjects - [2 hours 4 hours]~~

~~[e. b.] 38E: Central Station Dispatcher - 4 hours~~

9. Electronic security sales representative - 8 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a.] 30E: Electronic Security Core Subjects - [2 hours 4 hours]~~

~~[e. b.] 39E: Electronic Security Sales - 4 hours~~

10. Electronic security technician - 14 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a.] 30E: Electronic Security Core Subjects - [2 hours 4 hours]~~

~~[e. b.] 35E: Electronic Security Technician - 10 hours~~

11. Electronic security technician's assistant - 4 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b.] 30E: Electronic Security Core Subjects - [2 hours 4 hours]~~

12. Detector Canine Handler - 160 hours (excluding certification examination)

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b. a.] 04ED: Detector Canine Handler - [158 hours 160 hours]~~

~~[e. b.] Certification exam by a Certified Detector Canine Handler Examiner~~

13. Locksmith - 18 hours

~~[a. 10E: Private Security Orientation - 2 hours~~

~~b.] 25E: Locksmith - [16 hours 18 hours]~~

~~12. Compliance agent - 6 hours~~

D. Course content. The compulsory minimum entry level training course content by ~~category~~ specific course, excluding examinations, mandated practical exercises and range qualification, shall be as provided in this subsection.

~~[1. Private Security Orientation (10E) - 2 Hours (excluding examination)~~

~~a. Introduction to private security~~

~~b. Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services~~

~~c. Written comprehensive examination~~

~~This session is a requirement for all registration categories. However, an individual applying for more than one category of registration or adding an additional category shall only be required to take this training one time within 12 months of submitting application.]~~

~~[1. 2.] Security officer core subjects. (01E) - [16 hours 18 hours] (excluding examination)~~

The entry level curriculum for unarmed security officer, armed security officer/courier, security canine handler, and alarm respondent sets forth the following areas identified as:

- [a. Orientation] —2 hours
- (1) ~~Virginia law and regulations~~ [Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services]
- [(2) Code of ethics]
- (3) General duties and responsibilities
- [(4) The Seven Signs of Terrorism]
- [b. ~~a.~~] Law —4 hours
- [c. ~~b.~~] Security patrol, access control and communications —2 hours
- [d. ~~c.~~] Documentation —4 hours
- [e. ~~d.~~] Emergency procedures —4 hours
- [f. ~~e.~~] Confrontation management —2 hours
- [~~f. g.~~] Use of force
- [~~g. h.~~] Written comprehensive examination

Total hours (excluding exam) —18 ~~16~~ hours

~~2. Armed security officer/courier. [3. 2.] Armed Security Officer Arrest Authority (05E) - 8 hours (excluding examination)~~

- a. Arrest powers, policies and procedures
- b. Written comprehensive examination
- a. Security officer core subjects —18 ~~16~~ hours
- b. Entry level handgun training (refer to Article 2 (6VAC20 171 365 et seq.) of this part) —14 hours (includes dry fire, and judgmental shooting and low level light shooting familiarization)
- c. Arrest powers, policies, procedures —8 hours
- d. Entry level shotgun training, if applicable (refer to Article 2 (6VAC20 171 365 et seq.) of this part) —2 hours

Total hours (excluding examinations, shotgun classroom instruction and range qualification) —40 hours

[3. ~~4.~~] Armored car personnel. (03E) - 10 hours (excluding examination)

- [a. Administration and armored car orientation] —1 hour
- [The Seven Signs of Terrorism]
- [b. Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services] ~~DCJS regulations~~ —1 hour
- [c. ~~a.~~] Armored car procedures —10 hours
- [d. ~~b.~~] Written comprehensive examination
- e. Entry level handgun training (refer to Article 2 (6VAC20 171 365 et seq.) of this part) —14 hours (includes 4 hours of range dry fire and low level lighting)

f. Entry level shotgun training, if applicable (refer to Article 2 (6VAC20 171 365 et seq.) of this part) —2 hours

Total hours (excluding examinations, shotgun classroom instruction and range qualification) —26 hours

[4. ~~5.~~] Security canine handler. (04ES) [20 hours 12 hours] (excluding examination and basic obedience training)

- a. Prerequisites for security canine handler entry level (official documentation required): Successful completion of basic obedience training.
- b. Demonstration of proficiency. The student must demonstrate his proficiency in the handling of a security canine to satisfy the minimum standards
- c. Evaluation by a certified private security canine handler instructor and basic obedience retraining
- d. Security canine handler orientation/legal authority
- e. Canine patrol techniques
- f. Written comprehensive examination

~~Complete entry level training requirements pursuant to Article 3 (6VAC20 171 430 et seq.) of this part.~~

[5. ~~6.~~] Private investigator. (02E) - [58 hours 60 hours] (excluding examination and practical exercises)

- a. [Orientation] : ~~applicable sections of the Code of Virginia; Administrative Code 6VAC20 171; standards [Standards of professional conduct; and ethics -]~~ 6 hours
- [(1) Applicable sections of the Code of Virginia
- (2) 6VAC20-171, Regulations Relating to Private Security Services
- (3) Standards of professional conduct
- (4) Ethics
- (5) The Seven Signs of Terrorism]
- b. Law [: basic law; legal procedures and due process; civil law; criminal law; evidence; and legal privacy requirements] —16 hours plus one practical exercise : one practical exercise
- [(1) Basic law
- (2) Legal procedures and due process
- (3) Criminal and Civil law
- (4) Evidence
- (5) Legal privacy requirements]
- c. General investigative skills [, tools and techniques: surveillance; research; and interviewing] —16 hours plus one practical exercise - one practical exercise
- [(1) Tools and techniques
- (2) Surveillance
- (3) Research
- (4) Interviewing]

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d. Documentation: [~~Report preparations; photography; audio recording; general communication; and courtroom testimony~~] —8 hours plus one practical exercise - one practical exercise

[(1) Report preparations

(2) Photography

(3) Audio recording

(4) General communication

(5) Courtroom testimony]

e. Types of investigations [~~accident; insurance; background; domestic; undercover; fraud and financial; missing persons and property; and criminal~~] —14 hours plus one practical exercise - one practical exercise

[(1) Accident

(2) Insurance

(3) Background

(4) Domestic

(5) Undercover

(6) Fraud and financial

(7) Missing persons and property

(8) Criminal]

f. Written comprehensive examination

~~Total hours in classroom (excluding written examination and practical exercises) —60 hours~~

[~~6. 7.~~] Personal protection specialist. (32E) - [~~58 hours~~ 60 hours] (excluding written examination and practical exercises)

a. Administration and personal protection orientation —~~3 hours~~

[(1) The Seven Signs of Terrorism]

[b. Applicable sections of the Code of Virginia and DCJS regulations] —~~1 hour~~

[c. ~~b.~~] Assessment of threat and protectee vulnerability - ~~8 hours~~

[d. ~~e.~~] Legal authority and civil law —~~8 hours~~

[e. ~~d.~~] Protective detail operations —~~28 hours~~

[f. ~~e.~~] Emergency procedures —~~12 hours~~

(1) [CPR Medical procedures]

(2) [Emergency first aid Defensive preparedness]

[(3) Defensive preparedness]

[g. ~~f.~~] Performance evaluation - Five practical exercises

[h. ~~g.~~] Written comprehensive examination

~~Total hours (excluding written examination and performance evaluation) —60 hours~~

~~7. Alarm respondent.~~

~~Security officer core subjects —18 hours~~

[~~8. 7.~~] Electronic security core subjects. (30E) - [~~2 hours~~ 4 hours] (excluding examination) ~~The entry level electronic security subjects curriculum for central station dispatcher, electronic security sales representative, electronic security technician and electronic security technician's assistant sets forth the following areas identified as:~~

[a. Administration and orientation] to private security —~~1 hour~~

[(1) Applicable sections of the Code of Virginia

(2) 6VAC20-171, Regulations Relating to Private Security Services

(3) The Seven Signs of Terrorism]

~~b. Applicable sections of the Code of Virginia and DCJS regulations —1 hour~~

[~~e. a. b.~~] Overview of electronic security —~~1 hour~~

[~~d. b. c.~~] False alarm prevention —~~1 hour~~

[~~e. c. d.~~] Written comprehensive examination

~~Total hours (excluding examination) —4 hours~~

[~~9. 8.~~] Central station dispatcher. (38E) - 4 hours (excluding examination)

a. ~~Electronic security subjects —4 hours~~

~~b. a. Central station dispatcher subjects —4 hours~~

(1) Duties and responsibilities

(2) Communications skills

(3) Emergency procedures

~~e. b. Written comprehensive examination~~

~~Total hours (excluding examination) —8 hours~~

[~~10. 9.~~] Electronic security sales representative. (39E) 4 hours (excluding examination)

a. ~~Electronic security subjects —4 hours~~

~~b. a. Electronic security sales representative subjects —4 hours~~

(1) Duties and responsibilities

(2) System design/components

(3) False alarm prevention

~~e. b. Written comprehensive examination~~

~~Total hours (excluding examination) —8 hours~~

[~~11. 10.~~] Electronic security technician. (39E) - 4 hours (excluding examination)

a. ~~Electronic security subjects —4 hours~~

~~b. a. Electronic security technician subjects - 10 hours~~

(1) Duties and responsibilities

(2) Electronics

(3) Control panels

(4) Protection devices and application

(5) Test equipment

- (6) Power and grounding
- (7) National electrical code
- (8) Job safety
- e. b. Written comprehensive examination
- Total hours (excluding examination) — 14 hours
- ~~12. Compliance agent-~~
 - ~~a. Industry overview and responsibilities~~
 - ~~b. Regulations review~~
 - ~~c. Business practices and ethical standards~~
 - ~~d. Records requirements and other related issues~~
 - ~~e. Written examination~~
- Total hours (excluding written examination) — 6 hours
- [~~12. 11.] Detector Canine Handler (04ED) - [158 hours 160 hours] to include practical exercises (excluding certification exam)~~
- a. Introduction/orientation/administration
 - (1) Code of Ethics
 - (2) General Duties and Responsibilities
 - (3) Legal
 - [(4) Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services
 - (5) The Seven Signs of Terrorism]
- b. Working Canines
 - (1) Historical Perspective
 - (2) Terms and Definitions
 - (3) Methodology and Application
 - (4) Training Documentation
 - (5) Search Patterns
- c. Basic Canine Handling (including practical exercises)
 - (1) Training
 - (2) Care and Health
 - (3) Emergency Medical Care
- d. Detector Canine Deployment
- Canine Behavior: Reading and Understanding
- e. Explosive or Narcotics Familiarization (including practical exercises)
 - (1) Illegal Narcotics Familiarization
 - (2) Explosives Substance and I.E.D. Familiarization
 - (3) Safety
- f. Written comprehensive exam
- [~~13. 12.] Locksmith (25E) - [16 hours 18 hours] (excluding examination)~~
- [a. Code of Virginia and 6VAC20-171, Regulations Relating to Private Security Services
- The Seven Signs of Terrorism]

- [~~a. b.] Orientation to Locksmithing~~
- (1) History of locksmithing
- (2) Ethics
- (3) Trade resources
- (4) Terminology
- (5) Professional conduct
- (6) Job safety
- [~~b. c.] Public Safety Codes~~
- (1) NFPA (80, 101)
- (2) Overview of Authorities Having Jurisdiction (AHJs)
- (3) ADA
- (4) Terminology
- (5) Safety code resources
- [~~e. d.] Technical Applications [-10 hours]~~
- [(1)] Terminology (to include definition/purpose/function)
- [~~(a) (2)] Locks/types~~
- [~~(b) (3)] Handing~~
- [~~(c) (4)] Master keying~~
- [~~(d) (5)] Key records and codes~~
- [~~(e) (6)] Key blanks and keyways~~
- [~~(f) (7)] Physical security~~
- [~~(g) (8)] Types of client sites~~
- [~~(h) (9)] Safes/vaults~~
- [~~(i) (10)] Access control~~
- [~~(j) (11)] Handling restricted keys~~
- [~~(k) (12)] Door system components~~
- [~~(l) (13)] Automotive~~
- [~~(m) e.] Written comprehensive examination~~

6VAC20-171-360. In-service training.

A. Each person registered with the department as an armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, narcotics detector canine handler, explosives detector canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, unarmed security officer or electronic security technician's assistant, ~~or certified by the department to act as a compliance agent~~ shall complete the compulsory in-service training standard once during each 24-month period of registration or certification.

1. Compliance agent-

- ~~a. In-service training must be completed within 12 months immediately preceding the expiration date.~~
- ~~b. Individuals who fail to complete in-service training prior to the established expiration date may complete in-service training within 30 days after the expiration date if~~

Regulations

~~a completed in service training enrollment application and a \$25 delinquent training fee is received by the department.~~

~~2. Instructor. All private security instructors must complete instructor in service training within 12 months immediately preceding the individual's expiration date.~~

B. Hour Course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement by category, excluding examinations, practical exercises and range qualification, shall be as follows:

1. Unarmed security officer: (01I) Security Officer Core Subjects In-Service - 4 hours

~~[a. Legal authority b.]~~ Job-related training

2. Armed security officer/courier (01I) Security Officer Core Subjects In-Service - 4 hours [(not including range retraining)]

~~[a. Legal authority b.]~~ Job-related training

3. Armored car personnel (03I) Armored Car Personnel In-Service - 4 hours (not including range retraining)

~~[a. Legal authority b.]~~ Job-related training

4. Security canine handler (04IS) Security Canine Handler In-Service - 8 hours

- a. Basic obedience evaluation and retraining
- b. Canine grooming, feeding, and health care
- c. Apprehension techniques
- d. Obedience

5. Private investigator (02I) Private Investigator In-Service - 8 hours

Job-related training

6. Personal protection specialist (32I) Personal Protection Specialist In-Service - 8 hours (not including range retraining for armed)

Job-related training

7. Alarm respondent (01I) Security Officer Core Subjects In-Service - 4 hours

~~[a. Legal authority b.]~~ Job-related training

8. Central station dispatcher (38I) Central Station Dispatcher In-Service - 4 hours

Job-related training

9. Electronic security sales representative (39I) Electronic Sales Representative In-Service - 4 hours

Job-related training

10. Electronic security technician (35I) Electronic Technician In-Service - 4 hours

Job-related training

11. Electronic security technician's assistant (30I) Electronic Security Subjects In-Service - 2 hours

Job-related training

~~12. Compliance agent—4 hours Detector canine handler (04ID) Detector Canine Handler In-Service - 8 hours (excluding certification exam)~~

~~a. Detector canine team retraining and problem solving~~

~~b. Search techniques~~

~~c. Terrorist/criminal intelligence [update updates] and team safety~~

~~d. Certification exam (conducted by a certified detector canine handler examiner)~~

~~13. Firearms instructor—4 hours Locksmith (25I) Locksmith In-Service - 4 hours~~

~~Job-related training~~

~~14. General instructor—4 hours~~

C. Course content. ~~The compulsory minimum in-service training course content by category, excluding examinations, practical exercises and range qualification, shall be as follows:~~

~~1. Security officer core subjects: Unarmed security officer/armed security officer/courier/alarm respondent~~

~~a. Legal authority—2 hours~~

~~b. Job-related training—2 hours~~

~~Total hours—4 hours~~

~~2. Armored car personnel~~

~~Job-related training—4 hours~~

~~Total hours—4 hours~~

~~3. Security canine handler (annual requirement per 6VAC20-171-440)~~

~~a. Basic obedience evaluation and retraining—4 hours~~

~~b. Job-related training—4 hours~~

~~Total hours—8 hours~~

~~4. Private investigator~~

~~Job-related training—8 hours~~

~~Total hours—8 hours~~

~~5. Personal protection specialist~~

~~Job-related training—8 hours~~

~~Total hours—8 hours~~

~~6. Central station dispatcher~~

~~Job-related training—4 hours~~

~~Total hours—4 hours~~

~~7. Electronic security sales representative~~

~~Job-related training—4 hours~~

~~Total hours—4 hours~~

~~8. Electronic security technician~~

~~Job-related training—4 hours~~

~~Total hours—4 hours~~

9. Electronic security technician's assistant

Job related training—2 hours

Total hours—2 hours

10. Compliance agent

- a. Industry overview and responsibilities
- b. Regulations review
- c. Business practices and ethical standards
- d. Records requirements and other related topics

Total hours—4 hours

11. General instructor

- a. Regulations review and legal issues
- b. Ethical standards
- c. Records requirements and other related topics
- d. Techniques of instruction delivery, including practical exercises

Total hours—4 hours

12. Firearms instructor

- a. Legal issues
- b. Techniques of delivery of instruction and other related topics

Total hours—4 hours

Article 2

Firearms Training Requirements

6VAC20-171-365. General firearms training requirements.

A. Firearms training endorsement is required for all private security services business personnel who carry or have immediate access to a firearm while on duty. Each person who carries or has immediate access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

B. Each person registered as armored car personnel, security canine handler, detector canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant must complete [~~fundamental~~ entry-level] handgun training in order to apply for a firearms endorsement.

C. Each person applying for a registration as an armed security officer/courier must complete [~~basic~~ security officer] handgun training in order to apply for a firearms endorsement.

D. Each person registered as a personal protection specialist must complete entry-level handgun training and advanced handgun training in order to apply for a firearms endorsement.

6VAC20-171-370. [Entry level ~~Fundamental~~] handgun training.

A. Handgun classroom training.

1. The [entry-level ~~fundamental~~] handgun classroom training will include but not be limited to the following:

- a. The proper care and maintenance of the firearm;
- b. Civil liability of the use of firearms;
- c. Criminal liability of the use of firearms;
- d. Firearms retention and storage;
- e. Deadly force;
- f. Justifiable deadly force;
- g. Range safety;
- h. Principles of marksmanship;
- i. Practical firearms handling and safety;
- j. Judgmental shooting; and
- k. Low level light shooting familiarization.

a. Practical handgun handling

(1) Identification of handgun parts

(2) Draw

(3) Reholstering

(4) Ready position

(5) Loading

(6) Administrative loading

[(7) Tactical reloading

(8) Rapid reloading

~~(7)~~ (9)] Unloading

[~~(8)~~ Administrative]

[~~(9)~~ (10)] Malfunctions

[~~(10)~~ (11)] Immediate actions procedures

[~~(11)~~ Feedway clearance procedures

(12) Remedial action]

[~~(12)~~ (13)] Proper care and maintenance

[~~(13)~~ (14)] Firearms retention

[~~(14)~~ (15)] Ammunition identification and management

[~~(15)~~ (16)] Range safety

b. Fundamentals of marksmanship

(1) Grip

(2) Stance (position)

(3) Sight alignment

(4) Sight picture

(5) Trigger control

(6) Breathing

(7) Follow through

c. Dim light/low light/reduced light practice and familiarization

[~~(1)~~ Hours of darkness]

[~~(2)~~ (1)] Identification of target/threat/background

[~~(3)~~ (2)] Unaided training

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[~~(4)~~ (3)] Aided training

[~~(5)~~ (4)] Flashlight use

[~~(6)~~ (5)] Reloading during low light conditions

[~~(7)~~ (6)] Malfunctions

[~~(8)~~ (7)] Range safety

d. Use of force

[(1) Deadly force]

[(2) Justifiable deadly force]

e. [~~Criminal and civil liability~~ Liability]

[(1) Criminal liability]

[(2) Civil liability]

f. Judgmental shooting: judgmental shooting scenarios will be conducted in the classroom/range

g. Lead exposure

Total Hours (excluding written examination) - [~~14 hours~~ 16 hours]

2. Written examination required.

~~B. Range qualification (no minimum hours). The purpose of the range qualification course is to provide practical firearms training to individuals desiring to become armed private security services business personnel.~~

~~1. Prior to the date of range training, it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training. Equipment needed: handgun, belt with directional draw holster, ammunition (60 rounds)~~

~~2. Factory loaded practice or duty ammunition (60 rounds) may be used for practice or range qualification.~~

~~3. Course shall be fired double action, or double single action except for single action semi-automatic handguns.~~

~~4. All qualifications shall be conducted using a B 27 silhouette target or the FBI "Q" target. Alternate targets may be utilized with prior approval by the department.~~

~~5. With prior approval of the department, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.~~

~~6. A certified firearms instructor must be present on the range directly controlling the fire line during all phases of firearms training. There shall be a minimum of one certified firearms instructor per five shooters on the line.~~

~~7. All individuals shall qualify with directional draw holsters only.~~

~~8. The range qualification of individuals shall be scored as follows:~~

~~B27 target: (use indicated K value) 7, 8, 9, 10 X rings — value 5 points, other hits on silhouette — value 0 points; divide points scored by maximum possible score to~~

~~obtain decimal and convert to percentage, e.g., 225 / 300 = .75 = 75%.~~

~~FBI Q target: all hits inside the bottle — value 5 points; hits outside the bottle — value 0 points.~~

~~9. The low light range/familiarization of individuals shall be scored as indicated above. This is strictly a familiarization course with no pass or fail grade provided.~~

~~C. Course: Virginia Private Security Course of Fire for Handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in subsection B of this section. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:~~

~~1. Phase 1; 3 yards, utilizing weaver, modified weaver, or isosceles stance, 18 rounds:~~

~~a. Load 6 rounds and holster loaded firearm.~~

~~b. On command, draw and fire 2 rounds (3 seconds), repeat.~~

~~c. Load 6 rounds and holster loaded firearm.~~

~~d. On command, draw and fire 6 rounds with strong hand.~~

~~e. Unload, reload 6 rounds and fire 6 rounds with weak hand (25 seconds).~~

~~2. Phase 2; 7 yards, utilizing weaver, modified weaver, or isosceles stance, 24 rounds:~~

~~a. Load 6 rounds and holster loaded firearm.~~

~~b. On command, draw and fire 1 round (2 seconds), repeat.~~

~~c. Load 6 rounds and holster loaded firearm.~~

~~d. On command, draw and fire 2 rounds (3 seconds), repeat.~~

~~e. Load 6 rounds and holster loaded firearm.~~

~~f. On command, draw and fire 6 rounds, reload 6 rounds, fire 6 rounds (30 seconds).~~

~~3. Phase 3; 15 yards, 70 seconds, 18 rounds:~~

~~a. Load 6 rounds and holster loaded firearm.~~

~~b. On command, assume kneeling position, draw and fire 6 rounds with strong hand.~~

~~c. Assume standing position, unload, reload and fire 6 rounds from weak hand barricade position.~~

~~d. Unload, reload and fire 6 rounds from strong hand barricade position (Kneeling position may be fired using barricade position.) (70 seconds).~~

~~D. Low Light Course: Virginia Private Security Low Light Familiarization Course of Fire for Handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Equipment needed: belt with directional draw holster, handgun, two speed loaders or three magazines, range ammunition (30 rounds). Equipment~~

provided by instructor: A range that can simulate low light or a pair of welders goggles for each student that simulates low light. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:

1. Phase 1; 3 yards, utilizing weaver or isosceles stance, 18 rounds:
 - a. Load 6 rounds and come to ready.
 - b. On command, fire 2 rounds (3 seconds) repeat.
 - c. Load 6 rounds and come to ready.
 - d. On command, fire 6 rounds with strong hand.
 - e. Unload, reload 6 rounds and fire 6 rounds (30 seconds).
2. Phase 2; 7 yards, utilizing weaver or isosceles stance, 12 rounds:
 - a. Load 6 rounds and come to ready.
 - b. On command, fire 2 rounds (5 seconds), and repeat.
 - c. Load 6 rounds and come to ready.
 - d. On command, draw and fire 3 rounds (6 seconds), and repeat.

6VAC20-171-375. [Basic Security officer] handgun training.

Handgun classroom training.

1. The [basic security officer] handgun classroom training will include but not be limited to the following:

a. Practical handgun handling

- (1) Identification of handgun parts
- (2) Draw
- (3) Reholstering
- (4) Ready position
- (5) Loading
- (6) Administrative loading
- (7) Tactical reloading
- (8) Rapid reloading
- (9) Unloading
- [~~(10)~~ Administrative
- [~~(11)~~ (10)] Malfunctions
- [~~(12)~~ (11)] Immediate actions procedures
- [~~(13)~~ Feedway clearance procedures
- (12) Remedial action]
- [~~(14)~~ (13)] Proper care and maintenance
- [~~(15)~~ (14)] Firearms retention
- [~~(16)~~ (15)] Ammunition identification and management
- [~~(17)~~ (16)] Range safety

b. Fundamentals of marksmanship

- (1) Grip
- (2) Stance (position)
- (3) Sight alignment
- (4) Sight picture
- (5) Trigger control
- (6) Breathing
- (7) Follow through

c. Dim light/low light/reduced light practice and familiarization

- [~~(1)~~ Hours of darkness
- [~~(2)~~ (1)] Identification of target/threat/background
- [~~(3)~~ (2)] Unaided training
- [~~(4)~~ (3)] Aided training
- [~~(5)~~ (4)] Flashlight use
- [~~(6)~~ (5)] Reloading during low light conditions
- [~~(7)~~ (6)] Malfunctions
- [~~(8)~~ (7)] Range safety

d. Use of force

- (1) Deadly force
- (2) Justifiable deadly force

e. Liability

- (1) Criminal liability
- (2) Civil liability
- (3) Negligent discharge prevention

f. Judgmental shooting: judgmental shooting scenarios will be conducted in the classroom/range

- (1) Shoot/don't shoot judgment
- (2) Turn and fire drills
- (3) Failure to stop drills
- (4) Multiple target drills

g. Lead exposure

Total Hours (excluding written examination) —24 hours

2. Written examination required.

6VAC20-171-376. [Handgun Entry-level and security officer handgun] range qualification.

A. Range qualification (no minimum hours). The purpose of the range qualification course is to provide practical firearms training and qualification to individuals desiring to become armed private security services business personnel.

1. Prior to the date of range training, it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training. Equipment needed: handgun, belt with directional draw holster, i.e., one that is worn on the same side of the body as the shooting hand, two speed loaders or three magazines, ammunition ([~~48~~ 100] rounds)

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2. Each student will fire a minimum of [24 22] rounds of factory loaded ammunition [for familiarization] prior to qualification. (There is no course of fire [and it is not scored]; it is at the firearms instructor's discretion on how the round will be utilized.)

3. Course shall be fired double action or [double single double/single] action, except for single action semi-automatic handguns.

4. All qualifications shall be conducted using a B-27 silhouette target or the FBI "Q" target. Alternate targets may be utilized with prior approval by the department.

5. With prior approval of the department, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.

6. [For those utilizing semi-automatic firearms, it is not necessary to reload after every stage so long as there are at least three tactical reloads during the course of fire.

7.] A certified firearms instructor must be present on the range directly controlling the firing line during all phases of firearms training. There shall be a minimum of one certified firearms instructor per five shooters on the line.

[7- 8.] The range qualification of individuals shall be scored as follows:

a. B27 target: (use indicated K-value) 7, 8, 9, 10 X rings —value 5 points, other hits on silhouette —value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., $225 \div 300 = .75 = 75\%$.

b. FBI Q target: all hits inside the bottle —value 5 points; hits outside the bottle —value 0 points.

[8. The 9. Although not scored, each student is required to complete the] low light range/night time practice as outlined in [Section subsection] C [of this section] and the familiarization course of fire.

[B. Course: Virginia private security course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Strong support hand refers to the primary hand used in firing the firearm. All magazines will be loaded to maximum capacity; it will be the responsibility of the student to change magazines as required. Magazine change refers to tactical reloading/reloading refers to when the magazine is depleted. The course of fire shall be conducted in the following phases and scored as follows:

1. Rounds: 48 rounds duty ammunition or equivalent

Initial magazine loading: magazine and speed reloaders loaded to capacity:

Ammunition management: shooter is responsible for maintaining a loaded handgun, performing speed reloads/tactical reloads as necessary. Running out of ammunition during a stage is not a valid alibi.

Target: B 27 or FBI Q target

Scoring: B27 target: 7, 8, 9, 10 X rings value 5 points, other hits on silhouette value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., $190 \div 250 = .76 = 76\%$.

FBI Q target: all hits inside the bottle —value 5 points; hits outside the bottle —value 0 points.

Total possible: 250 points

Minimum score: 190 (76%) 38 hits

Firing position: all rounds will be fired from a two handed standing position unless noted otherwise.

Reholster: all reholstering will be done on command.

Start position: handgun secured in approved holster, interview position and all spare magazines secured in duty pouches.

2. Magazines loaded to capacity. Shooter is responsible for maintaining a loaded handgun, performing speed reloads and topping off magazines as necessary. Running out of ammunition during a stage is not a valid alibi.

3. Phase 1: 3 yards, utilizing a proper stance, 18 rounds

On command, draw and fire:

a. 2 rounds (3 seconds), drop/scan and re holster, repeat 3 times

b. 1 round (2 seconds), drop/scan and re holster, repeat 6 times

c. 6 rounds (15 seconds), 3 rounds with the strong hand ONLY, transfer firearm the support hand and fire 3 rounds with the support hand ONLY, transfer to strong hand, drop/scan, re holster.

4. Phase 2: 7 yards, utilizing a proper stance, 18 rounds

On command, draw and fire:

a. 1 round (2 seconds), drop/scan and reholster, repeat 6 times

b. 2 rounds (3 seconds), drop/scan and reholster, repeat 3 times

c. 6 rounds (10 seconds), drop/scan and reholster

5. Phase 3: 15 yards, kneeling position, 12 rounds

On command, draw and fire:

6 rounds kneeling strong side barricade position, reload and fire 6 rounds from the support barricade position (25 seconds)]

C. Low light course: Virginia private security low light practice/familiarization course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Equipment needed: belt with directional draw holster, flashlight, handgun, two speed loaders or three magazines, range ammunition (24 rounds). Equipment provided by instructor: A range that can simulate low light or a pair of welders goggles for each student that simulates low light. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite

hand may be used for support. The course of fire shall be conducted in the following phases for practice and familiarization:

1. Target: B 27 or FBI Q target
2. Scoring: B27 target: 7, 8, 9, 10 X rings value 5 points, other hits on silhouette value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., $95 \div 120 = .79 = 79\%$.
3. FBI Q target: all hits inside the bottle value 5 points; hits outside the bottle value 0 points.
4. Phase I; 3 yards, utilizing a proper stance, 12 rounds:
 - a. Load magazines to full capacity and come to ready
 - b. On command, fire 2 rounds (3 seconds) repeat
 - c. On command, fire 6 rounds (15 Seconds)
5. Phase 2; 7 yards, utilizing proper stance, 12 rounds
 - a. On command, fire 2 rounds (5 seconds), and repeat
 - b. On command, fire 3 rounds (6 seconds), and repeat]

D. Alternate course of fire semi-automatic handguns

1. Firearms instructors are authorized to implement a substitute handgun qualification course for semi-automatic handguns that incorporate the following elements at a minimum:
 - a. All classroom instruction contained in subsection A of this section;
 - b. The targets used are either a B 27 silhouette target or FBI Q target;
 - c. All firing is initiated with the firearm in a directional draw holster;
 - d. The alternative course of fire will incorporate a minimum of 4 magazine changes;
 - e. Scoring will be the same as that contained in subdivision B 1 of this section;
 - f. There shall not be more than 5 students on the firing line for each certified firearms instructor present;
 - g. Firing distances shall be 3 yards, 7 yards, and 15 yards;
 - h. A total of 60 rounds of ammunition will be fired by each shooter; and
 - i. Course will incorporate strong hand and weak hand firing position.
2. Timing of firing in each stage will be similar to that imposed in the standard course of fire; i.e., 1 shot in 2 seconds, 2 shots in 3 seconds. Firearms instructors are allowed to decrease the time limits imposed in the standard course of fire, but may not exceed them.
3. Firearms instructors desiring to develop an alternate course of fire for semi-automatic handguns must submit the proposed course in writing to the department for

approval prior to that alternate course being used for qualification firing.

4. An alternative course of fire for semi-automatics approved by the department will not be used to qualify or requalify shooters armed with a revolver.

B. Course: Virginia private security course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:

1. Phase 1: 3 yards, utilizing weaver, modified weaver, or isosceles stance, 18 rounds:
 - a. Load 6 rounds and holster loaded firearm.
 - b. On command, draw and fire 2 rounds (3 seconds), repeat 2 times.
 - c. Load 6 rounds and holster loaded firearm.
 - d. On command, draw and fire 6 rounds with strong hand.
 - e. Unload, reload 6 rounds and fire 6 rounds with weak hand (25 seconds.)
 2. Phase 2: 7 yards, utilizing weaver, modified weaver or isosceles stance, 24 rounds:
 - a. Load 6 rounds and holster loaded firearm.
 - b. On command, draw and fire 1 round (2 seconds), repeat 5 times.
 - c. Load 6 rounds and holster loaded firearm.
 - d. On command, draw and fire 2 rounds (3 seconds), repeat 2 times.
 - e. Load 6 rounds and holster loaded firearm.
 - f. On command, draw and fire 6 rounds, reload 6 rounds, fire 6 rounds (30 seconds).
 3. Phase 3: 15 yards, 70 seconds, 18 rounds
 - a. Load 6 rounds and holster loaded firearm.
 - b. On command, assume kneeling position, draw and fire 6 rounds with strong hand.
 - c. Assume standing position, unload, reload and fire 6 rounds from weak-hand barricade position.
 - d. Unload, reload and fire 6 rounds from strong-hand barricade position (kneeling position may be fired using barricade position) (70 seconds).
- C. Low light course: Virginia private security low light familiarization course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Equipment needed: belt with directional draw holster, handgun, two speed loaders or three magazines, range ammunition (18 rounds). Equipment provided by instructor: A range that can simulate low light or a pair of welders goggles for each student that simulates low light. Strong/weak hand refers to the primary hand used in

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firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:

1. Phase I; 3 yards, utilizing weaver or isosceles stance, 6 rounds:

- a. Load 6 rounds and come to ready
- b. On command, fire 2 rounds (3 seconds) repeat 2 times(30 seconds)

2. Phase 2; 7 yards, utilizing weaver or isosceles stance, 12 rounds

- a. Load 6 rounds and come to ready
- b. On command, fire 2 rounds (5 seconds), repeat 2 times
- c. Load 6 rounds and come to ready
- d. On command, draw and fire 3 rounds (6 seconds), and repeat.]

6VAC20-171-380. Entry-level shotgun training.

A. Shotgun classroom training. Individual must first successfully complete entry-level [or security officer] handgun training. The [~~entry-level~~ entry-level] shotgun classroom instruction will emphasize but not be limited to:

1. Safe and proper use and handling of shotgun;
2. Nomenclature;
3. Positions and combat loading techniques;
4. Decision making for the officer with the shotgun;
5. Transition from sidearm to shotgun; and
6. Shotgun retention and proper use of a sling.

~~Total hours — 2 hours~~

1. Shotgun handling techniques

- a. Identification of shotgun parts
- b. Slings – traditional sling, single point sling, 3 point sling
- c. Cruiser carry conditions
- d. Cruiser safe
- e. Chambering
- f. Reloading
- g. Transition from handgun to shotgun/shotgun to handgun (if applicable)
- h. Malfunctions
 - (1) Immediate actions procedures
 - (2) [~~Feedway clearance procedures~~ Remedial action]
- i. Proper care and maintenance
- j. Shotgun retention

k. Ammunition management and identification

- l. Range safety
- m. Dim light/low light

2. Fundamentals of shotgun marksmanship

- a. Grip
- b. Stance (position)
- c. Sight alignment
- d. Sight picture
- e. Trigger control
- f. Breathing
- g. Follow through

3. Written examination

Total hours excluding examination [~~(4 hours)~~ (3 hours)]

B. Range qualification (no minimum hours). The purpose of the range firing course is to provide practical shotgun training and qualification to those individuals who carry or have immediate access to a shotgun in the performance of their duties.

~~1. For certification, 12 gauge, double aught "00" buckshot ammunition shall be used. Five rounds.~~

~~2. Scoring — 70% of available pellets must be within silhouette.~~

~~1. [~~Fire a minimum of 10 prequalification~~ Familiarization: Prior to the qualification course, all shooters are required to fire a familiarization exercise consisting of 5] rounds using 12 gauge, double aught "00" buckshot or rifle slug ammunition and [~~± 6 rounds minimum of~~] handgun rounds. [~~Prequalification will~~ The exercise shall] include transition [~~drills~~] from handgun to shotgun and shotgun to handgun. [~~This exercise is not scored and the distance is at the discretion of the instructor.~~]~~

~~2. Fire [~~± 5~~] rounds of shotgun rounds (buckshot and/or rifled slugs if issued) on a daylight course using B27 single/multiple targets with 70% accuracy.~~

~~[3. Fire 10 rounds of (buck shot and/or rifled slugs if issued) using B27 single/multiple targets on a nighttime course with 70% accuracy.~~

~~4. Complete daylight and dim light shotgun practice and qualification courses with distance, positions, rounds, targets, and time limitations as described in subsection C of this section.]~~

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C. Course: Virginia Private Security Course of Fire for Shotguns.

[Distance]	[Position]	[No. Rounds]	[Target]	[Time]
[Combat load & fire 15 Yds.]	[Standing/Shoulder]	[3]	[B-27 Silhouette]	[20 sec.]
[Combat load & fire 25 Yds.]	[Kneeling/Shoulder]	[2]	[B-27 Silhouette]	[15 sec.]

<u>[Prequalification]</u>					
<u>Condition</u>	<u>Distance</u>	<u>Position</u>	<u>Rounds</u>	<u>Target</u>	<u>Time</u>
<u>Cruiser Safe</u>	<u>15</u>	<u>Standing/shoulder/transition*</u>	<u>3 SG/3 HG</u>	<u>B27</u>	<u>25 sec</u>
<u>Open breach</u>	<u>15</u>	<u>Kneeling/shoulder</u>	<u>2</u>	<u>B27</u>	<u>15 sec</u>
<u>Cruiser Safe</u>	<u>25</u>	<u>Kneeling/shoulder/transition</u>	<u>3 SG/3 HG</u>	<u>B27</u>	<u>30 sec</u>
<u>Open breach</u>	<u>25</u>	<u>Standing/shoulder</u>	<u>2</u>	<u>B27</u>	<u>20 sec</u>
<u>Day Light Qualification</u>					
<u>Condition</u>	<u>Distance</u>	<u>Position</u>	<u>Rounds</u>	<u>Target</u>	<u>Time</u>
<u>Cruiser Safe</u>	<u>15</u>	<u>Standing/shoulder</u>	<u>3</u>	<u>B27</u>	<u>15 sec</u>
<u>Open breach reloading</u>	<u>15</u>	<u>Kneeling/shoulder</u>	<u>2</u>	<u>B27</u>	<u>10 sec</u>
<u>Cruiser Safe</u>	<u>25</u>	<u>Kneeling/shoulder</u>	<u>3</u>	<u>B27</u>	<u>20 sec</u>
<u>Open breach reloading</u>	<u>25</u>	<u>Standing/shoulder</u>	<u>2</u>	<u>B27</u>	<u>25 sec</u>
<u>Dim Light/Low Light Qualification</u>					
<u>Condition</u>	<u>Distance</u>	<u>Position</u>	<u>Rounds</u>	<u>Target</u>	<u>Time</u>
<u>Cruiser Safe</u>	<u>7</u>	<u>Standing/shoulder</u>	<u>3</u>	<u>B27</u>	<u>20 sec</u>
<u>Open breach reloading</u>	<u>7</u>	<u>Kneeling/shoulder</u>	<u>2</u>	<u>B27</u>	<u>15 sec</u>
<u>Cruiser Safe</u>	<u>15</u>	<u>Standing/shoulder</u>	<u>3</u>	<u>B27</u>	<u>25 sec</u>
<u>Open breach reloading</u>	<u>15</u>	<u>Kneeling/shoulder</u>	<u>2</u>	<u>B27</u>	<u>30 sec]</u>

D. A certified firearms instructor must be present on the range directly controlling the firing line during all phases of firearms range training. There shall be a minimum of one certified firearms instructor per five shooters on the line.

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6VAC20-171-390. Advanced handgun training - required for the ~~[entry-level entry-level]~~ personal protection specialist who wishes to have firearms endorsement and optional for other armed registrants.

A. The entry level [basic] handgun training is a prerequisite for taking the advanced handgun training.

B. Advanced handgun classroom training.

1. The advanced handgun training will include but not be limited to:

- a. ~~Proper care of the weapon~~ Firearms safety;
- b. Civil and criminal liability ~~of the use of firearms~~;
- c. ~~Criminal liability of the use of firearms~~ Concealed carry law and authority;
- d. ~~Weapons retention~~ Function of firearms in close protection operations;
- e. ~~Deadly force~~ Deployment of firearms in close protection operations;
- f. ~~Justifiable deadly~~ Use of force;
- ~~g. Range safety~~;
- ~~h. Practical firearms handling~~;
- ~~i. g.~~ Principles of advanced marksmanship; and
- ~~j. h.~~ Decision-making for the personal protection specialist.

Total hours (excluding written examination) —~~24 hours~~ — 14 hours

2. Written examination required.

C. Range qualification (no minimum hours). The purpose of this course of fire is to assess and improve the tactical, protection-related shooting skills for personal protection specialist candidates seeking certification to be armed. This course entails five increasingly challenging stages of advanced firearms exercises with a 92% score required for qualification.

1. The advanced handgun course of fire is comprised of the following exercises:

- a. Shoot/don't shoot judgment;
- b. Turn and fire drills;
- c. Failure to stop drills;
- d. Multiple target drills; and
- e. Judgmental shooting.

2. For all range practicals (stage two through stage four):

- a. The student will fire at a man-size silhouette target with the following requirements:
 - (1) 4-inch diameter circle in head;
 - (2) 8-inch diameter circle in chest/body area; and
 - (3) Center points of circles - 13-1/2 inches apart.
- b. All rounds fired must hit within these circles.

c. Minimum 92% qualification score = 25 rounds total requiring 23 hits. With regard to scoring:

- (1) 25 points (1 round is good for 1 point).
- (2) 92% of shots must be "in circle" hits for a passing grade (2 misses allowed on total course).
- (3) Shots not taken during stage five when a "no-shoot" situation is presented scores a point, just as an accurate shot in a hostile situation.
- (4) 92% is 23 of 25 possible [points].

3. A certified advanced handgun firearms instructor must be on the range during all phases of advanced handgun training. There shall be no less than one certified advanced handgun firearms instructor per four students.

D. Course: Virginia Private Security Advanced Handgun Course of Fire.

1. Stage One: Shoot/don't shoot drill. Stage one of the advanced handgun course of fire is conducted in a classroom using a 16 mm film or video cassette tape of firearms combat scenarios or in practical exercises on the range to assess the student's decision-making capability given job-related shoot/don't shoot incidents.

After the interaction of the scenario, the students must explain all their commands and actions.

Dry-fire response from a weapon rendered safe should be incorporated into the scenario interaction.

2. Stage Two: Turn-and-fire drill. Stage two of the advanced handgun course of fire is held at a firing range and consists of turn-and-fire drills from varying distances (straight draw hip holsters only).

All handguns are loaded with ~~six~~ 6 rounds of ammunition and safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the target. Upon the command "fire," the students must quickly turn while acquiring a firm grip on the weapon. Once facing the target and in a stable position, they must safely draw and fire ~~two~~ 2 rounds at the designated target circle. After shooting, while facing the target, the student must reholster safely, then turn around to face up range, ready to continue the exercise. The "fire" commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

3. Stage Three: Failure to stop drill. Stage three of the advanced handgun course of fire is held at a firing range and consists of failure to stop drills fired from the ~~seven-yard~~ 7-yard line (straight draw hip holsters only).

All handguns are loaded with ~~six~~ 6 rounds of ammunition and are safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the target. Upon the command "fire," given at approximately the ~~seven-yard~~ 7-yard line,

each shooter must safely turn around while acquiring a firm grip on their weapon as performed in the previous drill. Once facing the target, the students will draw and fire ~~two~~ 2 rounds at the 8-inch body circle, and then one immediate round to the 4-inch head circle. The student will then safely reholster. The drill will be repeated three times.

4. Stage Four: Multiple target identification drill. Stage four of the advanced handgun course of fire is held at a firing range and consists of multiple target identification drills fired from varying distances (straight draw hip holsters only).

Each shooter will line up on a set of three targets. Only two shooters at one time can complete this exercise on a standard 10-12 station range. However, smaller ranges may allow for only one shooter at a time.

Each handgun is loaded with six rounds of ammunition and safely holstered. The shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the targets. Upon the command "left," "right," or "center," the student must again turn around safely while establishing a firm grip on the weapon. Then, once stable, the student must quickly draw and fire 2 rounds at the designated circle on the "called" target ("L," "R," "C"). Then, the shooter, while still facing the targets, must safely reholster, turn around to face up range, and continue the exercise. Each two-round pair must be fired within ~~four~~ 4 seconds of the called command. Direction commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

5. Stage Five: Judgmental shooting. This drill combines the skills developed in the prior four stages. The shooter will be required to safely turn and fire at a "photograph" type target which may be either friendly or hostile. It requires hostile targets to be stopped using deadly force. Necessity (immediate jeopardy) is presumed for this exercise. This stage allows the instructor to evaluate the decision-making capability of the student as well as his shooting accuracy and safety.

Shooter is placed on the 10-yard line facing the instructor with the target to his rear. The target will be placed at any location along the range target line and should not be seen by the student until he is given the "turn" command during the drill. Each shooter has the opportunity to complete this drill four times. Each decision is worth one point. If he shoots at a hostile target, a hit anywhere on that target will score the point. If a friendly target is presented, it is clearly a no-shoot situation and the student should merely holster safely to score the point. There is a ~~four-second~~ 4-second time limit at this stage for any "shoot" situation.

The instructor will allow each shooter two opportunities to complete this drill and place two targets downrange for each. Four points or hits are still necessary at this stage for the total score. If two targets are used, then the time limit is

raised to ~~six~~ 6 seconds, regardless of whether two hostile targets are used or one hostile with one friendly.

6VAC20-171-395. Entry-level patrol rifle training.

A. Patrol rifle classroom training. [Individual must first successfully complete security officer handgun training.] The entry-level patrol rifle classroom instruction will emphasize but not be limited to:

1. Rifle handling techniques

a. Nomenclature/identification of rifle parts

b. Field [~~stripping~~ striping] and reassembling

c. Loading and unloading

[~~d. Cruiser carry conditions~~

e. Cruiser safe

~~f. d.] Chambering~~

[~~g. e.] Reloading~~

[~~h. f.] Slings~~

(1) Traditional sling

(2) Single point sling

(3) 3 Point sling

[~~i. g.] Transition from handgun to rifle/rifle to handgun~~

[~~j. h.] Malfunctions~~

[~~k. i.] Immediate actions procedures~~

[~~l. Feedway clearance procedures j. Remedial action]~~

[~~m. k.] Proper care and maintenance~~

[~~n. l.] Rifle retention~~

[~~o. m.] Ammunition management and identification~~

[~~p. n.] Range safety~~

[~~q. o.] Dim light/low light~~

2. Fundamentals of rifle marksmanship

a. Grip

b. Stance (position)

c. Sight alignment

d. Sight picture

e. Trigger control

f. Breathing

g. Follow through

3. Zeroing iron sights

a. Establishing mechanical zero

b. Zeroing process

4. Dim light shooting

a. Hours of darkness/dim light

b. Identification requirements

c. Unaided reduced light shooting techniques

d. Aided reduced light shooting techniques

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5. Shooting positions

a. Fundamentals of shooting positions

b. Basic patrol positions

6. Use of force

7. Criminal and civil liability

[8. Judgmental shooting

9- 8.] Written comprehensive examination

Total hours (excluding examination) [~~24 hours~~ 16 hours]

B. Range qualification (no minimum hours). The purpose of the range firing course is to provide practical patrol rifle training and qualification to those individuals who carry or have immediate access to a patrol rifle in the performance of their duties with the sighting system that will be carried on duty.

C. Patrol rifle qualification course.

1. All rifle qualification will be done with a law-enforcement type and caliber rifle. A total of 60 rounds of ammunition will be fired for rifle qualification.

2. All rifle qualification firing will be done with [~~a tactical (not parade) style sling mounted~~] iron sights. [In addition, if an officer is using an optic while] on [~~the rifle and utilized by the shooter~~ duty, they must qualify with that optic].

3. All indoor rifle qualification firing will be done at a range that accommodates a distance of 25 yards between the shooter and the target. No variances of this distance are allowed. The indoor target system will contain two targets per shooter mounted side by side. The targets will be FBI Q-R, half-sized silhouette targets. Use of this target type will simulate shooting at 50 yards.

4. All outdoor rifle qualification firing will be done at 50 yards using the FBI Q silhouette full-sized targets. Two of these targets will be mounted side by side for each shooter.

5. FBI Q silhouette targets are used for rifle qualification, scoring will be all hits inside the bottle – value 5 points; outside the bottle – value 0 points. With these targets a maximum score of 300 points is possible. Minimum qualification is 85% or 255 points.

D. Patrol rifle course of fire.

1. [~~All shooter~~ Prior to qualification, all shooters] are required to fire [~~at~~] a minimum of 30 familiarization rounds which will include transition drills from handgun to rifle and rifle to handgun. [Shooters will fire a minimum of 10 rounds with a handgun. This exercise is not scored and the distance is at the discretion of the instructor.]

2. Stage 1; 50 yards/25 yards (indoors) – Shooters will load their rifle with a magazine of 20 rounds and place the selector on safe. From the standing position with the rifle in the sling carry position, on command the shooters will fire 5 rounds from the standing position, place the selector on safe, assume a kneeling position and fire 5 rounds, place

the selector on safe shooter will assume the prone position, the shooter will fire 10 rounds. All 20 rounds of this stage will be fired at the left hand target. (1 minute) When firing is complete shooters will place the selector on safe and await further command.

3. Stage 2; 25 yards – Shooters will load their rifle with a magazine of 15 rounds and place the selector on safe. From the standing position with the rifle in the sling carry position, on command the shooters will fire 5 rounds from the standing position, place the selector on safe, assume a kneeling position and fire 5 rounds, place the selector on safe shooter will assume the prone position, the shooter will fire 5 rounds. All 15 rounds of this stage will be fired at the right hand target. (45 seconds) When firing is complete shooters will place the selector on safe and await further command.

4. Stage 3; 15 yards - On command shooters will assume the standing position and load rifle with a magazine of 10 rounds. On command shooters will fire 5 rounds at the right-hand target, place the selector on safe, assume the kneeling position and fire 5 rounds at the left-hand target in 15 seconds.

5. Stage 4; 7 yards - On command shooters will load rifle with a magazine of 20 rounds, selector in the safe position, and then place the rifle in the sling carry position. On command shooters will fire 2 rounds into the right target with a 2 second time limit. Upon completion of firing shooters will place the selector on safe and the rifle in the sling carry position. This exercise will be fired 5 times with a total of 10 rounds expended.

6. Stage 5; 5 yards - On command shooters will load rifle with a magazine of 5 rounds, selector in the safe position, and then place the rifle in the sling carry position. On command shooters will fire 1 round into the left target head with a 2 second time limit. Upon completion of firing shooters will place the selector on safe and the rifle in the sling carry position. This exercise will be fired 5 times with a total of 5 rounds expended.

E. Low light/dim light qualification course of fire.

7 yards - Under low-light conditions, on command shooters will fire 5 rounds at the left target, place the selector in the safe position, assume the kneeling position and fire 5 rounds at the right target. A time limit of 1 minute is allowed for this stage.

6VAC20-171-400. Firearms (handgun/shotgun) retraining.

A. All armed private security services business personnel with the exception of personal protection specialists must satisfactorily complete ~~two~~ 4 hours of firearms classroom training or practical exercises and range training, and requalify as prescribed in ~~6VAC20-171-370~~ 6VAC20-171-376 B and C for handgun. Firearms instructors who have received prior approval from the department may substitute

the alternative course specified in 6VAC20-171-370 D and the low-light course specified in 6VAC20-171-370 C for requalification firing with a semi-automatic handgun, and 6VAC20-171-380 for shotgun, if applicable, on an annual basis prior to the issuance of the Firearms Endorsement, as follows:

1. Classroom retraining or practical exercises — 2 hours
2. Range qualification with handgun and/or shotgun, if applicable (no minimum hours)

Total hours (excluding range qualification) — 2 hours

B. Requalification training with the shotgun shall be comprised of [4 hours 3 hours] of classroom training or practical exercises and range training and requalification firing as specified in 6VAC20-171-380 B.

C. Requalification training with the patrol rifle shall be comprised of 4 hours of firearms classroom training or practical exercises and range training and requalification firing as specified in 6VAC20-171-395 for patrol rifle.

D. All applicable firearms retraining must be completed and documented with the department on an annual basis prior to the issuance of a firearms endorsement.

6VAC20-171-420. Advanced handgun retraining.

All armed private security services business personnel registered in the category of personal protection specialist or other armed category seeking advanced handgun designation must satisfactorily complete advanced handgun retraining, which includes eight hours of firearms classroom training and range training, and requalify as prescribed in 6VAC20-171-390 C for handgun [~~within the 12-month period immediately preceding the expiration date of his registration~~] as follows:

1. Legal authority and decision making — 4 hours
2. Handgun safety, marksmanship and skill development — 4 hours
3. Completion of advanced handgun course of fire

Total Hours (excluding range qualification) – 8 hours

~~Article 3~~

~~Security Canine Handler Training Requirements~~

6VAC20-171-430. ~~Entry level security canine handler training; (Repealed.)~~

~~A. Prerequisites for security canine handler entry level (official documentation required):~~

1. Successful completion of the security officer core subjects curriculum — 18 hours; and
2. Successful completion of basic obedience training.

~~B. Following successful completion of the above prerequisites, each security canine handler must also comply with the following requirements:~~

1. Demonstration of proficiency. The student must demonstrate his proficiency in the handling of a security canine to satisfy the minimum standards — 2 hours

2. Evaluation by a certified private security canine handler instructor and basic obedience retraining
3. Security canine handler orientation/legal authority — 4 hours
4. Canine patrol techniques — 6 hours
5. Written examination

Total hours (excluding examinations) — 30 hours

6VAC20-171-440. ~~Security canine handler retraining; (Repealed.)~~

~~Each security canine handler registrant shall comply annually with the requirement for basic obedience evaluation and retraining (Refer to 6VAC20-171-430).~~

1. Applicable sections of the Code of Virginia and DCJS regulations — 1 hour
2. Security canine handler basic obedience evaluation and retraining — 4 hours
3. Canine grooming, feeding, and health care — 1 hour
4. Apprehension techniques — 1 hour
5. Obedience — 1 hour

Total hours — 8 hours

Article 4 3

Training Exemptions

6VAC20-171-445. Training exemptions.

Persons who meet the statutory requirements as set forth in § 9.1-141 of the Code of Virginia may apply for a partial exemption from the compulsory training standards. Individuals requesting such partial exemption shall file an application furnished by the department and include the applicable, nonrefundable application fee. The department may issue such partial exemption on the basis of individual qualifications as supported by required documentation. Those applying for and receiving exemptions must comply with all regulations promulgated by the board. Each person receiving a partial exemption must apply to the department for registration within 12 months from the date of issuance, otherwise the partial exemption shall become null and void.

Article 2

Department Action/Sanctions

6VAC20-171-500. Disciplinary action; sanctions; publication of records.

A. Each person subject to jurisdiction of this chapter who violates any statute or regulation pertaining to private security services shall be subject to sanctions imposed by the department regardless of criminal prosecution.

B. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation or in noncompliance of the Code of Virginia or of this chapter:

1. Letter of reprimand or censure;
2. Probation for any period of time;

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3. Suspension of license, registration, certification, or approval granted, for any period of time;
4. Revocation;
5. Refusal to issue, renew or reinstate a license, registration, certification or approval;
6. Fine not to exceed \$2,500 per violation as long as the respondent was not criminally prosecuted;
7. Remedial training; or
8. Conditional agreements.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this chapter but do not hold a valid license, certification or registration. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

D. The director may summarily suspend a license, certification or registration under this chapter without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the licensee or registrant would constitute a life-threatening situation, or has resulted in personal injury or loss to the public or to a consumer, or which may result in imminent harm, personal injury or loss.

E. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all persons, licensees, firms, registrants, training schools, school directors, compliance agents and licensed firms whose conduct and activities are subject to this chapter and have been sanctioned or denied licensure, registration, certification or approval.

6VAC20-171-550. Appeals.

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, ~~805 East Broad Street, Richmond, Virginia 23219~~, within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

6VAC20-171-560. Court review; appeal of final agency order.

A. The agency's final administrative decision (final agency orders) may be appealed. Any person affected by, and claiming the unlawfulness of the agency's final case decision, shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; save, if such party is not a resident of Virginia, the venue shall be in the city of Richmond, Virginia.

B. Notification shall be given to the attention of the Director, Department of Criminal Justice Services, ~~805 East Broad Street, Richmond, Virginia 23219~~, in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect, unless the court issues a stay of the order.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (6VAC20-171)

Irrevocable Consent for Service Form, ~~PSS-IC (eff. 2/00)~~, PSS-IRC (eff. 5/07).

Fingerprint Processing Application, ~~PSS-FP (eff. 2/00)~~, (eff. 3/08).

Initial Compliance Agent Training and Certification, ~~PSS-CA (eff. 2/00)~~, (eff. 3/08).

Initial Business License Application, ~~PSS-LA (eff. 2/00)~~, (eff. 3/08).

Renewal Business License Application, ~~PSS-LR (eff. 2/00)~~, (eff. 3/08).

Initial Private Security Registration Application, ~~PSS-RA (eff. 2/00)~~, (eff. 3/08).

Renewal Private Security Registration Application, ~~PSS-RR (eff. 2/00)~~, (eff. 3/08).

Partial Training Exemption Application for Entry-Level Training, ~~PSS-WA Entry (eff. 2/00)~~, (eff. 3/08).

In-Service Alternative Credit Application Instructions, ~~PSS-WA In-Service (eff. 5/07)~~.

Training Completion Roster Application, ~~PSS-SA1 (eff. 2/00)~~, PSS-TCR (eff. 5/07).

Initial ~~Private Security~~ Instructor Certification Application - Instructions, ~~PSS-IA (eff. 2/00)~~, (eff. 1/07).

Renewal ~~Private Security~~ Instructor Application, ~~PSS-IR (eff. 2/00)~~, (eff. 5/07).

Private Security Services Complaint Form, ~~PSS-C (eff. 2/00)~~, (eff. 5/07).

Duplicate/Replacement Photo ID Application, ~~PSS-MP2 (eff. 2/00)~~.

General Instructor Entry-Level Training Enrollment, ~~PSS-GE (eff. 2/00)~~, (eff. 5/07).

Compliance Agent In-Service Training Enrollment, ~~PSS-CT (eff. 2/00)~~, (eff. 5/07).

TITLE 9. ENVIRONMENT**VIRGINIA WASTE MANAGEMENT BOARD****Proposed Regulation**

Title of Regulation: **9VAC20-160. Voluntary Remediation Regulations (amending 9VAC20-160-10 through 9VAC20-160-40, 9VAC20-160-60 through 9VAC20-160-120).**

Statutory Authority: § 10.1-1232 of the Code of Virginia.

Public Hearing Information:

November 6, 2012 - 1 p.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Conference Room C, Richmond, VA

Public Comment Deadline: November 23, 2012.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Basis: The legal basis for the Voluntary Remediation Regulations, 9VAC20-160, is the Brownfield Restoration and Land Renewal Act. Specifically, § 10.1-1232 of the Code of Virginia authorizes the Waste Management Board to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. There is no corresponding federal mandate, since the regulations apply only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived.

Purpose: The agency performed an internal review of the Voluntary Remediation Regulations and determined that there was a continued need for this regulation. Since 1996 more than 325 applications have been submitted to the Voluntary Remediation Program (VRP). Certificates of completion have been issued to over 200 participants and the current active case load exceeds 125 sites. Without this program there is a likelihood that many of these cleanups may not have occurred. Further, the regulation is not considered complex.

Section 10.1-1232 of the Code of Virginia requires the Waste Management Board to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The Voluntary Remediation Regulation was last amended in 2002 and became effective as a final regulation on July 1, 2002. Based on a four-year periodic review, it was determined that the regulations needed to be updated to

~~Training Completion Form, PSS-TCF (eff. 2/00). (eff. 8/05).~~
~~Initial Private Security Certification Application, PSS-UA (eff. 2/00).~~

~~Renewal Private Security Certification Application, PSS-UR (eff. 2/00).~~

~~Additional Registration Category Application, PSS-MP1 (eff. 2/00).~~ PSS-ARC (eff. 3/08).

~~Training Session Notification Form, PSS-TN (eff. 2/00).~~
PSS-TSN (eff. 5/07).

~~Initial Training School Application, PSS-TA (eff. 2/00).~~
(eff. 5/07).

~~Renewal Training School Application, PSS-TR (eff. 2/00).~~
(eff. 5/07).

~~General Instructor In-Service Training Enrollment, PSS-GI (eff. 2/00).~~ (eff. 5/07).

~~Personal Protection Specialist Advanced Firearms Instructor Entry Level Training Enrollment, PSS-PPSFI (eff. 2/00).~~

~~Private Security Firearms Instructor Entry Level Training Enrollment, PSS-FE (eff. 2/00).~~

~~Firearm Discharge Report, PSS-FR (eff. 2/00).~~ (eff. 5/07).

~~Firearms Instructor In-Service Training Enrollment, PSS-FI (eff. 2/00).~~ (eff. 5/07).

Business or Training School Address Change Form, PSS-AC2 (eff. 3/08).

Private Security Services Bond, PSS-BD (eff. 5/07).

Compliance Agent Designation/Removal Form, PSS-CD (eff. 3/08).

Additional Private Security License Category Application, PSS-LC (eff. 3/08).

Compliance Agent Certification Application and Online Training Exemption Form, PSS-WC (eff. 5/07).

Criminal History Supplemental Form, PSS-CHS (eff. 3/08).

Criminal History Waiver Application, PSS-CHW (eff. 3/08).

Locksmith Experience Verification for Entry-Level Training Waiver - No Fee, PSS-LTW (eff. 3/08).

Request for Extension Form, PSS-ER (eff. 5/07).

Individual Address Change Form, PSS-IAC (eff. 5/07).

Firearms Endorsement Application, PSS-RF (eff. 3/08).

Training School Staff Change Form, PSS-SC (eff. 4/07).

School Director Designation and Acceptance Form, PSS-SD (eff. 5/07).

Electronic Roster Submittal Authorization Application, PSS-SR (eff. 5/07).

Training School Add Category Form - No Fee, PSS-TSAC (eff. 3/08).

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include current remediation levels and sampling and analysis methods; to improve reporting requirements; and to clarify eligibility, termination, and application requirements.

The amendments are intended to revise the program procedures so that sites can be processed more efficiently and reflect changes in technology.

Substance: The proposed amendments to the Voluntary Remediation Regulations include the following:

1. 9VAC20-160-10: Definitions - Definitions have been clarified and some additional ones added to clarify requirements;
2. 9VAC20-160-20: Purpose, applicability, and compliance with other regulations - Has been revised to include characterization as part of the purpose of this chapter;
3. 9VAC20-160-30: Eligibility criteria - Requirements have been added that address both the applicant and candidate sites eligibility; that allow applicants to have access to the property until the remediation is complete; that the department is notified of any change in ownership or in agent for the owner; that documentation of completed remediation is provided; that clarify when remediation has been clearly mandated; and that require written permission from off-site property owners;
4. 9VAC20-160-40: Application for participation - A requirement for a map and acreage of the property has been added to the application materials. Completeness review and notification provisions have been added;
5. 9VAC20-160-60: Registration Fee - A requirement that the initial registration fee shall be the statutory maximum has been added. Conditions for a participant seeking a partial refund have been added;
6. 9VAC20-160-70: Work to be performed - Clarifies the required components of the Voluntary Remediation Report. Requires the submittal of an assessment of any risks to off-site properties and clarifies the use of land use controls. Clarifies the reporting requirements in the case where the participant determines that no remedial action is necessary. A requirement for analysis to be performed by laboratories certified by the Virginia Environmental Laboratory Accreditation Program has been added. A requirement for the submission of an annual report containing a brief summary of any actions ongoing or completed as well as any planned future actions is also included;
8. 9VAC20-160-90: Remediation levels - Clarifies carcinogenic risks, ecological risks, surface water quality standards, soil screening levels, groundwater concerns, and human health considerations;
9. 9VAC20-160-100: Termination - Clarifies the conditions under which participation in the program may be terminated. Adds a requirement that the participant must make reasonable progress towards completion of the program to remain eligible;

10. 9VAC20-160-110: Certification of satisfactory completion of remediation - Regulatory requirements have been clarified. Provides for notification when there is a change in ownership; and

11. 9VAC20-160-120: Public notice - Provides for written notice to adjacent property owners and other owners whose property has been impacted by the release being addressed under the VRP project as soon as the department accepts the site characterization report and the proposed or completed remediation and prior to the department's issuing a certificate. Also provides for the acknowledgement of the receipt of written comments and an evaluation of the comment's impact on the planned or completed action or actions.

Issues: This regulation has no negative economic impact on small businesses. The VRP provides the opportunity for reasonable cleanup goals and protects human health and the environment. These cleanups facilitate the sale and reuse of industrial and commercial properties, provide economic benefits for the buyer and seller, and reduce green space development. Communities benefit when these projects are completed. The cleanup of a site may impact surrounding properties by increasing property values, tax revenues, employment opportunities and community pride. The citizens, businesses, and local governments of the Commonwealth all derive benefits from the VRP. This regulation poses no disadvantages to the public, to the regulated community, or to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a periodic review of regulations, the Waste Management Board (Board) proposes to amend its Voluntary Remediation Regulations. The Board proposes to make many clarifying changes to the requirements of these regulations and also proposes to change the language for fees so that affected entities will pay \$5,000 at the start of their remediation project and may apply for a refund of any unowed monies at the end.

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

Estimated Economic Impact. DEQ's voluntary remediation program allows land owners (mostly business land owners) to voluntarily clean up polluted land that is not so polluted that clean up would be mandated under state or federal regulations. Most entities that participate in this program are in the process of trying to sell their land and would take part in the program in hopes of increasing the value and, therefore, the sale price of the affected holding. The Board last updated its Voluntary Remediation Regulations in 2002. As a result of a periodic review of these regulations, the Board now proposes to make many clarifying changes as well as one change that may have a significant economic impact of the entities that choose to participate. The clarifying changes that

are being proposed for these regulations will not change the practices employed by the program and, so, should not increase costs for any affected entities. To the extent that these changes streamline processes and/or make these regulations easier to understand, affected entities will likely benefit.

Current regulations allow participating entities to pay, at the time of initial registration, a fee of one percent of the anticipated costs of their remediation projects, up to a statutory maximum of \$5,000. At the end of the project, DEQ will currently bill a participant for the actual costs of administering the project, minus the amount they have already paid, up to the statutory maximum. DEQ can withhold the certificate of completion for a project until that bill is paid but has no recourse for recouping its costs if a participant drops out of the program before his project is completed or just has no interest in obtaining the certificate. As a consequence, DEQ has had some projects where participants have only paid several hundred dollars when the actual program administration costs are many thousands of dollars. DEQ reports that the average costs for administering a remediation project is approximately \$40,000.

The Board proposes to amend the fees structure in these regulations so that program participants will pay the statutory maximum (\$5,000) at the time of initial registration. Participants will be able to request a refund upon project completion if the actual costs of administering their projects are less than the collected fee. Some project participants, particularly participants who drop out before project completion, will likely pay a larger fee on account of this regulatory change. Because participation in this program is voluntary, these costs are likely to be outweighed by the benefits that will accrue to any entities that choose to participate. DEQ, and taxpayers, will benefit from this change as it will allow DEQ to recoup more of the costs of administering this program from the program participants (its most immediate beneficiaries).

Businesses and Entities Affected. The Department of Environmental Quality (DEQ) reports that approximately 20 entities (individuals or businesses) per year initiate a voluntary remediation project. DEQ estimates that approximately 90% of these entities would be classified as small businesses.

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

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

Effects on the Use and Value of Private Property. This regulatory action will likely have minimal effects on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Since participation is voluntary, small businesses in the Commonwealth are unlikely to take part in DEQs voluntary

remediation program unless they expect the benefits that they will accrue to outweigh the costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no other methods that DEQ could have employed that would both have allowed DEQ to guarantee it would recoup more of its costs (up to the statutory maximum) and further minimized costs for affected small businesses.

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

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

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

Summary:

The proposed action updates current remediation levels and sampling and analysis methods; improves reporting requirements; clarifies eligibility, termination, and application requirements; and updates program procedures to process contaminated sites more efficiently and reflect changes in technology. The action also changes the language for fees so that affected entities will pay \$5,000 at the start of their remediation project and may apply for a refund of any unowed moneys at the end.

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9VAC20-160-10. Definitions.

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

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

"Certificate" means a written certification of satisfactory completion of remediation issued by the ~~director~~ department pursuant to § 10.1-1232 of the Code of Virginia.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including, but not limited to, such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9VAC20-60), solid waste (as defined in 9VAC20-81), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.)) of the Virginia State Water Control Law, or natural gas.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with participating in the program and addressing the contaminants of concern at the site.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

"Director" means the Director of the Department of Environmental Quality.

"Engineering controls" means physical modification to a site or facility to reduce or eliminate potential for exposure to contaminants. These include, but are not limited to, stormwater conveyance systems, pump and treat systems, slurry walls, vapor mitigation systems, liner systems, caps, monitoring systems, and leachate collection systems.

"Hazard index (HI)" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Incremental upper-bound lifetime cancer risk level" means a conservative estimate of the incremental probability of an individual developing cancer over a lifetime. Upper-bound lifetime cancer risk level is likely to overestimate "true risk."

"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed, and are used to reduce or eliminate the potential for exposure to contaminants. The term may include, but is not limited to, deed and water use restrictions.

"Land use controls" means legal or physical restrictions on the use of, or access to, a site to reduce or eliminate potential for exposure to contaminants, or prevent activities that could interfere with the effectiveness of remediation. Land use controls include but are not limited to engineering and institutional controls.

"Monitored natural attenuation" means a remediation process that closely monitors the natural or enhanced attenuation process.

"Natural attenuation" means a process through which contaminants breakdown naturally in the environment. Natural attenuation may be enhanced by the addition of nutrients, bacteria, oxygen, or other substances.

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"Operator" means the person currently responsible for the overall operations at a site, or any person responsible for operations at a site at the time of, or following, the release.

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of the registration fee.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

"Post certificate monitoring" means monitoring of environmental or site conditions stipulated as a condition of issuance of the Certificate of Satisfactory Completion of Remediation.

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the fee paid to enroll in the Voluntary Remediation Program, based on 1.0% of the total cost of remediation at a site, not to exceed the statutory maximum.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any contaminant into the environment.

"Remediation" means actions taken to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect human health and the environment, ~~including actions to investigate, study or assess any actual or suspected release.~~ Remediation may include, when appropriate and approved by the department, land use controls; natural attenuation; as well as, monitored natural attenuation.

"Remediation level" means the concentration of a contaminant with applicable land use controls, that is protective of human health and the environment.

~~"Report" means the Voluntary Remediation Report required by 9VAC20-160-70.~~

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program without obtaining a certification of satisfactory completion.

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

9VAC20-160-20. Purpose, applicability, and compliance with other regulations.

A. The purpose of this chapter is to establish standards and procedures pertaining to the eligibility, enrollment, reporting, characterization, remediation, and termination criteria for the

Virginia Voluntary Remediation Program in order to protect human health and the environment.

B. This chapter shall apply to all persons who elect to and are eligible to participate in the Virginia Voluntary Remediation Program.

C. Participation in the program does not relieve a participant from the obligation to comply with all applicable federal, state and local laws, ordinances and regulations related to the investigation and remediation (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) undertaken by the participant pursuant to this chapter.

9VAC20-160-30. Eligibility criteria.

A. ~~Candidate~~ Applicants and proposed sites shall meet eligibility criteria as defined in this section.

B. ~~Any~~ Eligible applicants are any persons who own, operate, have a security interest in or enter into a contract for the purchase or use of an eligible site. Those who wish to voluntarily remediate ~~that~~ a site may apply to participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may apply to participate in the program.

1. Access: Applicants who are not the site owner must demonstrate that they have access to the property at the time of application, during the investigation, and throughout the remedial activities until the remediation is completed.

2. Change in ownership: The department shall be notified if there is a change in property ownership.

3. Change in agent: The department shall be notified if there is a change in agent for the property owner or the participant.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

1. A site on which an eligible party has completed performed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for prospective remediation this chapter, and provided the site meets applicable remediation levels.

2. Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-

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44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

~~3.~~ Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

~~1.~~ a. It is not clear whether the release involved a waste material or a virgin material;

~~2.~~ b. It is not clear that the release occurred after the relevant regulations became effective; or

~~3.~~ c. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a ~~pending or existing~~ closure plan, a ~~pending or existing~~ an administrative order, a ~~pending or existing~~ court order, a ~~pending or existing~~ consent order, or the site is on the National Priorities List;

2. The site at which the release occurred is subject to the Virginia Hazardous Waste Management Regulations (9VAC20-60) (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and is thereby subject to requirements of the VHWMR;

3. The site at which the release occurred ~~constitutes~~ has been determined to be an open dump or unpermitted solid waste management facility under 9VAC20-81-45 of the Solid Waste Management Regulations;

4. The ~~director~~ department determines that the release poses an imminent and substantial threat to human health or the environment; or

5. Remediation of the release is otherwise the subject of a response action or investigation required by local, state, or federal law or regulation.

E. The director may determine that a site under subdivision D 3 of this section may participate in the program provided that such participation complies with the substantive requirements of the applicable regulations.

9VAC20-160-40. Application for participation.

A. The application for participation in the Voluntary Remediation Program shall, ~~at a minimum,~~ provide the elements listed below:

1. A written notice of intent to participate in the program and an overview of the project;

2. A statement of the applicant's eligibility to participate in the program (e.g., proof of ownership, security interest, etc.);

3. For authorized agents, a letter of authorization from an eligible party;

4. ~~A legal description of the site~~ map and acreage of the property and the boundaries of the site, if not the entire property;

5. ~~The~~ A general operational history of the site;

6. A general description of information known to or ascertainable by the applicant pertaining to (i) the nature and extent of any contamination; and (ii) past or present releases, both at the site and immediately contiguous to the site;

7. A discussion of the potential jurisdiction of other existing environmental regulatory programs, or documentation of a waiver thereof; and

8. ~~A notarized certification by the applicant that to the best of his knowledge all the information as set forth in this subsection is true and accurate.~~ An application signed by the applicant and the owner of the property attesting that to the best of their knowledge that all of the information as set forth in this subsection is true and accurate.

B. ~~Within 60 days of the department's receipt of an application, the director shall review the application to verify that (i) the application is complete and (ii) the applicant and the site meet the eligibility criteria set forth in 9VAC20-160-30.~~ The department shall review the application for completeness and notify the applicant within 15 days of the application's receipt whether the application is administratively incomplete. Within 60 days of the department's receipt of a complete application, the department shall verify whether the applicant and the site meet the eligibility criteria set forth in 9VAC20-160-30. The department reserves the right to conduct eligibility verification inspections of the candidate site during the eligibility verification review.

C. If the ~~director~~ department makes a tentative decision to reject the application, ~~he~~ it shall notify the applicant in writing that the application has been tentatively rejected and provide an explanation of the reasons for the proposed rejection. Within 30 days of the applicant's receipt of notice of rejection the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection. The ~~director's~~ department's tentative decision to reject an application will become a final agency action under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) upon receipt of an applicant's written acceptance of the ~~director's~~ department's decision to reject an application, or in the event an applicant fails to respond within the 30 days specified in this subsection, upon expiration of the 30 ~~days~~ specified day period. If within 30 days an applicant submits additional information to correct the inadequacies of an application, the review process ~~begins~~ shall begin again in accordance with this section.

9VAC20-160-60. Registration fee.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program.

B. The initial registration fee shall be at least 1.0% of the estimated cost of the remediation at the site, not to exceed the statutory maximum. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

~~C. To determine the appropriate registration fee, the applicant may provide an estimate of the anticipated total cost of remediation.~~

~~Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated with participating in the program and addressing the contaminants of concern at the subject site.~~

~~Departmental concurrence with an estimate of the cost of remediation does not constitute approval of the remedial approach assumed in the cost estimate.~~

~~The participant may elect to remit the statutory maximum registration fee to the department as an alternative to providing an estimate of the total cost of remediation at the time of eligibility verification.~~

~~D. If the participant does not elect to submit the statutory maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any costs to be refunded shall be remitted by the department with issuance of the certificate.~~

~~E. If the participant elected to remit the statutory maximum registration fee, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.~~

C. Failure to remit the required registration fee within 90 days of the date of eligibility verification shall result in the loss of eligibility status of the applicant. The applicant must reestablish his eligibility for participation in the program, unless alternate provisions are proposed and deemed acceptable to the department.

D. Upon completion of remediation and issuance of the Certificate of Satisfactory Completion of Remediation, the participant is entitled to seek a partial refund of the

registration fee. The refund will be reconciled as 1.0% of the final cost of remediation as compared to the initial registration fee.

1. The participant shall provide the department with a summary of the final cost of remediation within 60 days of issuance of a certificate. The department shall calculate the balance adjustment to be made to the initial registration fee and refund the difference.

2. If no summary of the final cost of remediation is provided to the department within 60 days of issuance of the certificate, the participant will have waived the right to a refund.

3. Concurrence with the summary of the final cost of remediation does not constitute department verification of the actual cost incurred.

E. Except for termination pursuant to 9VAC20-160-100 A 4, no portion of the registration fee will be refunded if participation in the program is terminated.

9VAC20-160-70. Work to be performed.

~~A. The Voluntary Remediation Report serves as the archive for all documentation pertaining to remedial activities at the site. Each component of the report shall be submitted by the participant to the department. As various components are received, they shall be inserted into the report. The report shall consist of the following components: a site characterization Site Characterization, a risk assessment including an assessment of risk to surrounding properties (as appropriate) Risk Assessment, a remedial action work plan Remedial Action Plan, a demonstration of completion Demonstration of Completion, and documentation of public notice. A separate report shall be submitted for each component of the Voluntary Remediation Report listed below:~~

~~1. The site characterization shall contain a delineation of Site Characterization Report shall provide an understanding of the site conditions including the identification and description of each area of concern (or source); the nature and extent of releases to all media, including the vertical and horizontal extent of the contaminants on the site, including off-site areas as applicable; and a preliminary screening of the risk or risks posed by the release.~~

~~2. The risk assessment Risk Assessment Report shall contain an evaluation of the risks to human health and the environment posed by the release, including an assessment of risk to off-site properties, a proposed set of remediation levels consistent with 9VAC20-160-90 that are protective of human health and the environment, and a recommended remediation to achieve the proposed objectives; or a demonstration that no action is necessary.~~

~~3. The remedial action work plan Remedial Action Plan Report shall propose the activities, schedule, any permits required to initiate and complete the remediation and~~

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specific design plans for implementing remediation that will achieve the remediation levels specified in the risk assessment. Control or elimination of continuing onsite source or sources of releases to the environment shall be discussed. Land use controls should be discussed as appropriate. If no remedial action is necessary, the Remedial Action Plan shall discuss the reasoning for no action. When remedial activities have occurred prior to enrolling in the Voluntary Remediation Program, this information shall be included in the Site Characterization Report. The Remedial Action Plan Report shall describe the remedial activities that occurred, to include as applicable: how releases (or sources) have been eliminated or controlled; the remediation system or systems installed; site restrictions imposed; permits required; and how remediation levels have been achieved.

~~4. Demonstration of completion. A Demonstration of Completion Report is required whenever remedial action has occurred as part of participation in the Voluntary Remediation Program. The Demonstration of Completion Report shall include: a detailed summary of the performance of the remediation implemented at the site, the total cost of the remediation, and confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.~~

~~a. The demonstration of completion should, when applicable, include a detailed summary of the performance of the remediation implemented at the site, the total cost of the remediation, and confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. If the participant elected to remit the statutory maximum registration fee and is not seeking a refund of any portion of the registration fee, the total cost of remediation need not be provided.~~

~~b. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.~~

~~5. The participant shall provide documentation. Documentation of public notice is required to demonstrate that public notice has been provided in accordance with 9VAC20-160-120. Such documentation shall include copies of comments received during the public comment period, all acknowledgements of receipt of comments, as well as the participant's responses to comments, if any are made.~~

B. It is the participant's responsibility to ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable federal, state, and local laws and regulations ~~and any appropriate regulations that are not required by state or federal law but are necessary to ensure that the activities do not result in a further release of contaminants to the environment and are protective of human health and the environment.~~

C. All work, to include sampling and analysis, shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised ~~April 1998~~ March 2009, or other media specific methods approved by the department and completed using appropriate quality assurance/quality control protocols. All analyses shall be performed by laboratories certified by the Virginia Environmental Laboratory Accreditation Program (VELAP). Laboratory certificates of analysis shall be included with applicable reports.

D. Until certificate issuance, all participants shall submit an annual report to the department containing a brief summary of any actions ongoing or completed as well as any planned future actions for the next reporting period. This report shall be submitted by July 1 using the "VRP Site Status Reporting Form." Failure to submit within 60 days may result in the site's Voluntary Remediation Program eligibility status being terminated.

9VAC20-160-80. Review of submittals.

A. ~~Upon receipt of submittals, the~~ The department shall review and evaluate the submittals components of the Voluntary Remediation Report submitted by the participant. The department may request additional information, including sampling data ~~of from~~ from the site or areas adjacent to the site to verify the extent of the release, ~~in order to render a decision and move the participant towards expeditious issuance of the certificate.~~

B. ~~The director~~ department may expedite, as appropriate, issuance of any permits required to initiate and complete a voluntary remediation. ~~The director~~ department shall, within 120 days of a complete submittal, expedite issuance of such permit in accordance with applicable regulations.

C. After receiving a complete and adequate report, the ~~director~~ department shall make a determination regarding the issuance of the certificate to the participant. The determination shall be a final agency action pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC20-160-90. Remediation levels.

A. The participant, with the concurrence of the department, shall consider impacts to human health and the environment in establishing remediation levels.

~~B. Remediation levels shall be based upon a risk assessment of the site and surrounding areas that may be impacted, reflecting the current and future use scenarios.~~

~~1. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.~~

~~2. For sites that do not achieve the unrestricted use classification, land use controls shall be applied. The restrictions imposed upon a site may be media specific, may vary according to site specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in 9VAC20-160-110. Land use controls approved by the department for use at the site are considered remediation.~~

~~C. B. Remediation levels based on human health shall be developed after appropriate site characterization data have been gathered as provided in 9VAC20-160-70. Remediation levels may be derived from the three-tiered approach provided in this subsection. Any tier or combination of tiers may be applied to establish remediation levels for contaminants present at a given site, with consideration of site use restrictions specified in subsection B of this section.~~

~~1. Under Tier I the participant shall collect appropriate samples from background and from the area of contamination for all media of concern remediation levels are based on media backgrounds levels. These background levels shall be determined from a portion of the property or a nearby property or other areas as approved by the department that have not been impacted by the contaminants of concern.~~

~~a. Background levels shall be determined from a portion of the property or a nearby property that has not been impacted by the contaminants of concern.~~

~~b. The participant shall compare concentrations from the area of contamination against background concentrations. If the concentrations from the area of contamination exceed established background levels, the participant may consider Tier II or Tier III methodologies, as applicable. If concentrations are at or below background levels, no further assessment is necessary.~~

~~2. Tier II generic remediation levels are media specific values, derived using unrestricted use default assumptions assuming that there will be no restrictions on the use of groundwater, surface water, and soil on the site. Use of Tier II shall be limited to the following:~~

~~a. Tier II generic groundwater remediation levels shall be based on the most beneficial use of groundwater. The~~

most beneficial use of groundwater is for a potable water source, unless demonstrated otherwise by the participant and accepted by the department. Therefore, they shall be based on (i) federal Maximum Contaminant Levels (MCLs) or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or, in the absence of a MCL, (ii) tap water values derived using the methodology provided in the EPA Region III Risk Based Concentration Table current at the time of the assessment Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 2009, using an acceptable individual carcinogenic risk of 1×10^{-5} and an individual noncarcinogen hazard quotient of 0.1. For contaminants that do not have values available under clauses (i) or (ii) above, a remediation level shall be calculated using criteria set forth under Tier III remediation levels.

b. Soil Tier II soil remediation levels shall insure that migration of contaminants shall not cause the cleanup levels established for groundwater and surface water to be exceeded. Soil remediation levels shall be determined as the lower of either the ingestion or cross-media transfer values, according to the following:

(1) For ingestion, values derived using the methodology provided in the EPA Region III Risk Based Concentration Table current at the time of assessment. Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 2009.

(a) For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of 1×10^{-6} to 10^{-5} .

(b) For noncarcinogens, $1/10$ (i.e., Hazard Quotient = 0.1) of the soil ingestion concentration, to account for multiple systemic toxicants at the site. For sites where there are fewer than 10 contaminants exceeding $1/10$ 0.1 of the soil ingestion concentration, the soil ingestion concentration may be divided by the number of contaminants such that the resulting hazard index does not exceed one 1.0.

(2) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, July 1996, Document 9355.4-23, EPA/540/R-96/018) and USEPA Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites (OSWER, December 2002, Document 9355.4-24) shall be used as follows:

(a) The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on a MCL; or

(b) The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens

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and a risk level of 1×10^{-5} for carcinogens, using default residential exposure assumptions.

~~(3) (c)~~ For noncarcinogens, for sites where there are fewer than 10 contaminants exceeding ~~1/40~~ 0.1 of the soil screening level, the soil screening level may be divided by the number of contaminants such that the resulting hazard index does not exceed ~~one~~ 1.0.

~~(4) (3)~~ Values derived under 9VAC20-160-90 C 2 b (1) and (2) may be adjusted to allow for updates in approved toxicity factors as necessary.

~~e. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under Tier II are also protective of ecological receptors of concern.~~

~~d. For unrestricted future use, where a contaminant of concern exists for which c. Tier II remediation levels for surface water quality standards shall be based on the Virginia Water Quality Standards (WQS) have been adopted as established by the State Water Control Board for a specific use, the participant shall demonstrate that concentrations in other media will not result in concentrations that exceed the WQS in adjacent surface water bodies. (9VAC25-260), according to the following:~~

~~(1) The chronic aquatic life criteria shall be compared to the appropriate human health criteria and the lower of the two values selected as the Tier II remediation level.~~

~~(2) For contaminants that do not have a Virginia WQS, the federal Water Quality Criteria (WQC) may be used if available. The chronic federal criterion continuous concentration (CCC) for aquatic life shall be compared to the appropriate human health based criteria and the lower of the two values selected as the Tier II remediation level.~~

~~(3) If neither a Virginia WQS nor a federal WQC is available for a particular contaminant detected in surface water, the participant should perform a literature search to determine if alternative values are available. If alternative values are not available, the detected contaminants shall be evaluated through a site-specific risk assessment.~~

3. Tier III remediation levels are based upon ~~a site-specific risk assessment considering~~ site-specific assumptions about current and potential exposure scenarios for the population or populations of concern, ~~including ecological receptors,~~ and characteristics of the affected media and can be based upon a site-specific risk assessment. Land-use controls can be considered.

a. In developing Tier III remediation levels, and unless the participant proposes other guidance that is acceptable to the department, the participant shall use, for all media and exposure routes, the methodology specified in Risk Assessment Guidance for Superfund, Volume 1, Human

Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002) and (Part B, Development of Preliminary Remediation Goals) Interim, USEPA, December 1991 (Publication 9285.7-01B) with modifications as appropriate to allow for site-specific conditions. The participant may use other methodologies approved by the department.

b. For a site with carcinogenic contaminants, the remediation goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of 1×10^{-6} 10^{-5} . The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding 1×10^{-4} considering multiple contaminants and multiple exposure pathways, unless the use of a MCL for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than 1×10^{-4} .

c. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

d. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the Voluntary Remediation Program site characterization.

~~e. Groundwater cleanup levels shall be based on the most beneficial use of the groundwater. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the participant and approved by the department.~~

~~f. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under Tier III are also protective of ecological receptors of concern. If the Tier III remediation levels developed for human health are not protective of ecological receptors of concern, the remediation levels shall be adjusted accordingly.~~

C. The participant shall determine if ecological receptors are present at the site or in the vicinity of the site and if they are impacted by releases from the site.

1. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under the three-tiered approach described in this section are also protective of such ecological receptors.

2. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under the three-tiered approach described in this section are also protective

of ecological receptors. If the remediation levels developed for human health are not protective of ecological receptors, the remediation levels shall be adjusted accordingly.

9VAC20-160-100. Termination.

A. Participation in the program shall be terminated:

1. When evaluation of new information obtained during participation in the program results in a determination by the ~~director~~ department that the site is ineligible or that a participant has taken an action to render the site ineligible for participation in the program. If such a determination is made, the ~~director~~ department shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 days, the participant may submit additional information, or accept the ~~director's department's~~ determination.

2. Upon 30 days written notice of ~~termination~~ withdrawal by ~~either party~~ the participant.

3. Upon participant's failure to make reasonable progress towards completion of the program, as determined by the department.

4. Upon fulfillment of all program requirements and issuance of the Certification of Satisfactory Completion of Remediation as described in 9VAC20-160-110, notwithstanding any conditions of issuance specified in the Certificate.

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program whether the program is satisfactorily completed or terminated.

C. ~~No~~ Except for termination pursuant to subsection A 4, no portion of the registration fee will be refunded if participation is terminated by any method as described in 9VAC20-160-100.

9VAC20-160-110. Certification of satisfactory completion of remediation.

A. The ~~director~~ department shall issue a certification of satisfactory completion of remediation when:

1. The participant has demonstrated that migration of contamination has been stabilized;

2. The participant has demonstrated that the site has met the applicable remediation levels and will continue to meet the applicable remediation levels in the future for both on site and off site receptors; ~~and~~

3. All provisions of the approved remedial action plan as applicable have been completed;

4. All applicable requirements of the regulations have been completed; and

~~3- 5.~~ 5. The department ~~concurs with~~ accepts all work submitted, as set forth in ~~9VAC20-160-80~~ 9VAC20-160-70.

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law for the release or releases addressed.

C. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.

D. For sites that do not achieve the unrestricted use classification, land use controls may be proffered in order to develop remediation levels based on restricted use. The restrictions imposed upon a site may be media-specific, may vary according to site-specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in this section. Land use controls accepted by the department for use at the site are considered remediation for the purpose of this chapter.

~~E.~~ E. ~~If a use restriction is specified in the certificate, such restriction must be attached to the deed to the property with an explanation for the restriction, subject to concurrence by the director, and shall the participant shall cause the certificate to be recorded by the participant with among the land records for the site in the office of the clerk of the circuit court for the jurisdiction in which the site is located within 90 days of execution of the certificate by the department, unless specified in the certificate. The participant may also record the certificate itself.~~ If the certificate does not include any use restriction, recordation of the certificate is at the option of the participant. The immunity accorded by the certification shall apply to the participant and shall run with the land identified as the site.

~~D.~~ F. The immunity granted by issuance of the certificate shall be limited to site conditions at the time of issuance as those conditions are described in the Voluntary Remediation Report. The immunity is further conditioned upon satisfactory performance by the participant of all obligations required by the ~~director~~ department under the program and upon the veracity, accuracy, and completeness of the information submitted to the ~~director~~ department by the participant relating to the site. Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the certificate shall be dependent upon the identification of the nature and extent of contamination as presented in the report.

~~E.~~ G. The certificate shall specify the conditions for which immunity is being accorded, including, but not limited to:

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1. A summary of the information that was considered;
2. Any restrictions on future use;
3. Any local land use controls on surrounding properties that were taken into account;~~and~~
4. Any ~~required~~ proffered land use controls ~~including; and~~
 - a. ~~Engineering controls and their maintenance; and~~
 - b. ~~Institutional controls.~~
5. Any post-certificate monitoring.

~~F.~~ H. The certificate may be revoked by the ~~director~~ department at any time in the event that conditions at the site, unknown at the time of issuance of the certificate, pose a risk to human health or the environment or in the event that the certificate was based on information that was false, inaccurate, or misleading. The certificate may also be revoked for the failure to meet or maintain the conditions of the certificate. Any and all claims may be pursued by the Commonwealth for liability for failure to meet a requirement of the program, criminal liability, or liability arising from future activities at the site that may cause contamination by pollutants. By issuance of the certificate the ~~director~~ department does not waive sovereign immunity. Failure to implement and maintain land use controls may result in revocation of the certificate.

~~G.~~ I. The certificate is not and shall not be interpreted to be a permit or a modification of an existing permit or administrative order issued pursuant to state law, nor shall it in any way relieve the participant of its obligation to comply with any other federal or state law, regulation or administrative order. Any new permit or administrative order, or modification of an existing permit or administrative order, must be accomplished in accordance with applicable federal and state laws and regulations.

J. Change in ownership: For properties that received a Certificate of Satisfactory Completion and are subject to use restrictions, the new property owner shall register with the department within 60 days of the acquisition.

9VAC20-160-120. Public notice.

A. The participant shall give public notice of ~~either~~ the proposed voluntary remediation ~~or the completed voluntary remediation.~~ The notice shall be made after the department ~~concurs with~~ accepts the site characterization report and the proposed or completed remediation, and shall occur prior to the department's issuing a certificate. Such notice shall be paid for by the participant.

B. The participant shall:

1. Provide written notice to the local government in which the facility is located;
2. Provide written notice to all adjacent property owners and other owners whose property has been impacted by the release being addressed under the VRP project; and
3. Publish a notice once in a newspaper of general circulation in the area affected by the voluntary action.

~~B.~~ C. A comment period of at least 30 days must follow issuance of the notices pursuant to this section. The department, at its discretion, may increase the duration of the comment period. The contents of each public notice required pursuant to 9VAC20-160-120 A shall include:

1. The name and address of the participant and the location of the proposed voluntary remediation;
2. A brief description of ~~the remediation,~~ the general nature of the release, any remediation, and any proposed land use controls;
3. The address and telephone number of a specific person familiar with the remediation from whom information regarding the voluntary remediation may be obtained; and
4. A brief description of how to submit comments.

D. The participant shall send all commenters a letter acknowledging receipt of written comments and providing responses to the same.

~~C.~~ E. The participant shall provide to the department ~~a:~~

1. A signed statement that he has sent a written notice to all adjacent property owners and the local government, a copy of the notice, and a list of all names and addresses to whom the notice was sent; and
2. Copies of all written comments received during the public comment period, copies of acknowledgement letters, and copies of any response to comments, as well as an evaluation of the comment's impact on the planned or completed action or actions.

~~D. The participant shall send all commenters a letter acknowledging receipt of comments.~~

~~E. The participant shall provide to the department copies of all written comments received during the public comment period, copies of acknowledgement letters, a discussion of how those comments were considered, a copy of any response to comments, and a discussion of their impact on the proposed or completed remediation.~~

DOCUMENTS INCORPORATED BY REFERENCE (9VAC20-160)

Test Methods for Evaluating Solid Waste: Physical/Chemical Methods; EPA Publication SW-846, Third Edition (1986) as amended by Final Update I, Final Update II, Final Update IIA, Final Update IIB, Final Update III, and Final Update IIIA, PB 99-115 891, revised ~~April 1998~~ March 2009.

U.S. EPA Soil Screening Guidance, EPA/540/R-96/018, Publication 9355.4-23, July 1996.

[U.S. EPA Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites \(OSWER, December 2002, Document 9355.4-24\)](#)

Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A) Interim Final, EPA/540/1-89/002, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, December 1989.

Risk Assessment Guidance for Superfund: Volume I—, Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) Interim, Publication 9285.7-01B, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, December 1991.

~~Risk Based Concentration Table, Region III, United States Environmental Protection Agency, April 2, 2002.~~

Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 2009.

VA.R. Doc. No. R08-1271; Filed September 4, 2012, 3:58 p.m.

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TITLE 12. HEALTH

BOARD OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (adding 12VAC30-10-445).

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

Effective Date: October 25, 2012.

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

Summary:

This action complies with the Centers for Medicare and Medicaid Services' (CMS) published letter from the State Medicaid Director informing states that, pursuant to § 6411 of the Affordable Care Act (Pub. L. 111-148), CMS requires states to establish a program under which the state contracts with one or more recovery audit contractors for the purpose of identifying underpayments and overpayments and recouping overpayments under the State Plan and under any waiver of the State Plan with respect to all services for which payment is made to any entity under the plan or waiver.

12VAC30-10-445. Recovery audit contractors.

A. The state has established a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State Plan and under any waiver of the State Plan.

B. The state/Medicaid agency has contracts of the type listed in § 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute.

C. The state will make payments to the RACs only from amounts recovered.

D. The state will make payments to the RACs on a contingent basis for collecting overpayments.

E. The state attests that the contingency fee rate paid to the Medicaid RAC will not exceed the highest rate paid to Medicare RACs as published in the Federal Register.

F. The payment methodology used to determine state payments to Medicaid RACs for the identification of underpayments will be based upon the percentage of the contingency fee.

G. The state has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RACs.

H. The state assures that the amounts expended by the state to carry out the program will be amounts expended as necessary for the proper and efficient administration of the State Plan or a waiver of the plan.

I. The state assures that the recovered amounts will be subject to a state's quarterly expenditure estimates and funding of the state's share.

J. Efforts of the Medicaid RACs will be coordinated with other contractors or entities performing audits of entities receiving payments under the State Plan or waiver in the state, and/or state and federal law-enforcement entities and the CMS Medicaid Integrity Program.

VA.R. Doc. No. R13-3145; Filed August 28, 2012, 10:37 a.m.

Fast-Track Regulation

Titles of Regulations: 12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-325).

12VAC30-20. Administration of Medical Assistance Services (adding 12VAC30-20-205).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 24, 2012.

Effective Date: November 8, 2012.

Agency Contact: Cindy Olson, Department of Medical Assistance Services Eligibility Supervisor, Department of

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Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or email cindy.olson@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Sections 32.1-324 and 32.1-325 of the Code of Virginia authorize the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: This change is to put in place the language added to Item 296 L of Chapter 874 of the 2010 Acts of Assembly directing DMAS to develop enrollment and retention provisions, consistent with those outlined in § 104 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), and implement provisions determined to be budget neutral, cost effective, or that would lead to an award of a CHIPRA performance bonus.

Rationale for Using Fast-Track Process: The agency is using the fast-track rulemaking process since this action is designed to save tax dollars and brings substantial additional federal money into the state. Using the fast-track process will get this regulation implemented as quickly as possible, as there was no emergency regulatory authority included in the General Assembly's mandate.

Substance: The Children's Health Insurance Program Reauthorization Act of 2009 authorizes the Centers for Medicare and Medicaid Services (CMS) to award annual financial bonuses to states that: (i) implement certain enrollment and retention provisions in their children's Medicaid and Children's Health Insurance Program (CHIP) programs and (ii) exceed enrollment goals in their children's Medicaid program. Funding for the annual CHIPRA performance bonus payments is available through federal fiscal year (FFY) 2013.

In order for the department to ensure that Virginia is eligible for a CHIPRA performance bonus in FFY2011, two new enrollment and retention strategies must be implemented. One enrollment and retention strategy, Administrative Renewals, is being implemented to streamline the renewal process for current FAMIS enrollees. While this is a positive step forward for the Children's Health program, this provision alone will not secure a performance bonus for the Commonwealth. A second enrollment and retention strategy is needed to obtain this funding. Without significant expense and administrative changes, the department can implement a § 1906A premium assistance program, and thereby qualify for federal performance bonuses for the next three years. Premium assistance programs use federal and state Medicaid funds to help subsidize the purchase of group health coverage for children who have access to employer-sponsored

coverage, but who may need assistance in paying for their premiums.

Virginia currently operates a premium assistance program, known as the Health Insurance Premium Payment Program (HIPP) under the authority of § 1906 of the Social Security Act. HIPP provides reimbursement for the Medicaid individual's share of the cost of the health insurance premium when it is cost-effective for the state to do so. The current HIPP program does not restrict enrollment to children under age 19 and opens enrollment up to most Medicaid eligible individuals covered under employer-sponsored health insurance.

CHIPRA added § 1906A to the Social Security Act and provides states with an additional premium assistance option for children under age 19 enrolled in Medicaid. This new provision is intended to give states the opportunity to build on existing § 1906 programs to augment coverage options for children.

The premium assistance option offered through CHIPRA allows states to provide health insurance premium assistance to children under age 19, who are eligible for Medicaid and who have access to qualified employer-sponsored coverage. The CHIPRA premium assistance provision would also require the department to pay cost sharing for the ineligible parent who holds the insurance as well as for enrolled children under age 19. It is estimated that this will cost the department approximately \$947,614 in total funds (\$446,326 in general funds) each year. Individual enrollment in the CHIPRA premium assistance program is voluntary and is not a condition of enrollment for those applying for Medicaid. This program will not require an administratively burdensome cost effectiveness calculation for each participant as is currently required in the HIPP program. Program guidelines require that cost effectiveness will be met as long as the employer covers at least 40% of the health insurance premium. Implementation of this provision will provide an alternative method for subsidizing employer-sponsored coverage and will encourage parents of Medicaid children to enroll in private health insurance.

Issues: The primary advantage of this action is that it will permit DMAS to extend the Health Insurance Premium Payment program to children, saving the state money and providing for private health insurance coverage for children. In addition, implementing this program qualifies Virginia for substantial extended federal match money. There are no disadvantages to the Commonwealth or to the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 874 of the 2010 Acts of Assembly Item 296 L, the proposed regulations will establish an additional premium assistance option for children enrolled in Medicaid.

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

Estimated Economic Impact. The federal Children's Health Insurance Program Reauthorization Act of 2009 authorized the Centers for Medicare and Medicaid Services to award annual performance bonuses through federal fiscal year (FFY) 2013 to states that implement certain enrollment and retention provisions in their children's Medicaid and Children's Health Insurance Program (CHIP) programs and exceed enrollment goals in their children's Medicaid program. Consequently, the 2010 General Assembly directed the Department of Medical Assistance Services (DMAS) to develop enrollment and retention provisions that would lead to an award of a performance bonus.

In order to get the bonus, a state must implement at least five of the eight program features that simplify the application and enrollment process. The goal is to encourage and assist states in reaching and enrolling more uninsured children who are eligible for Medicaid. The eight program features are: 1) liberalization of asset or resource requirements, 2) elimination of in-person interviews, 3) the same application and renewal process for Medicaid and CHIP, 4) automatic/administrative renewals, 5) premium assistance, 6) continuous eligibility, 7) presumptive eligibility for children, and 8) express lane eligibility.

During the last year, Virginia met the first three of the eight criteria above. Also, the fourth criterion was implemented administratively October 1, 2010. DMAS proposes to add the fifth criteria, premium assistance, through these regulations to qualify for the bonus.

Virginia Medicaid currently operates an optional premium assistance program known as the Health Insurance Premium Payment Program (HIPP). Under HIPP, Medicaid pays for the employees share of the health insurance premium and any other cost sharing fees if participation is found to be cost effective for Medicaid. Participation is considered cost effective if the premium assistance subsidy is likely to be less than the expected total expenditures that will be spent on that persons Medicaid coverage. The current HIPP program does not restrict enrollment to children under age 19 and opens enrollment up to most Medicaid eligible individuals covered under employer-sponsored health insurance.

The proposed new premium assistance program is different than the current HIPP program in three main ways. First, the new program provides health insurance premium assistance to children under age 19 while the current program does not restrict enrollment to children under age 19. Second, the new program requires Medicaid to pay cost sharing for the ineligible parent who holds the insurance as well as for enrolled children. Third, the proposed program does not require a cost effectiveness calculation for each participant as is currently required in the HIPP program as long as the employer covers at least 40% of the health insurance premium.

DMAS estimates that 1,186 families will enroll in the proposed premium assistance program. The new program

enrollees are expected to come from the current HIPP program and from the Medicaid program. Some of the families in the current HIPP program who have a child under age 19 are expected to apply for the new program because of the available cost sharing for the ineligible parents or because Medicaid will no longer require the cost effectiveness determination which may be administratively burdensome. Also, some of the families in the Medicaid program whose employer pays at least 40% of the health insurance premium and who did not pass the cost effectiveness test for the current program are expected to apply for the new program as there is no cost effectiveness test required.

It is estimated that DMAS will pay \$585,107 in FFY 2011, \$600,057 in FFY 2012, and \$600,057 in FFY 2013 for cost sharing¹, one time system changes in the first year, and two full time staff positions. Approximately one half of these amounts will be paid by the federal government and the remaining half will be paid by the Commonwealth.

The main benefit of the proposed program is the expected bonus. The projected performance bonus for FFY 2011 is \$32.4 million, for FFY 2012 it is \$43.6 million, and FFY 2013 it is \$59.2 million. Based on the 1,186 anticipated enrollment level, the expected bonus per enrollee varies from \$27,393 to \$49,959 which is significantly greater than \$799 expected cost sharing per enrollee. Also, the influx of the federal funds coming into the Commonwealth is expected to have expansionary economic effects on Virginia's economy.

In addition, a reduction in cost sharing expenditures in the current HIPP program would be expected as some individuals leave the current program to join the new program. Also, a reduction in administrative expenses may be expected as the new program does not require the time consuming administrative cost effectiveness determination. Furthermore, a reduction in Medicaid expenditures would be expected as some individuals who were ineligible for HIPP become eligible for premium assistance under the new program.² All of these anticipated fiscal effects would offset the additional cost sharing, system changes, and staff costs discussed above.

Finally, the proposed premium assistance program is expected to benefit the enrollees by paying for their and their ineligible parents' health insurance premiums. Since this is a completely optional program, applicants reveal that the benefits to them are greater than the costs by choosing to participate in the program.

Businesses and Entities Affected. The number of individuals anticipated to enroll in the proposed premium assistance program is 1,186.

Localities Particularly Affected. The proposed regulations do not affect any locality more than others.

Projected Impact on Employment. Implementation of the new program is estimated to require two full time staff positions and expected to increase in the demand for labor. Also, the expansionary effects of the influx of federal funds are expected to increase demand for labor. On the other hand,

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expected reduction in the administratively burdensome cost effectiveness determinations would reduce the need for some staff time and reduce the demand for labor, offsetting some of the expected increase in labor demand.

Effects on the Use and Value of Private Property. The proposed regulations are not expected to have an effect on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed regulations do not have a direct effect on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no anticipated adverse effect on small businesses.

Real Estate Development Costs. No effect on real estate development costs is expected.

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

¹ According to DMAS, \$799 per year is the national average for cost sharing.

² Even though no actual cost effectiveness determination is required, employer paying at least 40% of the health insurance premium is expected to result in cost effectiveness in majority of the cases.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Health Insurance Premium Payment (HIPP) for Kids Program (12VAC30-20). The agency concurs with this analysis.

Summary:

This action implements Item 296 L of Chapter 874 of the 2010 Appropriations Act, which directed the Department of Medical Assistance Services to develop enrollment and retention provisions, consistent with those outlined in § 104 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), P.L. 111-3, and implements provisions determined to be budget neutral, cost effective, or that would lead to an award of a CHIPRA performance bonus.

12VAC30-10-325. Premiums, deductibles, coinsurance and other cost sharing obligations.

A. ~~The Pursuant to § 1906 of the Act, the~~ Medicaid agency pays all premiums, deductibles, coinsurance, and other cost sharing obligations for items and services covered under the State plan (subject to any nominal Medicaid copayment) for eligible individuals in employer-based cost-effective group health plans.

B. When coverage for eligible family members is not possible unless ineligible family members enroll, the Medicaid agency pays premiums for enrollment of other family members when cost-effective. In addition, the eligible individual is entitled to services covered by the State plan which are not included in the group health plan. Guidelines for determining cost effectiveness are described in 12VAC30-10-610 H.

C. Pursuant to § 1906A of the Act, the Medicaid agency pays all premiums, deductibles, coinsurance, and other cost sharing obligations for items and services covered under the State Plan, as specified in the qualified employer-sponsored coverage, without regard to limitations specified in § 1916 or § 1916A of the Act, for eligible individuals under age 19 who have access to and elect to enroll in such coverage. The eligible individual is entitled to services covered by the State Plan that are not included in the employer-sponsored coverage. For qualified employer-sponsored coverage, the employer must contribute at least 40% of the premium cost.

When coverage for eligible family members under age 19 is not possible unless an ineligible family member enrolls, the Medicaid agency pays premiums for enrollment of the ineligible family member and, at the option of the parent or legal guardian, other family members that are eligible for coverage under the employer-sponsored plan. The agency also pays deductibles, coinsurance, and other cost-sharing obligations for items and services covered under the State Plan for the ineligible family member. 12VAC30-20-205 provides a detailed description of this program.

~~C. D.~~ The Medicaid agency pays premiums for individuals described in subsection 19 of 12VAC30-30-10.

12VAC30-20-205. Health Insurance Premium Payment (HIPP) for Kids.

A. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Case" means all family members who are eligible for coverage under the group health plan and who are eligible for Medicaid.

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DSS" means the Department of Social Services consistent with Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 of the Code of Virginia.

"Family member" means individuals who are related by blood, marriage, or adoption.

"High deductible health plan" means a plan as defined in § 223(c)(2) of the Internal Revenue Code of 1986, without regard to whether the plan is purchased in conjunction with a health savings account (as defined under § 223(d) of the Internal Revenue Code of 1986).

"HIPP" means the Health Insurance Premium Payment Program administered by DMAS consistent with § 1906 of the Act.

"HIPP for Kids" means the Health Insurance Premium Payment Program administered by DMAS consistent with § 1906A of the Act.

"Member" means a person who is eligible for Medicaid as determined by DMAS, a DMAS designated agent, or the Department of Social Services.

"Parent" means the biological or adoptive parent or parents, or the biological or adoptive parent and the stepparent, living in the home with the Medicaid-eligible child. The health insurance policyholder shall be a parent as defined herein.

"Premium" means the fixed cost of participation in the group health plan, which cost may be shared by the employer and employee or paid in full by either party.

"Premium assistance subsidy" means the amount that DMAS will pay of the employee's cost of participating in the qualified employer-sponsored coverage to cover the Medicaid eligible member or members under age 19.

"Qualified employer-sponsored coverage" means a group health plan or health insurance coverage offered through an employer:

1. That qualifies as creditable coverage as a group health plan under § 2701(c)(1) of the Public Health Service Act;
2. For which the employer contribution toward any premium for such coverage is at least 40%; and
3. That is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification

for purposes of paragraph (3)(A)(ii) of § 105(h) of the Internal Revenue Code of 1986 (but determined without regard to clause (i) of subparagraph (B) of such paragraph). "State Plan" means the State Plan for Medical Assistance for the Commonwealth of Virginia.

B. Program purpose. The purpose of the HIPP for Kids program shall be to:

1. Enroll members who are eligible for coverage under a qualified employer-sponsored coverage plan.
2. Provide premium assistance subsidy for payment of the employee share of the premiums and other cost-sharing obligations for the Medicaid eligible child under age 19. In addition, to provide cost sharing for the child's noneligible parent for items and services covered under the qualified employer-sponsored coverage that are also covered services under the State Plan. There is no cost sharing for parents for services not covered by the qualified employer-sponsored coverage.
3. Treat coverage under such employer group health plan as a third party liability consistent with § 1902(a)(25) of the Social Security Act.

C. Member eligibility. DMAS shall obtain specific information on qualified employer-sponsored coverage available to the members in the case including, but not limited to, the effective date of coverage, the services covered by the plan, the deductibles and copayments required by the plan, and the amount of the premium paid by the employer and employee. Coverage that is not comprehensive shall be denied premium assistance. All Medicaid eligible family members under the age of 19 who are eligible for coverage under the qualified employer-sponsored coverage shall be eligible for consideration for HIPP for Kids except the following:

1. The member is Medicaid eligible due to "spenddown"; or
2. The member is currently enrolled in the qualified employer-sponsored coverage and is only retroactively eligible for Medicaid.

D. Application required. A completed HIPP for Kids application must be submitted to DMAS to be evaluated for program eligibility. The HIPP for Kids application consists of the forms prescribed by DMAS and any necessary information as required by the program to evaluate eligibility and determine if the plan meets the criteria for qualified employer-sponsored coverage.

E. Exceptions. The term "qualified employer-sponsored coverage" does not include coverage consisting of:

1. Benefits provided under a health flexible spending arrangement (as defined in § 106(c)(2) of the Internal Revenue Code of 1986) or
2. A high deductible health plan (as defined in § 223(c)(2) of the Internal Revenue Code of 1986), without regard to

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whether the plan is purchased in conjunction with a health savings account (as defined under § 223(d) of the Internal Revenue Code of 1986).

3. For self-employed individuals, qualified employer-sponsored coverage obtained through self-employment activities shall not meet the program requirements unless the self-employment activities are the family's primary source of income and the insurance meets the requirements of the definition of qualified employer-sponsored coverage in subsection A of this section. Family for this purpose includes family by blood, marriage, or adoption.

F. Payments. When DMAS determines that a qualified employer-sponsored coverage plan is eligible and other eligibility requirements have been met, DMAS shall provide for the payment of premium assistance subsidy and other cost-sharing obligations for items and services otherwise covered under the State Plan, except for the nominal cost-sharing amounts permitted under § 1916 of the Social Security Act.

1. Effective date of premium assistance subsidy. Payment of premium assistance subsidies and other cost-sharing obligations shall become effective on the first day of the month in which DMAS receives a complete HIPP application or the first day of the month in which qualified employer-sponsored coverage becomes effective, whichever is later. Payments shall be made to either the employer, the insurance company, or the individual who is carrying the group health plan coverage.

2. Payments for deductibles, coinsurances, and other cost-sharing obligations.

a. Medicaid eligible children under age 19 pursuant to § 1906A of the Act. The Medicaid agency pays all premiums, deductibles, coinsurance, and other cost-sharing obligations for items and services covered under the State Plan, as specified in the qualified employer-sponsored coverage, without regard to limitations specified in § 1916 or § 1916A of the Act, for eligible individuals under age 19 who have access to and elect to enroll in such coverage. The eligible individual is entitled to services covered by the State Plan that are not included in the qualified employer-sponsored coverage.

b. Ineligible family members. When coverage for Medicaid-eligible family members under age 19 is not possible unless an ineligible parent enrolls, the Medicaid agency pays premiums only for enrollment of the ineligible parent and, at the parent's option, other family members who are eligible for coverage under the qualified employer-sponsored coverage. In addition, the agency provides cost sharing for the child's ineligible parent for items and services covered under the qualified employer-sponsored coverage that are also covered services under the State Plan. There is no cost-sharing for ineligible parents for items and services not covered by the qualified employer-sponsored coverage.

3. Documentation required for premium assistance subsidy reimbursement. A person to whom DMAS is paying a qualified employer-sponsored coverage premium assistance subsidy shall, as a condition of receiving such payment, provide documentation as prescribed by DMAS of the payment of the employer group health plan premium, as well as payment of coinsurances, copayments, and deductibles for services received.

G. Program participation requirements. Participants must comply with program requirements as prescribed by DMAS for continued enrollment in HIPP for Kids. Failure to comply with the following may result in termination from the program:

1. Submission of documentation of premium expense within specified time frame in accordance with DMAS established policy.

2. Report changes in the qualified employer-sponsored coverage within 10 days of the family's receipt of notice of the change.

3. Completion of annual redetermination.

4. Completion of consent forms. Participants may be required to complete a consent form to release information necessary for HIPP for Kids participation and program requirements as required by DMAS.

H. HIPP for Kids redetermination. DMAS shall redetermine the eligibility of the qualified employer-sponsored coverage periodically, at least every 12 months. DMAS shall also redetermine eligibility when changes occur with the group health plan information that was used in determining HIPP for Kids eligibility.

I. Program termination. Participation in the HIPP for Kids program may be terminated for failure to comply or meet program requirements. Termination will be effective the last day of the month in which advance notice has been given (consistent with federal regulations).

1. Participation may be terminated for failure to meet program requirements including, but not limited to, the following:

a. Failure to submit documentation of payment of premiums;

b. Failure to provide information required for reevaluation of the qualified employer-sponsored coverage (noncompliance);

c. Loss of Medicaid eligibility for all household members;

d. Medicaid household member no longer covered by the qualified employer-sponsored coverage;

e. Medicaid-eligible child turns age 19; or

f. Employer-sponsored health plan no longer meets qualified employer-sponsored coverage requirements.

2. Termination date of premiums. Payment of premium assistance subsidy shall end on whichever of the following occurs the earliest:

- a. On the last day of the month in which eligibility for Medicaid ends;
- b. The last day of the month in which the member loses eligibility for coverage in the group health plan;
- c. The last day of the month in which the child turns age 19;
- d. The last day of the month in which adequate notice has been given (consistent with federal requirements) that DMAS has determined that the group health plan no longer meets program eligibility criteria; or
- d. The last day of the month in which adequate notice has been given (consistent with federal requirements) that HIPP for Kids participation requirements have not been met.

J. Third-party liability. When members are enrolled in qualified employer-sponsored coverage health plans, these plans shall become the first sources of health care benefits, up to the limits of such plans, prior to the availability of payment under Title XIX.

K. Appeal rights. Members shall be given the opportunity to appeal adverse agency decisions consistent with agency regulations for client appeals (12VAC30-110).

L. Provider requirements. Providers shall be required to accept the greater of the group health plan's reimbursement rate or the Medicaid rate as payment in full and shall be prohibited from charging the member or the Medicaid program amounts that would result in aggregate payments greater than the Medicaid rate as required by 42 CFR 447.20.

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 (12VAC30-20)

[Health Insurance Premium Payment HIPP for Kids \(HFK\) Program - Cost Sharing of Co-Pays, Deductibles and Co-insurance \(undated\).](#)

[Health Insurance Premium Payment Programs Application/Renewal/Employer Insurance Verification Form, DMAS-502 \(rev. 2/2012\).](#)

[Health Insurance Premium Payment \(HIPP\) and HIPP for Kids Program - Consent for Authorization for Release of Information - Family Member Eligibility Release \(undated\).](#)

[Health Insurance Premium Payment Program - Change Form \(undated\).](#)

[Health Insurance Premium Payment Program \(HIPP\) for Kids - Change Form \(eff. 9/2010\).](#)

VA.R. Doc. No. R13-2610; Filed September 4, 2012, 12:19 p.m.

Emergency Regulation

Title of Regulation: 12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-180).

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

Effective Dates: September 4, 2012, through September 3, 2013.

Agency Contact: Tom Edicola, Director, Program Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-8098, FAX (804) 786-1680, or email tom.edicola@dmas.virginia.gov.

Preamble:

The department is promulgating this emergency regulation to comply with Chapter 890, Item 300 H of the 2011 Acts of Assembly, which requires the department to implement a mandatory electronic claims submission process, including the development of an exclusion process for providers who cannot submit claims electronically.

Approximately 84% of all Medicaid claims are currently filed electronically with the department. A survey of participating Medicaid providers who submit claims on paper was performed to better understand why claims are filed on paper when electronic filing is available and to understand any barriers that may exist to filing electronically. The survey found that the main barriers to electronic filing were cost and inadequate technology. However, a majority of providers indicated that they transact business electronically with commercial carriers and would welcome the change if these barriers could be addressed for Medicaid.

The department has implemented a Web-based Direct Data Entry solution that allows for electronic claim submission at no cost to the provider and at a lower cost for Virginia to process these claims. Language mandating the participation of providers via electronic funds transfer and electronic claims submissions is part of an overall strategy to simplify the claims submission process, increase processing efficiency, lower costs for both the Commonwealth and the Virginia Medicaid provider community, and support collaboration and consistency in business practices with other commercial carriers and Medicare. In this regulation, the department has identified the common reasons for which providers may be unable to submit claims electronically and anticipates that additional reasons will be identified during the standard regulatory process.

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12VAC30-20-180. Definition of a claim by service.

A. Claims:

SERVICE	CLAIM
A) Inpatient Hospital	A Bill for Service
B) Outpatient Hospital	A Bill for Service
C) Rural Health Clinic	A Line Item for Service
D) Laboratory and X-Ray	A Line Item of Service
E) Skilled Nursing	A Bill for Service
F) EPSDT	A Bill for Service
G) Family Planning	A Bill for Service or Line Item depending on provider type
H) Physician	A Line Item of Service
I) Other Medical	A Bill for Service or Line Item depending on provider type
J) Home Health	A Bill for Service
K) Clinic	A Line for Service Item
L) Dental	A Line Item of Service
M) Pharmacy	A Line Item of Service
N) Intermediate Care	A Bill for Service
O) Transportation	A Line Item of Service
P) Physical Therapy	A Bill for Service or Line Item depending on provider type
Q) Nurse Midwife	A Line Item of Service
R) Eyeglasses	A Line Item of Service

B. All providers that enroll with Medicaid on or after October 1, 2011, shall submit electronically all claims for covered services they render in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof and enroll to receive Electronic Funds Transfer (EFT) for payment of those services. All other providers shall comply with this electronic submission requirement by July 1, 2012.

1. Any provider who cannot comply with this electronic claims submission or EFT requirement may request an exception from DMAS for good cause shown. Good cause may include, but is not limited to, the unavailability of the

infrastructure necessary to support electronic claims submission in the provider's geographic region; there is no mechanism for electronic submission for the particular claim type, such as in the case of a Temporary Detention Order (TDO); the provider is unable to transact business through a banking institution capable of EFT; or for financial hardship.

VA.R. Doc. No. R13-2789; Filed September 4, 2012; 1:23 p.m.

Final Regulation

Title of Regulation: 12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: October 25, 2012.

Agency Contact: Patricia Taylor, Program Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-6333, FAX (804) 786-1680, or email patricia.taylor@dmas.virginia.gov.

Summary:

Item 306 AAA of Chapter 781 of the 2009 Acts of Assembly directed the Department of Medical Assistance Services to amend the State Plan for Medical Assistance to clarify that existing family healthcare coverage is a factor in the determination of eligibility under the Health Insurance Premium Payment program. More specifically, cases resulting in a determination that participation is denied based upon the existence of family health care coverage will be denied premium assistance.

The amendments make Medicaid recipients with a family health care coverage for three or more non-Medicaid family members ineligible for participation in the Health Insurance Premium Payment program, update the regulations to conform to the practice of handling high deductible health plans, and clarify some of the current requirements.

Changes since the proposed stage (i) add two exceptions to the family health care coverage exclusion; (ii) clarify that certain otherwise qualifying individuals may elect to receive an amount equal to their average monthly Medicaid costs; and (iii) clarify program participation requirements and termination.

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

12VAC30-20-210. State method on cost effectiveness of employer-based group health plans.

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

"Average monthly Medicaid cost" means average monthly medical expenditures based upon age, gender, Medicaid enrollment covered group, and geographic region of the state.

"Average monthly wraparound cost" means the average monthly aggregate costs for services not covered by private health insurance but covered under the State Plan for Medical Assistance, also includes copayments, coinsurance, and deductibles.

"Case" means all family members who are eligible for coverage under the group health plan and who are eligible for Medicaid.

"Code" means the Code of Virginia.

"Cost effective" and "cost effectiveness" mean the reduction in Title XIX expenditures, which are likely to be greater than the additional expenditures for premiums and cost-sharing items required under § 1906 of the Social Security Act (the Act), with respect to such enrollment.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DSS" means the Department of Social Services consistent with Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 of the Code of Virginia.

"Family member" means individuals who are related by blood, marriage, or adoption, or legal custody.

"Family health plan" and "family care coverage" means a group health plan that covers three or more individuals. Family health plans that cover three or more non-Medicaid eligible individuals are not eligible for the HIPP premium assistance subsidy.

"Group health plan" means a plan which meets § 5000(b)(1) of the Internal Revenue Code of 1986, and includes continuation coverage pursuant to Title XXII of the Public Health Service Act, § 4980B of the Internal Revenue Code of 1986, or Title VI of the Employee Retirement Income Security Act of 1974. Section 5000(b)(1) of the Internal Revenue Code provides that a group health plan is a plan, including a self-insured plan, of, or contributed to by, an employer (including a self-insured person) or employee association to provide health care (directly or otherwise) to the employees, former employees, or the families of such employees or former employees, or the employer.

"High deductible health plan" means a plan as defined in § 223(c)(2) of Internal Revenue Code of 1986, without regard to whether the plan is purchased in conjunction with a health savings account (as defined under § 223(d) of such Code).

"HIPP" means the Health Insurance Premium Payment Program administered by DMAS consistent with § 1906 of the Act.

"Premium" means that portion of the cost for the group health plan which is the responsibility of the person carrying the group health plan policy the fixed cost of participation in the group health plan; such cost may be shared by the employer and employee or paid in full by either party.

"Premium assistance subsidy" means the portion that DMAS will pay of the family's employee's cost of participating in an employer's health plan to cover the Medicaid eligible members under the employer-sponsored plan if DMAS determines it is cost effective to do so.

"Recipient" means a person who is eligible for Medicaid as determined by the Department of Social Services.

B. Program purpose. The purpose of the HIPP Program shall be [to]:

1. [Enroll ~~To enroll~~] recipients who have an available group health plan that is likely to be cost effective;
2. [Provide ~~To provide~~] premium assistance subsidy for payment of the employee share of the premiums and other cost-sharing obligations for items and services otherwise covered under the State Plan for Medical Assistance (the Plan); and
3. [Treat ~~To treat~~] coverage under such employer group health plan as a third party liability consistent with § 1906 of the Social Security Act.

C. Application required. A completed HIPP application must be submitted to DMAS to be evaluated for HIPP program eligibility; if HIPP program eligibility is established, DMAS shall then evaluate the group health plan for cost effectiveness. The HIPP application consists of the forms prescribed by DMAS and any necessary information as required by the program to evaluate eligibility and perform a cost-effectiveness evaluation.

D. Recipient eligibility. DMAS shall obtain specific information on all group health plans available to the recipients in the case including, but not limited to, the effective date of coverage, the services covered by the plan, the deductibles and copayments required by the plan, the exclusions to the plan, and the amount of the premium. Coverage that is not comprehensive shall be denied premium assistance. Cases that result in a determination that the applicant is not eligible for the HIPP program shall be denied premium assistance and shall not undergo further review as described in subsection E of this section. All family members who are eligible for coverage under the group health plan and who are eligible for Medicaid shall be eligible for consideration for HIPP, except [those who meet] any one or more of the factors identified in subdivisions 1 through 7 of this subsection, below. The agency will consider recipients in this subsection for consideration for HIPP when extraordinary circumstances indicate the group health plan might be cost effective.

1. The recipient is Medicaid eligible due to "spend-down";
2. The recipient is currently enrolled in the employer sponsored health plan and is only retroactively eligible for Medicaid;
3. The recipient is in a nursing home or has a deduction from patient pay responsibility to cover the insurance premium; or

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4. ~~The recipient is eligible for Medicare Part B, but is not enrolled in Part B.~~

5. ~~The recipient's family has, or would have, family healthcare coverage for three or more members who are not Medicaid eligible. [Exceptions to the family health care coverage exclusion are as follows:~~

~~a. The family meets Family Access to Medical Insurance Security (FAMIS) eligibility criteria but due to existing group health insurance cannot enroll in FAMIS for the non-Medicaid family members enrolled in the health care plan; or~~

~~b. Medicaid eligibility is based upon family income (Medicaid family unit) and the family members enrolled in the health care plan are not Medicaid eligible due to Medicaid age restrictions (aged 19 or older).]~~

6. ~~Medicare eligibility. Medicaid recipients eligible for, or enrolled in, Medicare Part A and/or Part B who are also covered by an employer group health plan are not eligible for HIPP.~~

7. ~~High Deductible Health Plans (HDHPs) are defined in § 223(c)(2) of the Internal Revenue Code of 1986. HDHPs are not cost effective for the HIPP program and shall be denied premium assistance and shall not undergo further review as described in subsection E of this section. The annual deductible amount for a HDHP is defined by the Department of Treasury and is updated annually.~~

~~D. Application required. A completed HIPP application must be submitted to DMAS to be evaluated for eligibility and cost effectiveness. The HIPP application consists of the forms prescribed by DMAS and any necessary information as required by the program to evaluate eligibility and perform a cost effectiveness evaluation.~~

E. ~~Cost-effectiveness evaluation. If the Medicaid eligible(s) is enrolled in the health plan and is not excluded from HIPP program participation under the criteria described in subsection D of this section, DMAS shall conduct the premium cost-effectiveness evaluation based upon the following methodology:~~

~~1. Recipient information. DMAS shall obtain demographic information on each recipient in each case including, but not limited to, Medicaid enrollment covered group, age, gender, and geographic region of residence in the state.~~

~~2. DMAS shall compute the average monthly Medicaid cost for each Medicaid enrollee on the group health insurance plan and compare the total cost to the employee's responsibility for the health insurance cost.~~

~~3. Wraparound cost. DMAS shall total the average monthly wraparound cost for each Medicaid enrollee on the HIPP case and subtract the amount from the average monthly Medicaid cost for the cost-effectiveness evaluation.~~

~~4. Administrative cost. DMAS shall total the administrative costs of the HIPP program and estimate an average administrative cost. DMAS shall subtract the~~

~~administrative cost from the average monthly Medicaid cost for the cost-effectiveness evaluation.~~

5. ~~Determination of premium cost effectiveness. DMAS shall determine that a group health plan is likely to be cost effective if subdivision a is less than subdivision b below:~~

~~a. The employee's responsibility for the group health plan premium.~~

~~b. The total of the average monthly Medicaid costs less the wraparound costs for each Medicaid enrollee covered by the group health plan and the administrative cost.~~

6. ~~[For individuals who otherwise meet all HIPP eligibility criteria in subdivision 5 of this subsection, such individuals may elect to have] DMAS [may] reimburse [them] up to the amount determined in subdivision 5 b of this subsection, if subdivision 5 a of this subsection is not less than subdivision 5 b of this subsection.~~

E. ~~Payments. When DMAS determines that a group health plan is likely to be cost effective based on the DMAS established methodology, DMAS shall provide for the payment of premiums premium assistance subsidy and other cost-sharing obligations for items and services otherwise covered under the Plan, except for the nominal cost sharing amounts permitted under § 1916.~~

1. ~~Effective date of premiums premium assistance subsidy. Payment of premiums premium assistance subsidy shall become effective on the first day of the month following the month in which DMAS makes the cost effectiveness determination receives a complete HIPP application or the first day of the month in which the group health plan coverage becomes effective, whichever is later. Payments shall be made to either the employer, the insurance company or to the individual who is carrying the group health plan coverage.~~

2. ~~Termination date of premiums. Payment of premiums shall end:~~

~~a. On the last day of the month in which eligibility for Medicaid ends;~~

~~b. The last day of the month in which the recipient loses eligibility for coverage in the group health plan; or~~

~~c. The last day of the month in which adequate notice has been given (consistent with federal requirements) that DMAS has redetermined that the group health plan is no longer cost effective, whichever comes later.~~

3. ~~Non Medicaid eligible family members. Payment of premiums for non Medicaid eligible family members may be made when their enrollment in the group health plan is required in order for the recipient to obtain the group health plan coverage. Such payments shall be treated as payments for Medicaid benefits for the recipient. 2. No payments for deductibles, coinsurances, and other cost-sharing obligations for non-Medicaid eligible family members shall be made by DMAS.~~

4. Evidence of enrollment required. A person to whom DMAS is paying the group health plan premium shall, as a condition of receiving such payment, provide to DSS or DMAS, upon request, written evidence of the payment of the group health plan premium for the group health plan which DMAS determined to be cost effective 3. Documentation required for premium assistance subsidy reimbursement. A person to whom DMAS is paying an employer group health plan premium assistance subsidy shall, as a condition of receiving such payment, provide documentation as prescribed by DMAS of the payment of the employer group health plan premium for the group health plan that DMAS determined to be cost effective.

F. Guidelines for determining cost effectiveness.

1. Enrollment limitations. DMAS shall take into account that a recipient may only be eligible to enroll in the group health plan at limited times and only if other non-Medicaid eligible family members are also enrolled in the plan simultaneously.

2. Plans provided at no cost. Group health plans for which there is no premium to the person carrying the policy shall be considered to be cost effective.

3. Non-Medicaid eligible family members. When non-Medicaid eligible family members must enroll in a group health plan in order for the recipient to be enrolled, DMAS shall consider only the premiums of non-Medicaid eligible family members in determining the cost effectiveness of the group health plan.

4. DMAS shall make the cost effectiveness determination based on the following methodology:

a. Recipient and group health plan information. DMAS shall obtain demographic information on each recipient in the case, including, but not limited to: federal program designation, age, sex, geographic location. DMAS [or DSS] shall obtain specific information on all group health plans available to the recipients in the case, including, but not limited to, the effective date of coverage, the services covered by the plan, the exclusions to the plan, and the amount of the premium.

b. Average estimated Medicaid expenditures. DMAS shall estimate the average Medicaid expenditures for a 12-month period for each recipient in the case based on the expenditures for persons similar to the recipient in demographic and eligibility characteristics. Expenditures shall be adjusted accordingly for inflation and scheduled provider reimbursement rate increases. Average estimated Medicaid expenditures shall be updated periodically.

e. Medicaid expenditures covered by the group health plan. DMAS shall compute the percentage of expenditures for group health plan services against the expenditures for the same Medicaid services and then adjust the average estimated Medicaid expenditures by

this percentage for each recipient in the case. These adjusted expenditures shall be added to obtain a total for the case.

d. Group health plan allowance. DMAS shall multiply an allowance factor by the Medicaid expenditures covered by the group health plan to produce the estimated group health plan allowance. The allowance factor shall be based on a state specific factor, a national factor or a group health plan specific factor.

e. Covered expense amount. DMAS shall multiply an average group health plan payment rate by the group health plan allowance to produce an estimated covered expense amount. The average group health plan payment rate shall be based on a state specific rate, national rate or group health plan specific rate.

f. Administrative cost. DMAS shall total the administrative costs of the HIPP program and estimate an average administrative cost per recipient. DMAS shall add to the administrative cost any pre-enrollment costs required in order for the recipient to enroll in the group health plan.

G. Determination of cost effectiveness. DMAS shall determine that a group health plan is likely to be cost effective if subdivision 1 of this subsection is less than subdivision 2 of this subsection:

1. The difference between the group health plan allowance and the covered expense amount, added to the premium and the administrative cost; and

2. The Medicaid expenditures covered by the group health plan.

If subdivision 1 of this subsection is not less than subdivision 2 of this subsection, DMAS shall adjust the amount in subdivision 2 of this subsection using past medical utilization data on the recipient, provided by the Medicaid claims system or by the recipient, to account for any higher than average expected Medicaid expenditures. DMAS shall determine that a group health plan is likely to be cost effective if subdivision 1 of this subsection is less than subdivision 2 of this subsection once this adjustment has been made.

3. Redetermination. DMAS shall redetermine the cost effectiveness of the group health plan periodically, not to exceed every 12 months. DMAS shall also redetermine the cost effectiveness of the group health plan whenever there is a change to the recipient and group health plan information that was used in determining the cost effectiveness of the group health plan. When only part of the household loses Medicaid eligibility, DMAS shall redetermine the cost effectiveness to ascertain whether payment of the group health plan premiums continue to be cost effective.

4. Multiple group health plans. When a recipient is eligible for more than one group health plan, DMAS shall perform

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~~the cost effectiveness determination on the group health plan in which the recipient is enrolled. If the recipient is not enrolled in a group health plan, DMAS shall perform the cost effectiveness determination on each group health plan available to the recipient.~~

G. Program participation requirements. Participants must comply with [the following] program requirements as prescribed by DMAS for continued enrollment in HIPP. Failure to comply shall result in termination from the program.

1. Submission of documentation of premium expense within specified time frame in accordance with DMAS established policy.

2. Changes that impact the cost-effectiveness evaluation must be reported within 10 days.

3. Completion of annual redetermination.

4. Completion of consent forms. Participants may be required to complete a consent form to release information necessary for HIPP participation and program requirements as required by DMAS.

[5. Participants terminated for noncompliance under subdivision 1 or 2 of this subsection shall be barred from reapplying to the HIPP program for three months from the date of cancellation.]

H. HIPP redetermination. DMAS shall redetermine the cost effectiveness of the group health plan periodically, [and] at least every 12 months. DMAS shall also redetermine cost effectiveness when changes occur with the [recipient recipient's] average Medicaid cost and/or with the group health plan information that was used in determining the cost effectiveness. When only part of the household loses Medicaid eligibility, DMAS shall redetermine the cost effectiveness to ascertain whether payment of the premium assistance subsidy of the group health plan continues to be cost effective.

I. Program termination. Participation in the HIPP program shall be terminated for failure to comply with or meet program requirements. Termination will be effective the last day of the month in which advance notice has been given (consistent with [federal regulations) 42 CFR 431.211].

1. [~~Participation~~ In addition to the reasons listed in subsection G of this section, participation] shall be terminated for:

[~~a. Failure to submit documentation of payment of premiums (noncompliance);~~

~~b. Failure to provide information required for reevaluation of cost effectiveness (noncompliance);~~

~~e. a.] Loss of Medicaid eligibility for all household members;~~

[~~d. b.] Medicaid household member no longer covered by employer health plan; or~~

[~~e. c.] Employer group health plan is determined to be not cost effective.~~

[~~2. Participants terminated for noncompliance under subdivisions 1 a and 1 b of this subsection, shall be barred from reapplying to the HIPP program for three months from the date of cancellation.~~

3. 2.] Termination date of premiums. Payment of premium assistance subsidy shall end on whichever of the following occurs the earliest:

a. On the last day of the month in which eligibility for Medicaid ends;

b. The last day of the month in which the recipient loses eligibility for coverage in the group health plan;

c. The last day of the month in which adequate notice has been given (consistent with federal requirements) that DMAS has determined that the group health plan is no longer cost effective; or

d. The last day of the month in which adequate notice has been given (consistent with federal requirements) that HIPP participation requirements have not been met.

H. J. Third party liability. When recipients are enrolled in group health plans, these plans shall become the first sources of health care benefits, up to the limits of such plans, prior to the availability of Title XIX benefits.

I. K. Appeal rights. Recipients shall be given the opportunity to appeal adverse agency decisions consistent with agency regulations for client appeals (12VAC30-110).

J. L. Provider requirements. Providers shall be required to accept the greater of the group health plan's reimbursement rate or the Medicaid rate as payment in full and shall be prohibited from charging the recipient or Medicaid amounts that would result in aggregate payments greater than the Medicaid rate as required by 42 CFR 447.20.

NOTICE: The following forms used in administering the regulation have been filed by the Department of Medical Assistance Services. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the forms by clicking on the names of the forms. The forms are also available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (12VAC30-20)

[[Health Insurance Premium Payment \(HIPP\)/HIPP For Kids Program Application and Instructions \(rev. 9/10\).](#)

[Employer Insurance Verification \(rev. 10/10\).](#)

[Re-evaluation Employer Insurance Verification \(rev. 10/10\).](#)

[Health Insurance Premium Payment HIPP for Kids \(HFK\) Program - Cost Sharing of Co-Pays, Deductibles and Co-insurance \(undated\).](#)

[Health Insurance Premium Payment Programs Application/Renewal, DMAS 500 and Employer Insurance Verification Form, DMAS-502 \(rev. 2/2012\).](#)

[Health Insurance Premium Payment \(HIPP\) and HIPP for Kids Program - Consent for Authorization for Release of Information - Family Member Eligibility Release \(undated\).](#)

[Health Insurance Premium Payment Program - Change Form \(undated\).](#)

[Health Insurance Premium Payment Program \(HIPP\) for Kids - Change Form \(eff. 9/2010\).](#)]

VA.R. Doc. No. R10-2021; Filed September 4, 2012, 12:13 p.m.

Final Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12VAC30-50-131).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200; adding 12VAC30-80-96).

12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-380).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: October 25, 2012.

Agency Contact: Molly Carpenter, Child and Maternal Health Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmas.virginia.gov.

Summary:

The regulations define a new approach to payment for Early Intervention services under Medicaid that supports the Infant and Toddler Connection (IT&C) model. Early Intervention services are provided in the child's natural environment, engage the family in the intervention, and engage the expertise of a multidisciplinary team to support the direct service provider. The new approach supports Medicaid payment for a broad base of qualified providers with demonstrated knowledge and skills in Early Intervention principles and practices. The regulations require Part C practitioners to be certified by the Department of Behavioral Health and Developmental Services as a condition of participation with the Department of Medical Assistance Services as designated Early Intervention service providers in the Medicaid program.

The final regulation differs from the proposed regulation by adding Early Intervention to the list of services that are

provided outside of Medicaid managed care organization networks.

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

12VAC30-50-131. [~~Early Intervention services~~ Services provided by certified Early Intervention practitioners under EPSDT]:

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

"DBHDS" means the Department of Behavioral Health and Developmental Services, the lead state agency for Early Intervention services appointed by the Governor in accordance with Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

"Early Intervention services" or "EI" means services provided through Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.), as amended [~~and~~ Early Intervention services are specialized rehabilitative services covered] in accordance with 42 CFR 440.130(d), which are designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development, and are provided to children from birth to age three who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. [~~EI services are available to qualified individuals through Early and Periodic Screening, Diagnosis, and Treatment (EPSDT). EI services are distinguished from similar rehabilitative services available through EPSDT to individuals aged three and older in that EI services are specifically directed towards children from birth to age three. EI services are not medically indicated for individuals aged three and above.~~]

"Individualized family service plan" or "IFSP" means a comprehensive and regularly updated statement specific to the child being treated containing, but not necessarily limited to, treatment or training needs, measurable outcomes expected to be achieved, services to be provided with the recommended frequency to achieve the outcomes, and estimated timetable for achieving the outcomes. The IFSP is developed by a multidisciplinary team that includes the family, under the auspices of the local lead agency.

"Local lead agency" means an agency under contract with the Department of Behavioral Health and Developmental Services to facilitate implementation of a local Early Intervention system as described in Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

"Primary care provider" means a practitioner who provides preventive and primary health care and is responsible for providing routine Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screening and referral and coordination of other medical services needed by the child.

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B. Coverage for Early Intervention services.

1. Early Intervention services shall be reimbursed for individuals [younger than 21 years of age] who meet criteria for Early Intervention services established by DBHDS in accordance with Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

2. Early Intervention services shall be recommended by the child's primary care provider or other qualified EPSDT screening provider as necessary to correct or ameliorate a physical or mental condition.

3. Early Intervention services shall be provided in settings that are natural or normal for an infant or toddler without a disability, such as the home, unless there is justification for an atypical location.

4. Except for the initial and periodic assessments, Early Intervention services shall be described in an IFSP developed by the local lead agency and designed to prevent or ameliorate developmental delay within the context of the Early Intervention services system defined by Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

5. Medical necessity for Early Intervention services shall be defined by the IFSP. The IFSP shall describe service needs in terms of amount, duration, and scope. The IFSP shall be approved by the child's primary care provider.

6. Covered Early Intervention services include the following functions provided with the infant or toddler and the child's parent or other authorized caregiver by a certified Early Intervention professional:

a. Assessment, including consultation with the child's family and other service providers, to evaluate:

(1) The child's level of functioning in the following developmental areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development;

(2) The family's capacity to meet the developmental needs of the child; and

(3) Services needed to correct or ameliorate developmental conditions during the infant and toddler years. [EI services include, but are not limited to, PT, OT, and speech therapy as described in 42 CFR 440.110, and developmental/rehabilitative services as described in 42 CFR 440.130(d). All licensed PT, OT, and speech therapy providers shall comply with requirements of 42 CFR 440.110. All EI providers are certified to provide EI services by the Virginia Department of Behavioral Health and Developmental Services.]

b. Participation in a multidisciplinary team review of assessments to develop integrated, measurable outcomes for the IFSP.

c. The planning and design of activities, environments, and experiences to promote the normal development of

an infant or toddler with a disability, consistent with the outcomes in the IFSP.

7. Covered Early Intervention services include the following functions when included in the IFSP and provided [with to] an infant or toddler with a disability and the child's parent or other authorized caregiver by a certified Early Intervention professional or by a certified Early Intervention specialist under the supervision of a certified Early Intervention professional:

a. Providing families with information and training to enhance the development of the child.

b. Working with the child with a disability to promote normal development in one or more developmental domains.

c. Consulting with the child's family and other service providers to assess service needs; and plan, coordinate, and evaluate services to ensure that services reflect the unique needs of the child in all developmental domains.

C. The following functions shall not be covered under this section:

1. Screening to determine if the child is suspected of having a disability. Screening is covered as an EPSDT service provided by the primary care provider and is not covered as an Early Intervention service under this section.

2. Administration and coordination activities related to the development, review, and evaluation of the IFSP and procedural safeguards required by Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.).

3. Services other than the initial and periodic assessments that are provided but are not documented in the child's IFSP or linked to a service in the IFSP.

4. Sessions that are conducted for family support, education, recreational, or custodial purposes, including respite or child care.

5. Services provided by a relative who is legally responsible for the child's care.

6. Services rendered in a clinic or provider's office without justification for the location.

7. Services provided in the absence of the child and a parent or other authorized caregiver identified in the IFSP with the exception of multidisciplinary team meetings, [that which] need not include the child.

D. Qualifications of providers:

1. Individual practitioners of Early Intervention services must be certified by DBHDS as a qualified Early Intervention professional or Early Intervention specialist [and hold a valid Medicaid Early Intervention provider agreement].

2. Certified individuals and service agencies or groups who employ or contract with certified individuals may enroll with DMAS as Early Intervention providers. In accordance with 42 CFR 431.51, recipients may obtain Early

Intervention services from any willing and qualified Medicaid provider who participates in this service [~~or for individuals enrolled with a Managed Care Organization (MCO), from such providers available in their MCO network~~] .

[3. Certified EI practitioners are qualified to provide a specialized rehabilitative service for young children with developmental delays. Certified individuals and agencies will enroll with DMAS and bill for this specialized rehabilitative service as an EPSDT Early Intervention provider rather than as a speech therapist, rehabilitation facility, or other designation. EI providers are certified or licensed to provide services within the scope of their practice as defined under state law. All licensed physical therapy and occupational therapy providers and those providing services for individuals with speech, hearing, and language disorders shall comply with the requirements of 42 CFR 440.110.]

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 1 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 150 days after the provider's fiscal year end. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Outpatient hospital services including rehabilitation hospital outpatient services and excluding laboratory.

a. Definitions. The following words and terms when used in this regulation shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

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(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at various percentages as noted in subdivisions 1 c (1) and (2) of this subsection of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date.

(1) Type One hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating reimbursement shall be at 91.2% of allowable cost and capital reimbursement shall be at 87% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating reimbursement shall be at 90.2% of allowable cost and capital reimbursement shall be at 86% of allowable cost.

(2) Type Two hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating and capital reimbursement shall be 77% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating and capital reimbursement shall be 76% of allowable cost.

d. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See [12VAC30-70-281](#) for prospective payment methodology for graduate medical education for interns and residents.

2. Rehabilitation agencies or comprehensive outpatient rehabilitation.

a. Effective July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities that are operated by community services boards or state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

b. Effective October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities operated by state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

12VAC30-80-96. Fee-for-service: Early Intervention (under EPSDT).

A. Payment for Early Intervention services pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004, as set forth in 12VAC30-50-131 [$\frac{7}{2}$ for individuals younger than 21 years of age,] shall be the lower of the state agency fee schedule or actual charge (charge to the general public). All private and governmental fee-for-service providers are reimbursed according to the same methodology. The agency's rates were set as of October 1, 2009, and are

effective for services on or after that date. Rates are published on the agency's website at www.dmas.virginia.gov.

B. There shall be separate fees for:

1. Certified Early Intervention professionals who are also licensed as either a physical therapist, occupational therapist, speech pathologist, or registered nurse and certified Early Intervention specialists who are also licensed as either a physical therapy assistant or occupational therapy assistant; and
2. All other certified Early Intervention professionals and certified Early Intervention specialists.

C. Provider travel time shall not be included in billable time for reimbursement.

[D. Local Education Agency (LEA) providers provide Medicaid-covered school health services for which they are reimbursed on a cost basis pursuant to 12VAC30-80-75. LEAs may also be certified as, and enrolled to provide, Early Intervention services. LEAs providing such services shall be reimbursed for EI services on a fee-for-service basis in the same manner as other EI providers. The fee-for-service rate is the same regardless of the setting in which LEAs provide EI services.]

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

A. Rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

1. Effective for dates of service on and after July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities, excluding those operated by community services boards or state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus \$371,800.
2. ~~(Reserved.)~~ Effective for dates of service on [~~or~~ and] after October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities excluding those operated by state agencies [;] shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have [been] paid in FY 2010 minus \$371,800.

B. Reimbursement for rehabilitation agencies subject to the new fee schedule methodology.

1. Payments for the fiscal year ending or in progress on June 30, 2009, shall be settled for private rehabilitation agencies based on the previous prospective rate

methodology and the ceilings in effect for that fiscal year as of June 30, 2009.

2. ~~(Reserved.)~~ Payments for the fiscal year ending or in progress on September 30, 2009, shall be settled for community services boards based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of September 30, 2009.

C. Beginning with state fiscal years beginning on or after July 1, 2010, rates shall be adjusted annually for inflation using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

D. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the nursing facility or any other available source, and provided further, that this subsection shall in no way diminish any obligation of the nursing facility to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Effective July 1, 2010, there will be no inflation adjustment for outpatient rehabilitation facilities through June 30, 2012.

Part VI
Medallion II

12VAC30-120-360. Definitions.

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

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"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Early Intervention" means EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 as set forth in 12VAC30-50-131.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
2. Serious impairment to bodily functions, or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and MCO enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External Quality Review Organization" (EQRO) is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

"Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO or PCCM.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12VAC30-50-229.1.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

12VAC30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for

Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include, but are not limited to, those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360), community mental health services (rehabilitative, targeted case management and the following substance abuse treatment services; emergency services (crisis); intensive outpatient services; day treatment services; substance abuse case management services; and opioid treatment services), as defined in 12VAC30-50-228 and 12VAC30-50-491, [EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 (as defined in 12VAC30-50-131),] and long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services.

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. Except for those services specifically carved out in subsection A of this section, EPSDT services shall be covered by the MCO [~~These services shall include EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004, as set forth in 12VAC30-50-131, as identified~~] and defined by the [contracts contract] between DMAS and the [MCOs MCO]. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure

that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R10-2080; Filed September 4, 2012, 2:51 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-370, 12VAC30-120-380).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearings are scheduled.

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Public Comment Deadline: November 23, 2012.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Sections 32.1-324 and 32.1-325 authorize the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: This regulatory action is not essential to protect the health, safety, and welfare of the citizens of the Commonwealth. However, it does protect Medicaid recipients in rural areas of the Commonwealth where only one managed care program operates. In such situations, all Medicaid recipients, who otherwise do not meet any of the managed care exemption reasons, are required to participate with the operating managed care program for their locality. Implementation of the rural exception option allows Virginia to adhere to the mandatory managed care requirements as set forth in the § 1915(b) Managed Care Waiver.

Substance: Currently, the Medallion II regulations do not provide for a rural exception. Until recently, managed care programs operated throughout the state with the MEDALLION Primary Care Case Management (PCCM) program as the sole program in the far southwest, the Medallion II program with one MCO option and MEDALLION PCCM program in Roanoke and the surrounding areas, and the Medallion II program with two or more contracted MCOs in all other localities. Newly assigned recipients residing in Medallion II areas are afforded a 90-day period of time in which to reconsider the MCO/plan to which they have been assigned. If they elect to switch to the alternative MCO/plan during this 90-day period, they are permitted to do so with no penalty. After the end of the 90-day period, however, they are locked in to receiving care from that MCO until the next open enrollment period.

Revisions to 12VAC30-120-360, 12VAC30-120-370, and 12VAC30-120-380 are being proposed to bring the Virginia Administrative Code in accordance with the CMS-approved § 1915(b) managed care waiver. It is under this waiver that both the Medallion II (MCO) program and MEDALLION (PCCM) program operate. The waiver is renewed every two years with amendments requested, as needed. The proposed regulation changes in this document are specific to the Medallion II (MCO) program.

The amendment to include the "rural" exception option (also referred to as the "rural option") to DMAS' § 1915(b) waiver

application was submitted to CMS on August 13, 2009, and subsequently approved for an effective date of October 1, 2009. The need for this amendment to the waiver, pursuant to 42 CFR 438.52 (b), resulted from Virginia Premier Health Plan exiting from Culpeper County and leaving only one remaining contracted health plan (AMERIGROUP Community Care) in the locality. The rural exception as provided for in these regulations is defined as a federally designated area where qualifying Medallion II recipients are mandated to enroll in the one contracted managed care organization.

12VAC30-120-360 adds a definition for the rural exception option, as well as for retractions as referenced in 12VAC30-120-370 G. Other noted changes provide clarification to policies surrounding the rural exception area (e.g., preassignment and open enrollment) and point to the § 1915(b) managed care waiver and Medallion II contract for terminology corrections or clarification in other areas of these regulations. The name of a sister state agency has been updated from the previous title of Department of Mental Health, Mental Retardation and Substance Abuse Services to the new title of Department of Behavioral Health and Developmental Services.

Issues: There are no advantages or disadvantages to the public in this regulatory action. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change. The recommended regulatory changes to 12VAC30-120 maintains Virginia's adherence to the mandatory managed care requirements set forth in the 1915(b) Managed Care Waiver; allows for Medicaid recipients of the Commonwealth to continue to receive comprehensive, cost effective, quality health care services; and recognizes the need for the managed care programs to keep pace with the changing needs of the state.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will add the "rural exception" provision to the Medallion II program.

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

Estimated Economic Impact. The proposed regulations will add the "rural exception" provision to the Medallion II program. This proposed change is already in effect under the emergency regulations since December 30, 2009, and under Centers for Medicaid and Medicare approval of the amendment to the Managed Care Waiver effective October 1, 2009.

In the absence of the "rural exception" provision, Virginia Medicaid is required to offer the enrollees at least two contracted managed care organizations or two managed care programs to choose from in Medallion II areas. If, in areas such as Culpeper, there are not two organizations to be

offered to choose from, rules without the "rural exception" provision dictate that the enrollees in these areas receive their services under the fee-for-service delivery system. In order to avoid having to provide the services under the fee-for-service delivery system where there is only one contracted managed care organization, the proposed changes allow the Virginia Medicaid to enroll recipients in the one contracted managed care organization in the federally designated rural area.

According to the Department of Medical Assistance Services (DMAS), the need for this change resulted from one of the two contracted managed care organizations exiting Culpeper County and leaving only one remaining contracted health plan. However, the language has been drafted broadly enough so that any future localities needing to fall under this program would be included. Currently a number of other localities have only two contracted managed care organizations. If one of the managed care organizations were to leave one of these areas that would meet the federal designation of rural, they would be subject to the proposed "rural exception" provision. These areas include King George, Lancaster, Loudoun, Pittsylvania, Rockingham, Danville, Fredericksburg, Harrisonburg, Poquoson, Williamsburg, Charlotte, Fauquier, Spottsylvania, Gloucester, Isle of Wight, James City County, Stafford, and York.

The main benefit of the proposed regulations is the avoided cost difference between fee-for-service and the managed care delivery systems in areas where "rural exception" provision is applied. According to DMAS, currently Culpeper County is the only locality affected by the rural exception option at this time. In July 2010, there were 3,860 managed care enrollees in Culpeper. According to DMAS, average per capita managed care premium in rural areas is about \$301.34 per month or \$3,616.08 per year. Also, the healthcare costs under the managed care delivery system are estimated to be up to 5% lower than the costs under the fee-for-service delivery system. Thus, the proposed regulations are estimated to save the Virginia Medicaid up to \$697,903.40. There could be additional savings if more localities become subject to the proposed "rural exception" provision in the future. One half of the savings would accrue to the Commonwealth and the remaining half would accrue to the federal government since Virginia Medicaid is funded 50% by state and 50% by federal government.

In addition to the fiscal savings, the managed care delivery system offers value added services that the fee-for-service system does not. These value added services may include no copayments for any covered service, medically necessary eyeglasses for certain members, medical case management, disease management programs, special programs to help control conditions like asthma and diabetes, well-adult checkups, 24-hour nurse line, and toll-free member services helpline. Another benefit for the managed care enrollees in the Culpeper area is being able to continue to receive their services from the providers of managed care network and avoid potential interruptions in the services they receive.

Since the proposed regulations make it possible to provide services through the managed care system, these changes have an impact on both the networks of the managed care system and the fee-for-service system. The providers in the network of managed care organization are able to continue offering their services to Medicaid recipients. The fee-for-service providers, on the other hand, are not allowed to be the only providers offering services to the Medicaid recipients.

However, it is possible that some providers belong to both networks. The remaining proposed changes are organizational improvements, updating of citations, and clarification improvements which are not expected to create any significant economic effect.

Businesses and Entities Affected. The proposed regulations primarily affect the Medicaid enrollees and the managed care provider network in the Culpeper County. There were 3,860 enrollees and 208 healthcare providers in the managed care provider network in the Culpeper area in July 2010.

Localities Particularly Affected. The proposed regulations particularly affect Medicaid enrollees in Culpeper County at this time. There are a number of other localities that have only two contracted managed care organizations. If one of the managed care organizations were to leave one of these areas that would meet the federal designation of rural, they would be subject to the proposed "rural exception" provision. These areas include King George, Lancaster, Loudoun, Pittsylvania, Rockingham, Danville, Fredericksburg, Harrisonburg, Poquoson, Williamsburg, Charlotte, Fauquier, Spottsylvania, Gloucester, Isle of Wight, James City County, Stafford, and York.

Projected Impact on Employment. The proposed regulations make it possible for the managed care provider network in Culpeper County to continue to provide their services to Medicaid recipients and has a positive impact on their demand for labor. On the other hand, the proposed regulations prevent the fee-for-service provider network in the Culpeper County to start serving the same recipients and has a negative impact on their demand for labor.

Effects on the Use and Value of Private Property. The proposed regulations make it possible for the managed care provider network in Culpeper County to continue to provide their services to Medicaid recipients. Maintaining the same level of business may help them maintain their profitability and help maintain their asset values. On the other hand, the proposed regulations prevent the fee-for-service provider network in the Culpeper County to start serving the same recipients. Since the recipients will not be forced to shift to the fee-for-service provider network, a potential increase in their revenues and therefore a potential increase in their asset values may be prevented.

Small Businesses: Costs and Other Effects. With the exception of one hospital and a large national laboratory corporation servicing the Culpeper area, most of the 208 healthcare providers in the managed care provider network

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are believed to be small businesses. The costs and other effects on the small businesses would be the same as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes adverse impact that achieves the same goals.

Real Estate Development Costs. The proposed regulations are not expected to have any effect of real estate development costs.

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

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning MCO Rural Exception Changes (12VAC30-120-360, 12VAC30-120-370, and 12VAC30-120-380).

Summary:

This action incorporates changes that have been approved by the Centers for Medicare and Medicaid Services to the Virginia Medicaid managed care waiver program entitled Medallion II (MCO). The approved changes concern the addition of the rural exception to the Medallion II program in areas federally designated as "rural" where there is only one contracted MCO. The changes also provide for several organizational improvements and update internal citations.

Part VI
Medallion II

12VAC30-120-360. Definitions.

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
2. Serious impairment to bodily functions, or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is

qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and MCO enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External Quality Review Organization" (EQRO) is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

"Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"PCP of record" means a primary care physician of record with whom the recipient has an established history and such history is documented in the individual's records.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO or PCCM.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

"Retractions" means the departure of an enrolled managed care organization from any one or more localities as provided for in 12VAC30-120-370.

"Rural exception" means a rural area designated in the § 1915(b) managed care waiver, pursuant to § 1932(a)(3)(B) of the Social Security Act and 42 CFR § 438.52(b) and recognized by the Centers for Medicare and Medicaid Services, wherein qualifying Medallion II members are mandated to enroll in the one available contracted MCO.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12VAC30-50-229.1.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

12VAC30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Medicaid eligible persons not meeting the exclusion criteria set out in this section must participate in the Medallion II program. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. DMAS reserves the right to exclude from participation in the Medallion II managed care program any recipient who has been consistently noncompliant with the policies and procedures of managed care or who is threatening to providers, MCOs, or DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. Recipients excluded from Medallion II through this provision may appeal the decision to DMAS.

B. The following individuals shall be excluded (as defined in 12VAC30-120-360) from participating in Medallion II ~~or will be disenrolled from Medallion II if any of the following~~

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~~apply. Individuals not meeting the exclusion criteria must participate in the Medallion II program, as defined in the § 1915(b) managed care waiver. Individuals excluded from Medallion II include the following:~~

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in the family planning waiver, or in federal waiver programs for home-based and community-based Medicaid coverage prior to managed care enrollment;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals under age 21 who are either enrolled in DMAS authorized treatment foster care programs as defined in 12VAC30-60-170 A, or who are approved for DMAS residential facility Level C programs as defined in 12VAC30-130-860;
7. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider (e.g., physician, hospital, midwife) does not participate with the enrollee's assigned MCO. Exclusion requests made during the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;
8. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;
9. Individuals who receive hospice services in accordance with DMAS criteria;
10. Individuals with other comprehensive group or individual health insurance coverage, including Medicare, insurance provided to military dependents, and any other insurance purchased through the Health Insurance Premium Payment Program (HIPP);
11. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, at the scheduled time of MCO enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the MCO enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge. This exclusion reason shall not apply to recipients admitted to the hospital while already enrolled in a department-contracted MCO;

12. Individuals who request exclusion during preassignment to an MCO or within a time set by DMAS from the effective date of their MCO enrollment, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less. The client's physician must certify the life expectancy;

13. Certain individuals between birth and age three certified by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;

14. Individuals who have an eligibility period that is less than three months;

15. Individuals who are enrolled in the Commonwealth's Title XXI SCHIP program;

16. Individuals who have an eligibility period that is only retroactive; and

17. Children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia.

C. Individuals enrolled with a MCO who subsequently meet one or more of the aforementioned criteria during MCO enrollment shall be excluded from MCO participation as determined by DMAS, with the exception of those who subsequently become recipients in the federal long-term care waiver programs, as otherwise defined elsewhere in this chapter, for home-based and community-based Medicaid coverage (AIDS, IFDDS, MR, EDCD, Day Support, or ~~Alzheimers~~ Alzheimer's, or as may be amended from time to time). These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

~~Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee for service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.~~

D. Individuals who are enrolled in localities that qualify for the rural exception may meet exclusion criteria if their PCP of record, as defined in 12VAC30-120-360, cannot or will not participate with the one MCO in the locality. Individual requests to be excluded from MCO participation in localities meeting the qualification for the rural exception must be made to DMAS for consideration on a case-by-case basis. Recipients enrolled in MCO rural exception areas shall not have open enrollment periods and shall not be afforded the 90-day window after initial enrollment during which they may make a health plan or program change.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

~~D.~~ E. Medallion II managed care plans shall be offered to recipients, and recipients shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

~~E.~~ F. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.
2. Clients shall receive a Medicaid card from DMAS, and shall be provided authorized medical care in accordance with DMAS' procedures after Medicaid eligibility has been determined to exist.
3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted MCOs. These letters shall indicate a preassigned MCO, determined as provided in subsection F of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 30 days. Recipients who are enrolled in one mandatory MCO program who immediately become eligible for another mandatory MCO program are able to maintain consistent enrollment with their currently assigned MCO, if available. These recipients will receive a notification letter including information regarding their ability to change health plans under the new program.
4. Any newborn whose mother is enrolled with an MCO at the time of birth shall be considered an enrollee of that same MCO for the newborn enrollment period. ~~The newborn enrollment period is defined as the birth month plus two months following the birth month.~~ This requirement does not preclude the enrollee, once he is assigned a Medicaid identification number, from disenrolling from one MCO to another in accordance with subdivision ~~G~~ H 1 of this section.

The newborn's continued enrollment with the MCO is not contingent upon the mother's enrollment. Additionally, if the MCO's contract is terminated in whole or in part, the MCO shall continue newborn coverage if the child is born while the contract is active, until the newborn receives a Medicaid number or for the newborn enrollment period, whichever timeframe is earlier. Infants who do not receive a Medicaid identification number prior to the end of the newborn enrollment period will be disenrolled. Newborns who remain eligible for participation in Medallion II will be reenrolled in an MCO through the preassignment process upon receiving a Medicaid identification number.

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous MCO without going through preassignment and selection.

~~F.~~ G. Clients who do not select an MCO as described in subdivision ~~E-3~~ F 3 of this section shall be assigned to an MCO as follows:

1. Clients are assigned through a system algorithm based upon the client's history with a contracted MCO.
2. Clients not assigned pursuant to subdivision 1 of this subsection shall be assigned to the MCO of another family member, if applicable.
3. Clients who live in rural exception areas as defined in 12VAC30-120-360 must enroll with the one available MCO. These persons shall receive a preassignment notification for enrollment into the MCO. Individuals in rural exception areas who are assigned to the one MCO may request exclusion from MCO participation if their PCP of record, as defined in 12VAC30-120-360, cannot or will not participate with the one MCO in the locality. Individual requests to be excluded from MCO participation in rural exception localities must be made to DMAS for consideration on a case-by-case basis.
- ~~3.~~ 4. All other clients shall be assigned to an MCO on a basis of approximately equal number by MCO in each locality.
- ~~4. In areas where there is only one contracted MCO, recipients have a choice of enrolling with the contracted MCO or the PCCM program. All eligible recipients in areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.~~
5. Recipients in areas where there is only one contracted MCO and the PCCM program are automatically assigned to the contracted MCO, but are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program, or vice versa. Recipients residing in localities qualifying for rural exception shall not be afforded the 90-day window after initial enrollment during which they may make a health plan or program change.
- ~~5.~~ 6. DMAS shall have the discretion to utilize an alternate strategy for enrollment or transition of enrollment from the method described in this section for expansions, retractions, or changes to new client populations, new geographical areas, expansion through procurement procurements, or any or all of these; such alternate strategy shall comply with federal waiver requirements.

~~G.~~ H. Following their initial enrollment into an MCO or PCCM program, recipients shall be restricted to the MCO or PCCM program until the next open enrollment period, unless

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appropriately disenrolled or excluded by the department (as defined in 12VAC30-120-360).

1. During the first 90 calendar days of enrollment in a new or initial MCO, a client may disenroll from that MCO to enroll into another MCO or into PCCM, if applicable, for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.

2. During the remainder of the enrollment period, the client may only disenroll from one MCO into another MCO or PCCM, if applicable, upon determination by DMAS that good cause exists as determined under subsection I of this section.

~~H.~~ I. The department shall conduct an annual open enrollment for all Medallion II participants with the exception of those clients who live in a designated rural exception area. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. In areas with only one contracted MCO and where the PCCM program is available, recipients will be given the opportunity to select either the MCO or the PCCM program. Enrollment selections will be effective on the first day of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current MCO selection.

~~I.~~ J. Disenrollment for cause may be requested at any time.

1. After the first 90 days of enrollment in an MCO, clients must request disenrollment from DMAS based on cause. The request may be made orally or in writing to DMAS and must cite the reasons why the client wishes to disenroll. Cause for disenrollment shall include the following:

a. A recipient's desire to seek services from a federally qualified health center which is not under contract with the recipient's current MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;

b. Performance or nonperformance of service to the recipient by an MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;

c. Lack of access to a PCP or necessary specialty services covered under the State Plan or lack of access to providers experienced in dealing with the enrollee's health care needs;

d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO or PCCM program, if applicable, or provider;

e. The enrollee moves out of the MCO's service area;

f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;

g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or

h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether cause exists for disenrollment. Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the enrollee files the request, in compliance with 42 CFR 438.56.

3. Cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

4. The DMAS determination concerning cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12VAC30-110-10 through 12VAC30-110-380.

5. The current MCO shall provide, within two working days of a request from DMAS, information necessary to determine cause.

6. Individuals enrolled with a MCO who subsequently meet one or more of the exclusions in subsection B of this section during MCO enrollment shall be ~~disenrolled~~ excluded as appropriate by DMAS, with the exception of those who subsequently become recipients into the AIDS, IFDDS, ~~MR~~ MR/ID, EDCD, Day Support, or Alzheimer's federal waiver programs for home-based and community-based Medicaid coverage. These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

~~Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.~~

12VAC30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for

Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include, but shall not be limited to, dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360), community mental health services (rehabilitative, targeted case management and the following substance abuse treatment services: emergency services (crisis); intensive outpatient services; day treatment services; substance abuse case management services; and opioid treatment services), as defined in 12VAC30-50-228 and 12VAC30-50-491, and long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services.

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

~~B. Except for those services specifically carved out in subsection A of this section,~~ EPSDT services shall be covered by the MCO and defined by the contract between DMAS and the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R10-2004; Filed September 4, 2012, 11:56 a.m.

Emergency Regulation

Title of Regulation: **12VAC30-120. Waivered Services (adding 12VAC30-120-199, 12VAC30-120-990).**

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

Effective Dates: September 4, 2012, through September 3, 2013.

Agency Contact: Melissa Fritzman, Project Manager, Division of Long Term Care Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4206, FAX (804) 612-0040, or email melissa.fritzman@dmas.virginia.gov.

Preamble:

The department is promulgating these emergency regulations to comply with Chapter 890, Item 297 CCCCC of the 2011 Acts of Assembly, The department's waiver

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programs, prior to this mandate, did not limit personal care services. The legislative mandate requires the department to limit personal care services to 56 hours per week and develop criteria by which a waiver individual could qualify for more than 56 hours of personal care services in a week. The department has initiated the new limit of 56 hours of personal care services in a separate final exempt regulatory action.

The Children's Mental Health Waiver and Alzheimer's Assisted Living Waiver are not included in this regulatory action because those waivers do not cover personal care services. The only Medicaid waivers that are covered by this mandate that do cover personal care services are the HIV/AIDS and Elderly or Disabled with Consumer Direction waivers.

12VAC30-120-199. Exception criteria for personal care services.

DMAS shall apply the following criteria to individuals who request approval of more personal care hours than the maximum allowed 56 hours per week. The waiver individual shall:

1. Presently have a minimum level of care of B (the waiver individual's composite Activities of Daily Living (ADL) score is between seven and 12 and have a medical nursing need) or C (the waiver individual's composite ADL score is nine or higher and have a skilled medical nursing need).

2. In addition to meeting the requirements set out in subdivision 1 of this subsection, the individual shall have one or more of the following:

a. Documentation of dependencies in all of the following activities of daily living: bathing, dressing, transferring, toileting, and eating/feeding, as defined by the current pre-admission screening criteria (submitted to the service authorization contractor via DMAS-99);

b. Documentation of dependencies in both Behavior and Orientation as defined by the current pre-admission screening criteria (submitted to the service authorization contractor via DMAS-99); or

c. Documentation from the local Department of Social Services that the individual has an open case with either Adult Protective Services (APS) or Child Protective Services (CPS) (as described in subdivisions (1) and (2) of this subdivision) and is in need of additional services above the 56 hour per week cap. Documentation can be in the form of a phone log contact or any other documentation supplied (submitted to the service authorization contractor via attestation).

(1) For APS: Is defined as a substantiated APS case with a disposition of needs protective services and the adult accepts the needed services.

(2) For CPS: Is defined as being open to CPS investigation if it is both founded by the investigation

and the completed family assessment documents the case with moderate or high risk.

12VAC30-120-990. Exception criteria for personal care services.

DMAS shall apply the following criteria to individuals who request approval of more personal care hours than the maximum allowed 56 hours per week. The waiver individual shall:

1. Presently have a minimum level of care of B (the waiver individual's composite Activities of Daily Living (ADL) score is between seven and 12 and have a medical nursing need) or C (the waiver individual's composite ADL score is nine or higher and have a skilled medical nursing need).

2. In addition to meeting the requirements set out in subdivision 1 of this subsection, the individual shall have one or more of the following:

a. Documentation of dependencies in all of the following activities of daily living: bathing, dressing, transferring, toileting, and eating/feeding, as defined by the current pre-admission screening criteria (submitted to the service authorization contractor via DMAS-99);

b. Documentation of dependencies in both Behavior and Orientation as defined by the current pre-admission screening criteria (submitted to the service authorization contractor via DMAS-99); or

c. Documentation from the local Department of Social Services that the individual has an open case with either Adult Protective Services (APS) or Child Protective Services (CPS) (as described in subdivisions (1) and (2) of this subdivision) and is in need of additional services above the 56 hour per week cap. Documentation can be in the form of a phone log contact or any other documentation supplied (submitted to the service authorization contractor via attestation).

(1) For APS: Is defined as a substantiated APS case with a disposition of needs protective services and the adult accepts the needed services.

(2) For CPS: Is defined as being open to CPS investigation if it is both founded by the investigation and the completed family assessment documents the case with moderate or high risk.

VA.R. Doc. No. R13-2812; Filed September 4, 2012, 12:35 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

REGISTRAR'S NOTICE: Enactments 59 through 71 of Chapters 803 and 835 of the 2012 Acts of Assembly

abolished the Department for the Aging and transferred its regulations to the newly created Department for Aging and Rehabilitative Services effective July 1, 2012. The following action transfers the Department for the Aging regulation numbered 22VAC5-20 to the Department for Aging and Rehabilitative Services and rennumbers the regulation as 22VAC30-60.

This regulatory action is excluded 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 where no agency discretion is involved. The Department of Aging and Rehabilitative Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22VAC30-60. Grants to Area Agencies on Aging (adding 22VAC30-60-10 through 22VAC30-60-590).

Statutory Authority: § 51.5-131 of the Code of Virginia; 42 USC § 3001 et seq.

Effective Date: October 24, 2012.

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Summary:

All references to the Department for the Aging have been changed to the Department for Aging and Rehabilitative Services to reflect the name of the new agency that has been created to assume the powers of the former Department of Rehabilitative Services and the Department for the Aging. This new agency was created as a result of the Governor's reorganization of the Executive Branch of state government. In addition to the agency name change, the agency and chapter numbers to each section of the regulation have been changed as a result of the regulation being promulgated by the newly created agency. Also, the citation to the Code of Virginia, which authorizes each section of this regulation to be promulgated, has been changed to the code number of the new agency.

CHAPTER ~~20~~ 60
GRANTS TO AREA AGENCIES ON AGING

Part I
Introduction

~~22VAC5-20-10.~~ 22VAC30-60-10. Purpose.

This chapter prescribes requirements which Area Agencies on Aging shall meet to receive federal and state funds to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under Title III of the Older Americans Act, as amended (42 USC § 3001 et seq.). These requirements include:

1. Designation and responsibilities of an Area Agency on Aging;
2. Development and implementation of an Area Plan for Aging Services;
3. Administration of grants and contracts from the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services; and
4. Operation of substate long-term care ombudsman programs.

~~22VAC5-20-20.~~ 22VAC30-60-20. Definitions.

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

"Access services" means services associated with access to other services, such as care coordination, information and assistance and transportation services.

"Area" means the planning and service area served by an Area Agency on Aging.

"Area Agency on Aging" means the public or private nonprofit agency created pursuant to the federal Older Americans Act of 1965, as amended (42 USC § 3001 et seq.) and incorporated by reference in this chapter, which has submitted an approved Area Plan and is designated by contract with the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services to develop and administer its area plan as approved for a comprehensive and coordinated system of services for older persons.

"Area Plan for Aging Services" means the document submitted by an area agency to and approved by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, as the scope of services in the executed contract, in order to receive funding under the Older Americans Act, as amended.

"Commissioner" means the Commissioner of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services.

"Complaint" means any written or oral allegation regarding (i) an action, inaction, or decision of a provider which adversely affects the rights, health, welfare, or safety of the person complaining or the recipient of services, or (ii) a violation of the regulations, policies or procedures which govern long-term care services, brought by or on behalf of a resident of a long-term care facility, regardless of age, or a recipient of long-term care services provided in the community who is at least 60 years of age.

"Complaint counseling" means information, guidance, and support to enable the complainant or the recipient of services to attempt to resolve the complaint or concern himself, if he so chooses or is able, by utilizing the complaint handling procedures of the long-term care facility or long-term care service provider.

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"Contract" means the document of agreement wherein the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services designates the contractor as the duly funded Area Agency on Aging, consistent with the federally approved State Plan for Aging Services, in consideration for which the area agency assures its specific performance of functions and services pursuant to the approved area plan.

"Frail" means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, which restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

"Government-sponsored area agencies or area agencies sponsored by governmental entities" means area agencies created as units of general purpose local governments, area agencies created through the joint exercise of powers, and area agencies created as units of community services boards. Included under this category of Area Agencies on Aging are: District Three Governmental Cooperative trading as District Three Senior Services, New River Valley Agency on Aging, Alexandria Agency on Aging, Arlington Agency on Aging, Fairfax Area Agency on Aging, Loudoun County Area Agency on Aging, Prince William Area Agency on Aging, Rappahannock-Rapidan Community Services Board, Jefferson Area Board for Aging, Lake Country Area Agency on Aging, and Crater District Area Agency on Aging. In instances where governmental-sponsored agencies need to be differentiated by their status as free-standing joint-exercise-of-powers agencies or units of a governmental entity, it has been so denoted.

"Grant" means an award of financial assistance in the form of money, or property instead of money, by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services to an Area Agency on Aging. The term includes such financial assistance when provided by contract.

"Grantee" or "contractor" means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services for the use of the funds provided.

"Greatest economic need" means the need resulting from an income level at or below the poverty level established by the federal Office of Management and Budget.

"Greatest social need" means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, and cultural, social, or geographical isolation, including that caused by racial or ethnic status, which restricts an individual's ability to perform normal daily tasks or which threatens such individual's capacity to live independently.

"In-home services" means (i) homemaker/personal care services, (ii) chore services, (iii) home health services, (iv) checking services, (v) residential repair and renovation services, and (vi) in-home respite care for families and adult day care as a respite service for families.

"Long-term care facility" means any facility outside of the service recipient's home in which two or more unrelated persons receive long-term care services, including, but not limited to, nursing homes licensed by the Department of Health, assisted living facilities licensed by the Department of Social Services, and geriatric treatment centers licensed by the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ Department of Behavioral Health and Developmental Services.

"Long-term care services" means diagnostic, preventive, therapeutic, rehabilitative, supportive, and maintenance services provided on a recurring or continuous basis for the purpose of (i) minimizing the effects of illness or disability, or both, (ii) assisting a person to maintain his highest level of functioning, or (iii) maintaining or restoring independence. Such services may be provided in the recipient's home or in a community setting such as a long-term care facility.

"Office of the State Long-Term Care Ombudsman" means the program administered and funded by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, which serves as a point of entry, whereby a complaint is received, investigated or referred for investigation, and resolved.

"Older person" or "elderly" or "older individual" means any individual who is 60 years of age or older.

"Planning and service area (PSA)" means a geographic area of the Commonwealth which is designated for purposes of planning, development, delivery, and overall administration of services under an area plan. Unless otherwise exempted, such planning and service areas shall be coterminous with the planning districts established by the Virginia Department of Planning and Budget, pursuant to §§ 2.2-1501 and 15.2-4202 of the Code of Virginia.

"Private nonprofit Area Agency on Aging" means those area agencies created independently of a local governing body or bodies. They include Mountain Empire Older Citizens, Appalachian Agency for Senior Citizens, League of Older Americans trading as LOA-Area Agency on Aging, Valley Program for Aging Services, Shenandoah Area Agency on Aging, Central Virginia Area Agency on Aging, Southern Area Agency on Aging, Piedmont Senior Resources Area Agency on Aging, Senior Connections, The Capital Area Agency on Aging, Rappahannock Area Agency on Aging, Bay Aging, Southeastern Virginia Areawide Model Program trading as Senior Services of Southeastern Virginia, Peninsula Agency on Aging, and Eastern Shore Area Agency on Aging/Community Action Agency.

"Subgrant" means an award of financial assistance in the form of money, or property instead of money, made under a

grant by an Area Agency on Aging to an eligible subgrantee. The term includes such financial assistance when provided by contract.

"Subgrantee" or "subcontractor" means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to an Area Agency on Aging for the use of the funds provided.

"Substate Long-Term Care Ombudsman Program" means an organizational unit within an Area Agency on Aging which the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services designates, through contract with the Area Agency on Aging, to fulfill the duties of the Office of the State Long-Term Care Ombudsman in a specific geographic area.

"Unit of general purpose local government" means a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions.

~~22VAC5-20-30.~~ 22VAC30-60-30. Applicability of other regulations.

Several other regulations apply to all activities conducted with Title III funds. These include, but are not limited to:

1. 45 CFR Part 1321: Grants to State and Community Programs on Aging;
2. 45 CFR Part 74: Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Government and Indian Tribal Governments; and
3. 45 CFR Part 84: Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

Part II
Area Agencies on Aging

~~22VAC5-20-40.~~ 22VAC30-60-40. Planning and service areas.

A. The following are currently accepted as Virginia's Planning and Service Areas for purposes of execution of the provisions of 42 USC § 3001 et seq. (the "Older Americans Act") and the federal regulations promulgated thereunder (45 CFR Part 1321). The respective Area Agencies on Aging, under contract with the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services as of the date of these regulations, are named herein for identification but may be subject to change, pursuant to ~~22VAC5-20-50~~ 22VAC30-60-50.

Planning and Service Area 1
Mountain Empire Older Citizens, Inc
Wise, Virginia
Serves Lee, Scott, and Wise counties; the City of Norton.

Planning and Service Area 2
Appalachian Agency for Senior Citizens, Inc.
Richlands, Virginia
Serves Buchanan, Dickenson, Russell, and Tazewell counties.

Planning and Service Area 3
District III Governmental Cooperative
Marion, Virginia
Serves Bland, Carroll, Grayson, Smyth, Washington, and Wytthe counties the cities of Bristol and Galax.

Planning and Service Area 4
New River Valley Agency on Aging
Pulaski, Virginia
Serves Floyd, Giles, Montgomery, and Pulaski counties; the City of Radford.

Planning and Service Area 5
League of Older Americans, Inc. trading as LOA-Area Agency on Aging,
Roanoke, Virginia
Serves Alleghany, Botetourt, Craig, and Roanoke counties; the cities of Covington, Roanoke, and Salem.

Planning and Service Area 6
Valley Program for Aging Services, Inc.
Waynesboro, Virginia
Serves Augusta, Bath, Highland, Rockbridge, and Rockingham counties; the cities of Buena Vista, Harrisonburg, Lexington, Staunton, and Waynesboro.

Planning and Service Area 7
Shenandoah Area Agency on Aging, Inc.
Front Royal, Virginia
Serves Clarke, Frederick, Page, Shenandoah, and Warren counties; the City of Winchester.

Planning and Service Area 8A
City of Alexandria (Alexandria Agency on Aging)
Alexandria, Virginia
Serves the City of Alexandria.

Planning and Service Area 8B
Arlington County (Arlington Agency on Aging)
Arlington, Virginia
Serves Arlington County.

Planning and Service Area 8C
Fairfax County (Fairfax Area Agency on Aging)
Fairfax, Virginia
Serves Fairfax County; the cities of Fairfax and Falls Church.

Planning and Service Area 8D
Loudoun County (Loudoun County Area Agency on Aging)
Leesburg, Virginia
Serves Loudoun County.

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<p>Planning and Service Area 8E Prince William County (Prince William Area Agency on Aging) Manassas, Virginia Serves Prince William County; the cities of Manassas and Manassas Park.</p>	<p>Planning and Service Area 17/18 Bay Aging Urbanna, Virginia Serves Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland counties.</p>
<p>Planning and Service Area 9 Rappahannock-Rapidan Community Services Board Culpeper, Virginia Serves Culpeper, Fauquier, Madison, Orange, and Rappahannock counties.</p>	<p>Planning and Service Area 19 Crater District Area Agency on Aging Petersburg, Virginia Serves Dinwiddie, Greensville, Prince George, Surry, and Sussex counties; the cities of Colonial Heights, Emporia, Hopewell, and Petersburg.</p>
<p>Planning and Service Area 10 Jefferson Area Board for Aging Charlottesville, Virginia Serves Albemarle, Fluvanna, Greene, Louisa, and Nelson counties; the City of Charlottesville.</p>	<p>Planning and Service Area 20 Southeastern Virginia Areawide Model Program, Inc. trading as Senior Services of Southeastern Virginia Norfolk, Virginia Serves Isle of Wight and Southampton counties; the cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach.</p>
<p>Planning and Service Area 11 Central Virginia Area Agency on Aging, Inc. Lynchburg, Virginia Serves Amherst, Appomattox, Bedford, and Campbell counties; the cities of Bedford and Lynchburg.</p>	<p>Planning and Service Area 21 Peninsula Agency on Aging, Inc. Newport News, Virginia Serves James City and York counties; the cities of Hampton, Newport News, Poquoson, and Williamsburg.</p>
<p>Planning and Service Area 12 Southern Area Agency on Aging, Inc. Martinsville, Virginia Serves Franklin, Henry, Patrick, and Pittsylvania counties; the cities of Danville and Martinsville.</p>	<p>Planning and Service Area 22 Eastern Shore Area Agency on Aging/Community Action Agency, Inc. Onancock, Virginia Serves Accomack and Northampton counties.</p>
<p>Planning and Service Area 13 Lake Country Area Agency on Aging South Hill, Virginia Serves Brunswick, Halifax, and Mecklenburg counties.</p>	<p>B. Pursuant to 42 USC § 3025(a)(1)(E) and (b)(1) of the Older Americans Act, as amended, the Department for the Aging <u>Department for Aging and Rehabilitative Services</u>, in its discretion, has established that the boundaries for planning and service areas (PSAs) will be coterminous with the boundaries of the planning districts established by the Department of Planning and Budget, except that:</p> <ol style="list-style-type: none"> 1. Within the boundaries of Planning District 8, the Department for the Aging <u>Department for Aging and Rehabilitative Services</u> has established five planning and service areas with the concurrence of the local governing bodies; and 2. The Department for the Aging <u>Department for Aging and Rehabilitative Services</u> has combined Planning Districts 17 and 18 into one planning and service area with the concurrence of the local governing bodies. 3. Within the boundaries of Planning District 23, the Department for the Aging <u>Department for Aging and Rehabilitative Services</u> has established two planning and service areas that existed from the former Planning Districts 20 and 21.
<p>Planning and Service Area 14 Piedmont Senior Resources Area Agency on Aging, Inc. Burkeville, Virginia Serves Amelia, Buckingham, Charlotte, Cumberland, Lunenburg, Nottoway, and Prince Edward counties.</p>	
<p>Planning and Service Area 15 Senior Connections, The Capital Area Agency on Aging, Inc. Richmond, Virginia Serves Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent, and Powhatan counties; the City of Richmond.</p>	
<p>Planning and Service Area 16 Rappahannock Area Agency on Aging, Inc. Fredericksburg, Virginia Serves Caroline, King George, Spotsylvania, and Stafford counties; the City of Fredericksburg.</p>	

C. These boundaries shall be maintained until such time as there is good cause, shown by clear and convincing evidence, to create a new planning and service area.

~~22VAC5-20-50. 22VAC30-60-50.~~ Application procedures to obtain designation as a new planning and service area or as a new Area Agency on Aging.

A. Applications of units of general purpose local government to serve as designated Area Agencies on Aging within established planning and service areas or to create a new planning and service area shall be made only by formal resolution of city councils or county boards of supervisors and must be submitted in writing to the Commissioner of the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services. Such new entities, if approved, shall become effective with the beginning of the terms of their approved Area Plan for Aging Services and the contract incorporating such plan, upon execution of the contract. Any application for new Area Agency on Aging status or new planning and service area status shall be submitted prior to July 1 of the year preceding the year in which the new status would become effective.

B. The application for new Area Agency on Aging status or for new planning and service area status shall contain the proposed Area Plan for Aging Services and shall show the following:

1. All the city councils and county boards of supervisors in the planning and service area which would be affected have consented to the proposed change.
2. The proposed change will not result in creation of an Area Agency on Aging or new planning and service area which would receive less than 1.0% of the formula fund allocation for Virginia, according to the allocation method used by the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services for the year in which the application is submitted.
3. Provision of services in a proposed new planning and service area or by a proposed new Area Agency on Aging shall be shown, by clear and convincing evidence, to assure more efficient and effective preparation and implementation of the Area Plan for Aging Services for the older Virginians within the planning and service area.

C. Upon receipt of an application which meets the foregoing requirements, the Commissioner of the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services shall provide a public hearing in the planning and service area. At least a 30-day notice shall be provided through publication in a newspaper or newspapers of general circulation in the cities and counties to be affected by the proposed new entity and its submitted Area Plan for Aging Services. Notification shall be mailed to the local governments and all other interested Area Agencies on Aging. The public hearing shall be held at a time and location as convenient as possible to the citizens of the cities and counties affected by the proposed change. The commissioner

or a hearing officer designated by the commissioner will preside at the hearing. At the public hearing, interested persons may speak for themselves or be represented by counsel, and written presentations may be submitted. Following the public hearing and for at least 30 days thereafter, the commissioner will receive any additional written information which citizens or organizations wish to submit.

D. In addition to the public hearing and reception of comments by the ~~Virginia Department for the Aging~~ Department for Aging and Rehabilitative Services and the commissioner, as provided above, the commissioner shall consult with the Department of Planning and Budget, pursuant to § 2.2-1501(2) of the Code of Virginia, whenever a new planning and service area is proposed, and the approval of that department shall be persuasive.

E. Within 120 days of the public hearing, the commissioner shall issue written findings of fact, the consideration of the Department of Planning and Budget, and a particularized conclusion and decision. In the case of a new planning and service area, its effective date shall be determined and stated. The designation of Area Agencies on Aging becomes effective upon approval of their Area Plans for Aging Services and execution of the contract.

F. Any applicant for designation as a new entity whose application is denied may request an administrative hearing, pursuant to the Virginia Administrative Process Act, § 2.2-4019 of the Code of Virginia, within 15 days of receipt of the written denial. If, after hearing, the applicant's request is still denied, the applicant may appeal the decision in writing within 30 days after receipt of the decision to the Commissioner of the U.S. Administration on Aging, pursuant to 45 CFR 1321.31.

~~22VAC5-20-60. 22VAC30-60-60.~~ Termination of the designation of an Area Agency on Aging.

A. The contractual designation of an incumbent Area Agency on Aging will be renewed annually contingent upon approval of and performance on the Area Plan for Aging Services.

B. The contractual designation of an Area Agency on Aging will be withdrawn by the Commissioner of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services for any of the following:

1. Upon a written request by the Area Agency on Aging that the commissioner terminate its contractual designation.
2. Upon a request by formal resolution of all the city councils and county boards of supervisors within the planning and service area of the Area Agency on Aging that the commissioner designate and contract with another Area Agency on Aging, whose area plan is approved.
3. Upon a finding by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative

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Services, after reasonable notice and opportunity for a hearing, pursuant to 45 CFR 1321.35, that:

- a. An area plan or plan amendment is not approved.
- b. An area agency does not meet the requirements of the Older Americans Act, as amended; the federal regulations to implement the Older Americans Act, as amended; the Code of Virginia; or the policies and regulations of the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services.
- c. There is substantial failure in the provisions or administration of an approved area plan to comply with one or more of the provisions of the Older Americans Act, as amended; the federal regulations to implement the Older Americans Act as amended; the Code of Virginia; regulations of the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services; licensing requirements of the Commonwealth of Virginia; and local ordinances.
- d. The activities of the Area Agency on Aging are inconsistent with the statutory mission in the Older Americans Act, as amended, and its implementing regulations.

4. Upon reasonable application of the terms and conditions stated in the contract. Contractual obligations, failure of fulfillment of which shall lead to termination of the contract, include, but are not limited to, the following:

- a. Failure to correct deficiencies disclosed in an audit report from an audit conducted as required by the ~~Virginia Department for the Aging~~, Department for Aging and Rehabilitative Services pursuant to, ~~22VAC5-20-460~~ 22VAC30-60-450;
- b. Failure to report promptly to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services and to the appropriate law-enforcement officials any theft, embezzlement, or unlawful use of funds received from the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services;
- c. Failure to submit reports which meet the requirements (including due dates) established by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services;
- d. Deliberate falsification of information in such reports.

5. Upon a decision pursuant to ~~22VAC5-20-50~~ 22VAC30-60-50 creating a new Area Agency on Aging or new planning and service area, to the extent that such a decision makes performance on the existing contract impossible.

C. Upon notice by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services of its intent to terminate, the Area Agency on Aging, within 15 days from receipt of the notice, may request and shall be provided an informal fact-finding conference pursuant to the Virginia Administrative Process Act, § 2.2-4019 of the Code

of Virginia. If, from such a conference, a finding is made that one of the conditions set forth in subdivision B 4 of this section ~~obtains~~ applies or that a term or condition in the contract so permits, the contractual designation shall be withdrawn. In the alternative, if no request for such hearing has been made by 15 days from receipt of the notice, the contractual designation shall terminate 30 days after receipt of the notice.

D. If the Commissioner of the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services has reason to believe that one or more of the reasons for termination constitutes an emergency endangering the health, safety, or welfare of citizens or seriously threatens the financial or programmatic continuation of services required by the Area Plan for Aging Services, the commissioner may order the immediate suspension of the designation of the Area Agency on Aging, in advance of a hearing, and shall state in writing the reasons therefor.

E. When the contractual designation of an Area Agency on Aging is withdrawn, the commissioner, to assure continued conduct of functions and provision of services to the extent feasible, shall contractually designate a new Area Agency on Aging in a timely manner, or, for a period of up to 180 days from the withdrawal, the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, itself, may perform the responsibilities of the Area Agency on Aging or may assign the responsibilities of the area agency to another agency in the planning and service area. With the consent of the Commissioner of the U.S. Administration on Aging, the Commissioner of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services may extend the 180-day period.

22VAC5-20-70. 22VAC30-60-70. Designation of a new Area Agency on Aging.

A. When there is no designated Area Agency on Aging for a planning and service area, or when there has been a decision to create a new planning and service area, the commissioner shall solicit applications for a new Area Agency on Aging as soon as possible. Such applications shall be solicited by advertisement in the newspapers of general circulation serving the planning and service area and by notification mailed to the local governing bodies of cities and counties within the planning and service area. At least 30 days from the date of advertisement shall be provided for applicants to submit their applications to the commissioner. The application shall include the applicant's proposed Area Plan for Aging Services. The commissioner shall give the right of first refusal to a unit of general purpose local government, if such unit can meet the requirements of the Older Americans Act, as amended, and if the boundaries of such a unit and the boundaries of the planning and service area are reasonably contiguous. Applicants may be:

1. A city or county within the affected planning and service area;

2. All the cities and counties within the affected planning and service area, applying as a joint exercise of powers, pursuant to § 15.2-3000 of the Code of Virginia;

3. A public agency or a private nonprofit corporation of Virginia, or any separate organizational unit within such agency which can and shall engage only in the planning or provision of a broad range of supportive services for older persons within the planning and service area.

B. Within 30 days after the deadline set by the commissioner for submission of applications for designation as an Area Agency on Aging, the commissioner shall advertise a public hearing to receive comments on such designation. At least 30 days notice of the hearing shall be provided through advertisement in newspapers of general circulation serving the affected planning and service area and by notification mailed to the local governing bodies and all applicants. The hearing shall be held at a time and location as convenient as possible to the citizens of the cities and counties affected by the proposed change. The commissioner or a hearing officer designated by the commissioner will preside at the public hearing. At the public hearing, interested parties may speak for themselves or be represented by counsel, and written presentations may be submitted. Upon conclusion of the hearing, the commissioner will continue to receive any additional written information which citizens or organizations may wish to provide.

C. Within 45 days after the public hearing, unless the applicants have agreed otherwise, the commissioner shall issue a written decision. The commissioner may designate a new Area Agency on Aging, subject to final approval of its Area Plan for Aging Services and execution of the contract. Such designation shall become effective upon execution of the contract or such other date as agreed upon therein. Or, if the commissioner finds that the applicant or applicants applying do not offer functions, services, and an Area Plan for Aging Services which will be in the best interests of the Commonwealth or of the persons to be served, the commissioner may reject all applications and recommence the designation process. Reasons for denial shall be set forth with reasonable particularity.

Part III
Area Plans for Aging Services

22VAC5-20-80. 22VAC30-60-80. Preparation and submission of the area plan.

A. Any existing Area Agency on Aging or any applicant for area agency designation will prepare an Area Plan for Aging Services and submit it to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services for approval. The area plan will clearly detail the means of providing supportive and nutrition services and substantiation for the means selected. An approved area plan will be in effect for two, three, or four years, as determined by the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services. Such plan, if approved, will become

the scope of services in the contract executed between the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services and the Area Agency on Aging as contractor.

B. The Area Agency on Aging shall submit to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services for approval all requests for, and reasonable documentation of and substantiation for, necessary changes, additions, or deletions in its area plan. The area agency shall submit a written amendment to the area plan if it intends to change the scope of a service or if it intends to change the arrangements by which a service is delivered (e.g., direct service or contracted service, the number or location of congregate meal sites). Any amendment shall be approved by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services and, when signed by both the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services and the Area Agency on Aging as contractor, will be incorporated into the contract as part of the scope of services.

C. The area plan shall provide, through a comprehensive and coordinated system, for supportive and nutrition services and, where appropriate, for the establishment, maintenance, and construction of multipurpose senior centers within the planning and service area covered by the plan. Subject to the requirements in ~~22VAC5-20-100~~ 22VAC30-60-100, such services may include:

1. Checking services. Calling or visiting older persons at their residence to check on them to make sure they are well and safe. This activity may also serve to provide psychological reassurance to an older person who is alone and in need of personal contact from other individuals.
2. Congregate meals. Procurement, preparation, conveyance, and provision of nutritionally balanced meals that meet one-third of the current recommended dietary allowance for older persons. The provision of meals must occur at designated nutrition sites which also provide a climate or atmosphere for socialization and opportunities to alleviate isolation and loneliness.
3. Information and Assistance. Assess older persons' needs for services; collecting and providing information to link older persons with the opportunities, services, and resources needed to meet their particular problems and needs.
4. Dental services. Provision of needed dental services to limited-income persons 60 years of age and older not otherwise able to obtain the services.
5. Emergency services. Provision of money and other resources, including referral to other public and private agencies, for assistance to persons 60 and older who have an emergency need for help. Area agencies must have approved policies established by their governing board for administration of this service.

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6. Employment services. Assistance to older persons seeking part-time or full-time employment within the public or private sector and advocacy on behalf of the older worker.

7. Finance, tax, and consumer counseling. Provision of direct guidance and assistance to older persons and their caregivers in the areas of consumer protection, personal financial matters, and tax preparation.

8. Adult day care services. Regular daytime supervision and care of frail, disabled, and institutionally at-risk older adults. Participants require a level of care which ensures their safety, and, with the provision of services ranging from socialization to rehabilitation, may experience an enhancement in their quality of life and level of functioning.

9. Health education. Provision of information or materials, or both, specifically designed to address a particular health-related issue. The activity may be preventive in nature and may promote self-care and independence.

10. Health screening. Provision of screening to determine current health status, including counseling, follow-up, and referral, as needed.

11. Chore services. Provision of light housekeeping and other services to eligible older adults, who, because of their functional level, are unable to perform these tasks themselves.

12. Home delivered meals. Procurement, preparation, conveyance, and provision of nutritionally balanced meals that meet one-third of the current recommended dietary allowance for older persons. The meals must be delivered and received at the homes of the individuals.

13. Home health services. Provision of intermittent skilled nursing care under appropriate medical supervision to acutely or chronically ill homebound older adults. Various rehabilitative therapies and home health aides providing personal care services are included.

14. Homemaker/personal care services. Provision of nonmedically oriented services by trained personnel under professional supervision. Services may include personal care activities, nutrition-related tasks, light housekeeping, and respite for family caregivers.

15. Identification/discount program. Provision to older persons of a card which can be used as identification to cash checks and to obtain discounts for goods and services from participating merchants.

16. Legal assistance. Legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney). Includes counseling or representation by a nonlawyer, where permitted by law, to older individuals with economic or social needs. May also include preventive measures such as community education.

17. Long-term care coordinating activity. Provides for the participation of area agency staff on the local long-term care coordinating committee or committees and in the planning and implementation of a coordinated service delivery system.

18. Public information and education. Provision of information to older persons and the general public about the programs and services available to the elderly and their caregivers and about the talents, skills, problems, and needs of older persons.

19. Residential repair and renovation. Provision of home repairs or home maintenance to persons 60 years of age and older (includes weatherization provided with Older American Act funds).

20. Services to persons in institutions. Provision of consultation and assistance to institutionalized older persons, their families, and facility staff in such areas as aging issues, resident rights, and activities for facility residents.

21. Socialization/recreation services. Activities to provide persons 60 years of age and older with opportunities to participate in constructive social experiences and leisure time activities. This may also include senior center activities as well as activities suitable for and within the time constraints of the nutrition sites.

22. Substate long-term care ombudsman program. Serves as a point of entry for long-term care recipients, their families and friends, and the concerned public, whereby complaints made by, or on behalf of, older persons in long-term care facilities or receiving long-term care services in the community can be received, investigated, and resolved. The program also provides counseling and support to long-term care recipients and others to assist them in resolving problems and concerns through the use of the complaint handling procedure of the long-term care facility or community based long-term care service provider. In addition, the program is a resource for information regarding institutional and community based long-term care services. Through its contacts with long-term care recipients and others concerned with long-term care, the Long-Term Care Ombudsman Program identifies problems and concerns of older persons receiving long-term care and their families and friends and recommends changes in the long-term care system which will benefit these individuals as a group.

23. Transportation services. Group transportation of older persons to congregate meals, socialization and recreation activities, shopping, and other services available in the community; individual transportation to needed services that promote continued independent living.

24. Volunteer programs. Development of opportunities for the community to do volunteer work in aging programs and services; recruiting and supervising volunteers; and

developing opportunities for older persons to do volunteer work in the community.

D. An Area Agency on Aging may provide a service, other than those listed above, under the following conditions:

1. The service is consistent with the goals and objectives of the Older Americans Act, as amended.
2. The area agency makes a written request to, and receives written approval from, the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services.
3. Such written request includes at least the following:
 - a. A description of the service to be provided;
 - b. A budget for the service for the duration of the current Area Plan for Aging Services, including sources and amounts of all funding for the service; and
 - c. A summary of the process which the area agency used to obtain public comment on the service to be provided.
4. If the area agency plans to provide the service directly, the area agency must comply with ~~22VAC5-20-120~~ 22VAC30-60-110.

E. If a citizen, organization, or local government should believe an Area Agency on Aging or its Area Plan for Aging Services substantially fails to comply with the provisions of the Older Americans Act, as amended, the complaint shall be addressed in writing to the Commissioner of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, detailing the reasons and bases for the complaint.

F. In the alternative, a complaint can be initiated at the local level with the substate ombudsman program, under circumstances described in ~~22VAC5-20-590 D 2~~ 22VAC30-60-580 D 2 and ~~22VAC5-20-590 D 3~~ 22VAC30-60-580 D 3 for reporting complaints to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services.

G. If, after an investigation is conducted, the commissioner has cause to believe that there are substantial grounds for termination of the designation of the area agency which is the subject of the complaint, pursuant to ~~22VAC5-20-60 B 3 c~~ 22VAC30-60-60 B 3 c, the commissioner shall provide notice to the area agency of intent to withdraw its area agency designation within 30 days, stating the bases, and shall provide an opportunity for a hearing if requested within 15 days of receipt of the notice by the area agency involved. Failure to request a hearing shall result in withdrawal of the area agency designation at the end of the 30th day after receipt of the notice by the area agency.

H. The hearing, if timely requested, shall be provided consistent with the provisions of the Virginia Administrative Process Act, § 2.2-4019 of the Code of Virginia. Within 30 days of the close of the hearing, unless the case is disposed of by consent during the hearing process, the commissioner shall

render a written decision. If the commissioner finds that the Area Plan for Aging Services of the Area Agency on Aging or the administration of the area plan by the area agency does not comply with the requirements and provisions of the Older Americans Act, as amended, the commissioner shall withdraw the designation, pursuant to 45 CFR 1321.35. If there are significant, correctable problems in the Area Plan for Aging Services or the administration thereof, the commissioner may allow the area agency to continue as such, contingent upon appropriate changes and attainment of compliance within a stated time period.

I. When the cause for termination endangers the health, safety and welfare of the population to be served or jeopardizes the financial or programmatic provision of functions and services, suspension of the area agency shall be immediate, and termination shall become final within 30 days, unless good cause is shown by clear and convincing evidence.

~~22VAC5-20-90~~, 22VAC30-60-90. Population to be served.

A. All Virginians age 60 years or older are eligible to receive services provided under an Area Plan for Aging Services. An Area Agency on Aging shall give preference to providing services to older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals and older individuals residing in rural areas. Older Americans Act, as amended, funds and state funds shall be targeted to services which can assist older persons to function independently for as long as possible.

B. Any Virginian 60 years of age or older and his or her spouse, regardless of age, are eligible to receive congregate nutrition services.

1. The following individuals are also eligible to receive congregate nutrition services:

- a. A handicapped or disabled individual who is under the age of 60 years and who resides in a housing facility occupied primarily by older individuals at which congregate nutrition services are provided.
- b. An individual, regardless of age, who provides volunteer services during the meal hours.
- c. A disabled individual under age 60 who resides at home with and accompanies an older individual who is otherwise eligible.

C. Any Virginian 60 years of age or older, who is homebound by reason of illness or incapacitating disability or otherwise isolated, is unable to prepare his own meal, and has no one to prepare food for him is eligible to receive home-delivered nutrition services. The following individuals are also eligible to receive home-delivered nutrition services:

- a. The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if receipt of the meal is in the best interest of the homebound older person. Each Area Agency on Aging shall establish

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criteria for determining when receipt of the meal is in the best interest of the older person.

b. A nonelderly disabled individual who resides at home with an older individual who is otherwise eligible.

22VAC5-20-100, 22VAC30-60-100. Priority services.

A. An Area Agency on Aging shall spend at least 15% of its Title III-B allotment for services associated with access to other services, as defined in ~~22VAC5-20-20~~ 22VAC-30-60-20.

B. An Area Agency on Aging shall spend at least 5.0% of its Title III-B allotment for in-home services, as defined in ~~22VAC5-20-20~~ 22VAC-30-60-20.

C. An Area Agency on Aging shall spend at least 1.0% of its Title III-B allotment for legal assistance for the elderly.

D. An Area Agency on Aging, whose spending in a priority service category exceeds the minimum proportional expenditure level specified above, shall spend in each such category of services at least the same amount of actual funds as it spent in such category for the previous fiscal year.

E. To the extent that the priority services and the proportional expenditure level to be allotted to them are prescribed by law and regulation of the federal government, this section is exempt from the procedural requirements of the Virginia Administrative Process Act, pursuant to § 2.2-4002 B 4 of the Code of Virginia.

F. The ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services may waive the requirement described in subsections A through C of this section for any category of services described in that section if the Area Agency on Aging demonstrates to the department that services being provided in such category in the area are sufficient to meet the need for such services in such area.

G. Before an Area Agency on Aging requests a waiver pursuant to subsection F of this section, the Area Agency on Aging shall conduct a public hearing as follows:

1. The Area Agency on Aging requesting a waiver shall notify all interested persons of the public hearing.
2. The area agency shall provide interested persons with an opportunity to be heard.
3. The Area Agency on Aging requesting the waiver shall receive, for a period of 30 days, any written comments submitted by interested persons.

H. The Area Agency on Aging shall furnish a complete record of the public comments with the request for the waiver to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services.

22VAC5-20-120 22VAC30-60-110. Direct services.

A. An Area Agency on Aging shall not provide directly any supportive services or nutrition services except where, in the judgment of the ~~Virginia Department for the Aging~~, Virginia Department for Aging and Rehabilitative Services, pursuant to a request for waiver as set forth in subsection B of this

section, provision of such services by the area agency is necessary to assure an adequate supply of such services, or where such services are directly related to the area agency's administrative functions, or where such services of comparable quality can be provided more economically by the area agency.

B. An Area Agency on Aging shall request explicitly, in writing, a waiver to provide supportive services or nutrition services. The request for a waiver must include, at a minimum, the area agency's rationale for providing the service directly, including sufficient documentation that provision of such service by the area agency is necessary to assure an adequate supply of such service, or that such service is directly related to the area agency's administrative functions, or that such service of comparable quality can be provided more economically by the area agency.

C. Unless and until a waiver has been granted in writing by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, an Area Agency on Aging shall not provide or begin to provide any supportive or nutrition service using Older Americans Act, as amended, or state funds.

Part IV

Administration of Grants and Contracts

Article 1

Principles and Standards for Financial Management and Accounting

22VAC5-20-130, 22VAC30-60-120. Basis of accounting.

A. Each area agency and all entities with which such area agency itself contracts shall report program outlays and program income on the modified accrual basis. Accordingly, expenditures are recorded when a liability is incurred (i.e., when goods and services have been received or the amount can be readily estimated), but revenue is not recorded until actually realized or recognized and collectible by the grantee/contractor or entity under subcontract in a current reporting period.

B. If the Area Agency or entity under subcontract presently maintains its accounting system on the cash basis, it must develop the necessary accrual information through analysis of pertinent documentation on hand.

C. Area Agencies on Aging shall observe the cash basis of accounting for U.S. Department of Agriculture (USDA) funding and the commodities-received basis for USDA commodities. An unbilled receivable shall not be reflected for USDA receivables.

22VAC5-20-140, 22VAC30-60-130. Authority to expend federal and state funds.

A. By virtue of the ~~Virginia Department for the Aging's~~ Virginia Department for Aging and Rehabilitative Services' approval of an Area Plan for Aging Services, issuance of a notice of approval, and execution of the contract, an Area Agency on Aging is granted authority to incur costs under its

approved area plan for eligible activities, for the period covered by the area plan. This authorization to incur costs under its approved area plan is extended only for allowable and allocable costs which are also reasonable and net of all applicable credits.

B. An Area Agency on Aging receiving a contractual award pursuant to an approved area plan understands and agrees that the period of the contractual award is for one year. Prior to the renewal of the contractual award of any additional financial support for any subsequent period, the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services may conduct an on-site evaluation of the Area Agency on Aging to determine if the objectives of the area plan are being met and whether continued financial support is indicated.

C. An Area Agency on Aging is to refer to the federal cost principles applicable to its type of organization to ascertain when prior approval is required from the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services. In addition, prior approval may be required by the contractual award of funded support from the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services or required by specific program legislation or regulation, including but not limited to the following:

1. Changes in the scope or objectives of the activities assured by the area plan, as approved and incorporated into the contractual award;
2. Undertaking any activities which are disapproved or restricted as a condition of the contractual award;
3. Any pending change of institutional affiliation of the Area Agency on Aging, any reassignment to a legal successor of interest, or any nominal or legal change in agency name. The ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services may in its discretion determine whether to approve such contractual modification and continue funding the existing project or projects under the new entity. Factors to be considered include assurances to continue the project or projects as approved and the acceptance of the new entity by the carrier of any surety bonds required for the project or projects;
4. Transferring to a third party, by contract or any other means, the actual performance of substantive responsibility for the management of the grant/contract. Generally, such changes may require the designation of a new Area Agency on Aging and the execution of a new contract;
5. Carrying over funds from one budget period to another;
6. Extending the budget/project period with or without additional funds;
7. Expending funds for the purchase of land or buildings;
8. Conveying, transferring, assigning, mortgaging, leasing, or otherwise encumbering property acquired under a

grant/contract with the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services;

9. Acquiring automatic data processing equipment (see ~~22VAC5-20-280~~ 22VAC30-60-270);
10. Incurring costs or liabilities prior to the effective date of any grant/contract award;
11. Paying fees to a consultant whenever the consulting agreement (i) constitutes a transfer of substantive management or administrative work to a third party, or (ii) results in a contract for management services that requires the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services or the federal grantor agency's prior approval, as required by program regulations or other award terms;
12. Additional funding when clearly demonstrated to be essential;
13. Reallocating costs between closely related projects supported by two or more grant sources. Approval may be granted to charge costs to the Title III grant for which the costs are originally approved, or to another ~~Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services project, when all of the following conditions are met:
 - a. The projects are programmatically related;
 - b. There is no change in the scope of the individual grants involved;
 - c. The reallocation of costs is not detrimental to the conduct of work approved under each individual award; and
 - d. The reallocation is not used to circumvent the terms and conditions of either individual award;
14. Indemnifying third parties;
15. Transferring funds between construction and nonconstruction;
16. Traveling outside of the continental United States;
17. Contributing to a reserve fund for a self-insurance program;
18. Insuring any U.S. government-owned equipment; and
19. Meeting the costs of nonemergency patient care where other forms of medical cost reimbursement, such as but not limited to Medicaid, are available.

~~22VAC5-20-150, 22VAC30-60-140~~. **Chart of accounts.**

Provided that an Area Agency on Aging is able to comply with the nine standards for financial management systems in U.S. Office of Management and Budget (OMB) Circulars A-102 and A-110, as applicable, and the financial management standards contained in 45 CFR 74.21, an Area Agency on Aging shall adopt its own account structure based on its own external and internal reporting requirements.

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~~22VAC5-20-160.~~ 22VAC30-60-150. Elements of an acceptable financial management system.

A. An Area Agency on Aging shall maintain records and make reports in such form and containing such information as may be required by the ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services. An Area Agency on Aging shall maintain such accounts and documents as will serve to permit expeditious determination of the status of funds and the levels of services provided under the approved area plan, including the disposition of all moneys received from the ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services. and the nature and amount of all charges claimed against such funds.

B. An Area Agency on Aging shall keep records that identify adequately the source and application of funds for grant/contract-supported activities and for activities under subcontract. At a minimum, these records shall contain information pertaining to the grant/contract, subcontracts, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a governmental entity, liabilities.

C. Special grant/contract conditions more restrictive than those prescribed in 45 CFR Part 74 may be imposed by the ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services on an Area Agency on Aging, as needed, when the ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services has determined that the Area Agency on Aging:

1. Is financially unstable;
2. Has a history of poor performance; or
3. Has a management system which does not meet the standards of 45 CFR Part 74.

D. For the purpose of determining the adequacy of an area agency's financial management system, the ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services shall consider the following records maintained on a current basis to be minimum:

1. General journal;
2. General ledger;
3. Separate or combined cash receipts and disbursements journal or voucher register;
4. Payroll register (if the agency has more than 10 employees);
5. Fixed assets register for all owned and leased property and equipment;
6. In-kind journal/worksheets;
7. Project cost control subsidiary ledger/worksheets; and
8. Bank statements reconciled within 30 calendar days of receipt.

E. Grantees/contractors of the ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services may substitute the equivalent kind of records for those specified above, provided the substitute records meet the function for which those records have been required.

F. An Area Agency on Aging shall have procedures for determining the reasonableness, allowability, and allocability of all contract costs.

~~22VAC5-20-170.~~ 22VAC30-60-160. USDA funds.

Providers of nutrition services to older persons shall treat USDA funds as income upon receipt.

~~22VAC5-20-180.~~ 22VAC30-60-170. Reimbursement from other sources.

All reimbursement under Titles XIX and XX of the Social Security Act for services funded jointly by the Older Americans Act, as amended shall be considered "other federal funds" for budgeting and reporting purposes.

~~22VAC5-20-190.~~ 22VAC30-60-180. Liquidation of obligations.

A. Grantees/contractors of the ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services and subcontractors of the Area Agencies on Aging shall liquidate all obligations incurred under the Older Americans Act, as amended within 90 days of the end of the grant period. The ~~Virginia Department for the Aging.~~ Virginia Department for Aging and Rehabilitative Services shall consider written requests for waivers of this rule in the case of any multiyear subcontracts involving construction or renovation.

B. All Virginia general fund moneys shall be spent by June 30 of the year covered by the award. No unliquidated obligations shall exist beyond June 30.

~~22VAC5-20-200.~~ 22VAC30-60-190. Area Agency on Aging fiscal manual.

An Area Agency on Aging shall prepare a complete, accurate, and current set of written fiscal policies to be maintained in the form of an officially adopted manual. This manual shall cover the area agency's own fiscal policies and those applicable to its subcontractors. At a minimum, the manual shall provide for a description of each of the following accounting applications and the internal controls in place to safeguard the agency's assets: billings, receivables, cash receipts, purchasing, accounts payable, cash disbursements, payroll, inventory control, property and equipment, and general ledger. Each of the agency's fiscal activities for revenue/receipts, disbursements and financial reporting shall also be described.

Article 2
Transfer of Funds

~~22VAC5-20-210.~~ 22VAC30-60-200. Authority to transfer funds between the titles of the Older Americans Act.

A. With the prior written approval of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, an Area Agency on Aging may transfer funds between the titles of the Older Americans Act, as amended. Area agencies may request transfers of up to 25% between Title III-C(1) funds and Title III-C(2) projects.

B. With the prior written approval of the department, area agencies may transfer up to 10% between Title III-C funds and Title III-B projects.

Article 3
Personnel Policies

~~22VAC5-20-220.~~ 22VAC30-60-210. Employment of key Area Agency on Aging personnel.

The governing board of the Area Agency on Aging shall have the authority to hire and otherwise supervise the activities of the Director of the Area Agency on Aging. All recruitment efforts shall be guided by a description of duties and a list of recruitment criteria developed in advance by the Area Agency on Aging.

~~22VAC5-20-230.~~ 22VAC30-60-220. Taking security deposits and making payments on behalf of clients.

Unless an Area Agency on Aging has an approved program for such purposes and any such security deposits and payments are explicitly covered under the agency's fidelity bond coverage, all officers, employees, volunteers and agents shall be prohibited from taking security deposits for clients or from making payments on behalf of participants of programs funded under the Older Americans Act, as amended. Where such programs are provided for and explicitly covered under the agency's fidelity bond coverage, adequate safeguards shall be formally in place and the operation of the program periodically monitored by the Area Agency on Aging.

~~22VAC5-20-240.~~ 22VAC30-60-230. Support for labor distribution.

A. Charges to awards for salaries and wages shall be based on documented payrolls approved by a responsible supervisory official of the Area Agency on Aging. The distribution of time worked must be supported by personnel activity reports.

B. Labor distribution reports should be prepared and controlled according to the following minimum standards:

1. Employees, including employees under subcontract, are responsible for preparing their own timecards/timesheets.
2. Employees shall be provided clear instructions as to the work to be performed and the grant/contract category or program to be charged.

3. Periodic internal reviews of the timekeeping system shall be performed to assure compliance with system controls.

4. Overtime hours shall be approved in advance and justification provided.

5. A list of supervisors authorized to approve timecards/timesheets shall be maintained along with signature cards kept on file by the timekeeping office.

C. In situations where the use of labor distribution reports may be impractical or essentially the same results could be obtained through sampling techniques, an Area Agency on Aging may request in writing from the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services approval of a substitute system which involves staff-maintained labor distribution reports for a prototypical period.

~~22VAC5-20-250.~~ 22VAC30-60-240. Up-to-date job descriptions for all Title III funded positions.

For each paid and volunteer position funded by Title III of the Older Americans Act, as amended, an Area Agency on Aging shall maintain:

1. A current and complete job description which shall cover the scope of each position-holder's duties and responsibilities and which shall be updated as often as required, and
2. A current description of the minimum entry-level standards of performance for each job.

Article 4
Property Control

~~22VAC5-20-260.~~ 22VAC30-60-250. Inventorying acquired equipment.

An Area Agency on Aging shall conduct or have conducted on an annual basis an inventory of all equipment acquired with funds granted by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, including equipment acquired by their subcontractors and subgrantees.

~~22VAC5-20-270.~~ 22VAC30-60-260. Control of USDA commodities.

To prevent unauthorized diversion, all elderly nutrition projects obtaining commodities from USDA shall conduct an inventory at least once a year of all USDA commodities and shall maintain a perpetual inventory system over such commodities.

~~22VAC5-20-280.~~ 22VAC30-60-270. Purchase of automatic data processing (ADP) equipment.

A. An Area Agency on Aging shall take special precautions in the purchase of ADP equipment and software. The purchase, lease, or retention of ADP equipment shall require prior approval from the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services on an individual or blanket purchase basis.

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B. In the acquisition of computer equipment, an Area Agency on Aging shall ensure the following:

1. A full requirements analysis has been conducted;
2. Its computer utilization needs are projected over at least a three-year period;
3. The intended software system meets federal and state reporting requirements;
4. There is adequate post-sale vendor support; and
5. Competitive purchasing procedures are adhered to.

C. The cost of ADP services does not require federal or state prior approval.

22VAC5-20-290. 22VAC30-60-280. Area Agency on Aging property control policies.

An Area Agency on Aging shall have written policies and procedures, approved by the governing board, for managing equipment purchased in whole or part with federal, state, or matching funds, to include: (i) accurate and complete property records, (ii) regular physical inventory of equipment, (iii) adequate maintenance procedures, and (iv) disposal of property and equipment.

Article 5

Procurement Practices and Contracting

22VAC5-20-300. 22VAC30-60-290. Summary of procurement procedures.

A. Each Area Agency on Aging not subject by statute to the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia) shall have written policies and procedures which are consistent with the provisions of the Virginia Public Procurement Act.

B. The Area Agency on Aging shall incorporate in any contract, grant, or purchase agreement of over \$50,000 the conditions specified in the Virginia Public Procurement Act or those conditions provided in the written policies and procedures required in subsection A of this section.

22VAC5-20-310. 22VAC30-60-300. Contract awards to Area Agencies on Aging.

The ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services is authorized under ~~§ 2.2-703~~ § 51.5-135 of the Code of Virginia to award grants or contracts, or a combination of both, to a designated Area Agency on Aging to administer programs under an approved area plan. The ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services has determined that the contracts mechanism is the appropriate vehicle for making awards to Area Agencies on Aging in furtherance of its purpose under its approved area plan. Even though the procuring mechanism is called a contract, for purposes of interpreting federal regulations, the provisions for grants and grantees shall apply to an Area Agency on Aging rather than the provisions for contracts.

22VAC5-20-320. 22VAC30-60-310. Unauthorized awards to debarred, suspended, or high-risk subcontractors.

A. An Area Agency on Aging shall make awards only to responsible subcontractors possessing the ability to perform successfully under the terms and conditions of the proposed contract. Consideration shall be given to such matters as the integrity of the subcontractor, compliance with public policy, record of past performance, and financial and technical resources.

B. An Area Agency on Aging shall not execute any subcontract at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

C. An Area Agency on Aging shall require its proposed subcontractors at any tier to certify whether they have been excluded from participation in federal assistance programs.

D. If an Area Agency on Aging believes that there are compelling reasons for executing a subcontract with a debarred, suspended, or voluntarily excluded provider in a particular area, the area agency may apply to the ~~Virginia Department for the Aging or~~ Virginia Department for Aging and Rehabilitative Services for a waiver from this requirement. Such waivers shall be granted only in unusual circumstances upon the written determination, by an authorized ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services official, that there are compelling reasons justifying the participation.

22VAC5-20-330. 22VAC30-60-320. Authority for multiyear awards.

A. An Area Agency on Aging may enter into a multiyear subcontract provided such contract has a completion date, a binding schedule of costs for each year of the entire contract period, a satisfactory performance clause, and a funds-availability clause. An optional-year contract is the preferred contracting mechanism for multiyear awards.

B. The maximum period of time for a multiyear subcontract from the effective date of the contract to close-out shall be five years. Any subcontracts for periods longer than five years shall be reprocedured and renegotiated at the end of the five-year period through normal competitive processes.

22VAC5-20-340. 22VAC30-60-330. Preference for small business and minority firm awards of grants and contracts.

It is the ~~Virginia Department for the Aging's~~ Virginia Department for Aging and Rehabilitative Services' policy that a fair share of subcontracts be awarded to small and minority business firms and nonprofit organizations. Accordingly, affirmative steps shall be taken to assure that small and minority businesses are utilized, when possible, as sources of supplies, equipment, construction, and services.

~~22VAC5-20-350.~~ 22VAC30-60-340. Contract and competitive grants appeals process.

An Area Agency on Aging shall establish an appeals and hearing process to resolve disputes and claims involving contracts and competitively awarded grants, if such are authorized. At a minimum, this process shall describe:

1. Applicable procurement rules to be used in the appeals process;
2. Designation of an impartial officer to hear and pass on the dispute or claim;
3. Form and timing of the claim to be filed;
4. Right of the claimant to counsel;
5. Hearing procedures;
6. Manner and timing of the hearing officer's opinion;
7. Right to appeal to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services; and
8. Retention and disposal of the hearing's record.

Article 6

General Program Income

~~22VAC5-20-360.~~ 22VAC30-60-350. Acceptable methods for general program income.

An Area Agency on Aging is authorized to observe the additional-costs alternative. Under this alternative, all general program income earned by the Area Agency on Aging shall be retained by the area agency and added to funds committed to the project by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services and shall be used to further eligible program objectives.

~~22VAC5-20-370.~~ 22VAC30-60-360. Treatment of interest earned on advances.

Interest earned on federal funds passed through the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services is to be considered general program income. Such funds may be used as cash match in the supportive services and nutrition programs, to expand any approved program, or to further any activity or benefit to the elderly as approved by the governing board of the Area Agency on Aging. Such funds may not be used to meet the costs associated with the preparation and administration of the area plan.

~~22VAC5-20-380.~~ 22VAC30-60-370. Allowable investment and custody policies.

The investment of available federal or state funds shall be directed by two principles: (i) all funds received must be protected from unreasonable loss or diminished value, and (ii) investments must be selected to earn a reasonable return on funds not expected to be disbursed immediately. In furtherance of such principles, the following investment mechanisms are authorized:

1. Any interest bearing checking account that is fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;
2. NOW accounts.

~~22VAC5-20-390.~~ 22VAC30-60-380. Timing of spending general program income.

In general, there is no time restriction as to when general program income under the additional-costs alternative must be spent. To avoid any excessive accumulation of funds and the abuse of this alternative, the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services has determined that general program income earned under the additional-costs alternative shall be spent in the year in which it is earned. If it is earned near the end of the agency's fiscal year and the agency is unable to spend this income by then, it shall at least be spent before the expenditure of any federal or state funds in the beginning of the next fiscal year.

~~22VAC5-20-400.~~ 22VAC30-60-390. Special internal control safeguards over participant contributions.

Because of the cash nature of participant contributions, agencies shall exert special safeguards over such funds. At a minimum, agencies receiving participant contributions shall employ one or more of the following precautions: (i) have two persons count all cash contributions; (ii) deposit the amount intact; (iii) make deposits on a daily basis; (iv) maintain all cash contributions in a secure place until deposit; (v) regularly justify cash counts against deposit receipts received from the bank; (vi) for home-delivered meals, maintain lock boxes in the vans and encourage mailed contributions; (vii) provide a clearly stated policy concerning provision of client receipts, in duplicate, for each cash transaction; and (viii) rotate staff periodically, if staffing permits.

~~22VAC5-20-410.~~ 22VAC30-60-400. Area Agency on Aging written policies on program income.

An Area Agency on Aging shall formally adopt written policies and procedures, approved by the governing board, regarding collection, disposition, and accounting for (i) program income, including participant contributions, and (ii) interest and other investment income earned on advances of federal and state funds.

Article 7

Bank Balance and Check Handling Procedures

~~22VAC5-20-420.~~ 22VAC30-60-410. Rules on cash management by Area Agencies on Aging.

A. An Area Agency on Aging shall institute procedures to minimize their cash balances of funding provided by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services. Accordingly, Area Agencies on Aging shall tailor projections of cash requirements from the ~~Virginia Department for the Aging~~

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Virginia Department for Aging and Rehabilitative Services to coincide closely with the actual disbursement of such funds.

B. An Area Agency on Aging shall adopt procedures for minimizing the time elapsed between the receipt of federal and state funds and their disbursement.

~~22VAC5-20-430.~~ **22VAC30-60-420. Fidelity bond requirements.**

For all personnel handling cash or preparing or signing checks, the Area Agency on Aging shall obtain minimum insurance coverage of three-months' ~~cashflow~~ cash flow, including checks received, in blanket fidelity bond coverage.

Article 8

Monitoring of Subcontractors of Area Agencies on Aging

~~22VAC5-20-440.~~ **22VAC30-60-430. Area Agency on Aging written policies on subcontractor monitoring.**

Each Area Agency on Aging shall adopt formal written policies and procedures, approved by the governing board, for monitoring their subcontractors and subgrantees under the approved area plan and for follow-up on any findings.

Article 9

Carry-Over Balance Policies

~~22VAC5-20-450.~~ **22VAC30-60-440. Carry-over funds.**

Carry-over funds may represent obligated but unspent funds. For such funds to be available for expenditure in a subsequent fiscal year, the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services must reauthorize in the subsequent area plan such funds for an area agency to obligate and expend. An Area Agency on Aging shall request authority for such reauthorization of funds. In general, carry-over balances from Titles III-B, III-C(1), III-C(2), and III-D should not exceed 10% of the federal obligation for the new fiscal year, computed separately. This 10% carry-over policy does not apply to Virginia general fund moneys; all of general fund moneys must be spent by June 30 of the fiscal year in which they have been awarded. Approval for the use of such federal carry-over funds shall be granted by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services only for specific uses and for a specified period of time.

Article 10

Audits

~~22VAC5-20-460.~~ **22VAC30-60-450. Area Agencies on Aging retain own independent public accountants.**

A. Each Area Agency on Aging shall retain its own public accountant, who is sufficiently independent of those who authorize the expenditure of federal funds, to produce unbiased opinions, conclusions, or judgments. The auditor shall meet the independence criteria established in Amendment No. 3 of the Government Auditing Standards, as amended, (the Yellow Book) published by the U.S. General Accounting Office.

B. In arranging for audit services, an Area Agency on Aging shall follow procurement standards for retaining professional services. Small audit firms and audit firms owned and controlled by minority individuals shall have the maximum practical opportunity to participate in audit contracts awarded.

C. In soliciting and retaining auditors to conduct the annual audit, an Area Agency on Aging must make specific reference in their request for proposals and any resulting subcontract that the auditor shall be required to conform the audit to the requirements in Audits of States, Local Governments, and Nonprofit Organizations, OMB Circular A-133; and the Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, OMB Circular A-110, as applicable. This would relate to the scope of the audit, standardized audit report, reportable events, monitoring by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services and quality assurance review, access to audit work papers, plan for corrective action, and resolution of audit findings.

D. The audit solicitation and any resulting contract for audit services shall make specific reference that "if it is determined that the contractor's audit work was unacceptable as determined by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services or a federal supervisory agency, either before or after a reasonable time after a draft or final report was issued, because it did not meet the ~~Virginia Department for the Aging's~~ Virginia Department for Aging and Rehabilitative Services' standards, the AICPA Standards, or those promulgated by the Comptroller General of the United States, the contractor may, at the area agency's written request, be required to reaudit at its own expense and resubmit a revised audit report which is acceptable."

~~22VAC5-20-470.~~ **22VAC30-60-460. Frequency of audits and due date for submission of audit reports.**

A. An audit of Area Agencies on Aging and their grantees and cost-reimbursement contractors shall be conducted at least annually.

B. The audit report shall be submitted to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services by December 15. If, for reasons within the control of the Area Agency on Aging, this report cannot be submitted by this time, funding of the agency may be suspended by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services. An Area Agency on Aging shall make a written request for an extension of time for justifiable reasons to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services before December 15. Such request shall be submitted with sufficient time for ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services' review and approval.

22VAC5-20-480, 22VAC30-60-470. Scope of audit report.

A. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

B. The audit shall cover the entire operations of the agency or, at the option of that agency, it may cover departments, agencies or establishments that received, expended or otherwise administered federal financial assistance during the year. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

C. The auditor shall determine whether:

1. The financial statements and the accompanying schedules of the agency, department, or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles.
2. The organization has internal accounting and other control systems to provide reasonable assurance that it is managing federal financial assistance programs in compliance with applicable laws and regulations.
3. The organization has complied with laws and regulations that may have a material effect on its financial statements and on each major federal assistance program.

D. The independent public accountant shall render an opinion on three accompanying schedules: Status of Funds, Costs by Program Activity, and Status of Inventories.

22VAC5-20-490, 22VAC30-60-480. Area Agency on Aging audit resolution.

Each Area Agency on Aging shall have a systematic method to assure the timely and appropriate resolution of audit findings and recommendations.

Article 11
Close-Out Procedures

22VAC5-20-500, 22VAC30-60-490. Close-out.

A. In the event of termination, all property, documents, data, studies, and reports purchased or prepared by the Area Agency on Aging or its subgrantees or subcontractors under its approved area plan shall be disposed of as directed by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services. The terminated Area Agency on Aging shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred up to the point of receipt of the termination notice in satisfactory performance under its approved area plan. In spite of the above, the Area Agency on Aging shall not be relieved of liability to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services for damages sustained by the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services by virtue of any breach of the approved contract and area plan. The ~~Virginia Department for the Aging~~ Virginia

Department for Aging and Rehabilitative Services may withhold for purpose of a set-off any reimbursement of funds to the Area Agency on Aging until such time as the exact amount of damages due the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services from the Area Agency on Aging is agreed upon or otherwise determined.

B. In the event of ~~recession~~ rescission, revocation, or termination, all documents and other materials related to the performance under the Area Plan for Aging Services shall become the property of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services.

22VAC5-20-510, 22VAC30-60-500. Bankruptcy.

Approval of the area plan shall be withdrawn and any contractual relations terminated for cause if, upon 60 days notice, either party is adjudicated bankrupt, is subject to the appointment of a receiver and fails to have such receiver removed within 60 days, has any of its property attached and fails to remove such attachment within 60 days, or becomes insolvent or for a period of 60 days is unable to pay its debts as the same become due.

22VAC5-20-520, 22VAC30-60-510. Follow-up actions to grant or subgrantee close-out or termination.

As a consequence of close-out or termination, the following steps shall be taken:

1. Upon request, the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services shall promptly pay the contractor for all allowable reimbursable costs not covered by previous payments.
2. The contractor shall immediately refund or otherwise dispose of any unobligated balance of cash advanced to the contractor, in accordance with instructions from the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services.
3. The contractor shall submit, within 90 days of the date of close-out or termination, all financial, performance, and other reports required by the terms of the agreement. The ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services may extend the due date in response to a written or oral request from the contractor. The department shall respond in writing to the request.
4. The ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services shall make a settlement for any upward or downward adjustment of the federal share of costs, to the extent called for by the terms of the agreement.

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Article 12

Record Management

~~22VAC5-20-530.~~ **22VAC30-60-520.** Area agency record retention requirements.

Fiscal records shall be maintained for five years from the date the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services submits to the U.S. Department of Health and Human Services its final expenditures report for the funding period. This period may be extended, if an audit, litigation, or other action involving the records is started before the end of the five-year period and the records must be retained until all issues arising from the action are resolved or until the end of the five-year period, whichever is later.

~~22VAC5-20-540.~~ **22VAC30-60-530.** Contractors and subcontractors.

In the case of grantees/contractors and subcontractors, there shall be a five-year record retention requirement from the date when final payment is made and all other pending matters are closed. Grantees/contractors and subcontractors of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services shall include a provision in contracts for the five-year record retention period and for access to the contractor's records by authorized representatives of the Commonwealth of Virginia and the United States Government.

~~22VAC5-20-550.~~ **22VAC30-60-540.** Other record retention requirements.

An Area Agency on Aging and its subcontractors/subgrantees shall also comply with the record retention requirements of the State Corporation Commission and the Internal Revenue Service for corporations and individuals.

~~22VAC5-20-560.~~ **22VAC30-60-550.** Area agency policy and procedures.

An Area Agency on Aging shall have written policies and procedures approved by the governing board regarding the retention and access to all financial and programmatic records, supporting documents, statistical records, and other records.

~~22VAC5-20-570.~~ **22VAC30-60-560.** Access to records.

In addition to the head of the federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives, the Commissioner of the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services and the Comptroller of the Commonwealth of Virginia, or their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, and records of the Area Agency on Aging and its subcontractors to make audits, examinations, excerpts, and transcripts.

Part V

Long-Term Care Ombudsman Program

~~22VAC5-20-580.~~ **22VAC30-60-570.** Office of the State Long-Term Care Ombudsman.

A. When handling complaints, the Office of the State Long-Term Care Ombudsman shall take the following steps:

1. Staff of the Office of the State Long-Term Care Ombudsman shall provide complaint counseling to an appropriate person alleging a reasonably specified complaint to assist such person in resolving the complaint himself.

2. If the person alleging a reasonably specified complaint is unable or unwilling to resolve the complaint himself, staff of the Office of the State Long-Term Care Ombudsman will attempt to obtain reasonably specific information from the complainant, in accordance with which staff of the Office of the State Long-Term Care Ombudsman shall assess the complaint to determine the most appropriate means of investigating and resolving the complaint.

a. Staff of the Office of the State Long-Term Care Ombudsman shall investigate reasonably specified complaints reported to the office which allege action, inaction, or decisions of providers of long-term care services (or their representatives) which may adversely affect the rights, health, welfare, or safety of the person complaining or the recipient of services.

b. Staff of the Office of the State Long-Term Care Ombudsman shall initiate the investigation of a complaint within two working days of the date on which the complaint is received.

c. Staff of the Office of the State Long-Term Care Ombudsman shall refer complaints concerning long-term care regulatory issues and allegations of abuse, neglect, and exploitation to the appropriate agency for investigation, pursuant to ~~§§ 2.2-704 through 2.2-707~~ **§§ 51.5-139 through 51.5-142** of the Code of Virginia.

d. When the complaint alleges abuse, neglect, or exploitation, staff of the Office of the State Long-Term Care Ombudsman shall make a referral by telephone immediately to the appropriate Adult Protective Services staff in the appropriate local Department of Social Services. "Appropriate local Department of Social Services" means the Department of Social Services (i) in the locality where the alleging person resides, or (ii) in the locality where the abuse, neglect, or exploitation is alleged to have occurred, or (iii) in the locality where the complaint is discovered.

e. Staff of the Office of the State Long-Term Care Ombudsman shall forward a reasonably specified complaint to the appropriate regulatory agency or to the Adult Protective Services unit within three working days of the date on which the complaint is received.

f. Staff of the Office of the State Long-Term Care Ombudsman shall complete their investigation of a complaint handled by the office within 45 working days of the date on which the complaint is received.

g. No action shall be taken or threatened by any long-term care provider or facility for the purpose of punishing or retaliating against any resident, ombudsman, employee, or other interested person for presenting a complaint under this regulation or for providing assistance to the complaining party.

B. Staff of the Office of the State Long-Term Care Ombudsman shall comply with the provisions of confidentiality required by ~~§ 2.2-706~~ § 51.5-141 of the Code of Virginia and the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia) concerning confidentiality with respect to the identity of the alleging person or the service recipient and the records maintained by the office.

C. Staff of the Office of the State Long-Term Care Ombudsman shall provide identifying information to the Adult Protective Services unit of the Department of Social Services concerning the affected person or service recipient alleged to be a victim of abuse, neglect, or exploitation.

D. Staff of the Office of the State Long-Term Care Ombudsman may provide identifying information to appropriate agencies involved in the investigation of complaints, at the discretion of the State Ombudsman.

E. All substate ombudsman representatives, when acting for or on behalf of the Office of the State Long-Term Care Ombudsman pursuant to a duly executed contract between the substate ombudsman program in the Area Agency on Aging and the Office of the State Long-Term Care Ombudsman in the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, shall be bound by the provisions of subsections A through C of this section.

F. Section ~~2.2-705~~ 51.5-140 of the Code of Virginia provides to the staff of the Office of the State Long-Term Care Ombudsman the right of access to long-term care facilities and to the residents and records of such facilities.

G. All substate ombudsman representatives, when acting for or on behalf of the Office of the State Long-Term Care Ombudsman pursuant to a duly executed contract between the substate ombudsman program in the Area Agency on Aging and the Office of the State Long-Term Care Ombudsman in the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services, shall be provided the same rights of access as those set forth in subsection F of this section.

~~22VAC5-20-590, 22VAC30-60-580.~~ Substate long-term care ombudsman programs.

A. An Area Agency on Aging shall obtain approval of its Area Plan for Aging Services from, and shall execute a contract with, the ~~Virginia Department for the Aging~~ Virginia

Department for Aging and Rehabilitative Services before it operates a substate ombudsman program. Such contract shall be in the form of an agreement incorporating as the scope of services the approved Area Plan for Aging Services or approved amendments thereto, signed by both parties. The contract shall provide assurances by the Area Agency that adequate legal representation, should any be necessary, shall be supplied on behalf of representatives of the substate ombudsman program acting in the scope of their services.

B. The actions of the representatives of the substate ombudsman program when acting on behalf of the Office of the State Long-Term Care Ombudsman pursuant to the duly executed contract, shall be governed, with regard to confidentiality requirements and rights of access, by the provisions of ~~22VAC5-20-580 B through 22VAC5-20-580 D~~ 22VAC30-60-570 B through 22VAC30-60-570 D.

C. The authority of the substate ombudsman program shall be limited to the geographic area specified in the approved Area Plan for Aging Services or in an approved area plan amendment, recognized as the scope of services of the contract.

D. The following steps will be observed under the circumstances described:

1. Staff of the substate ombudsman program shall comply with the complaint handling and reporting procedures established by the Office of the State Long-Term Care Ombudsman, in accordance with ~~22VAC5-20-580 A~~ 22VAC30-60-570 A and instructions provided by the Office of the State Long-Term Care Ombudsman.

2. Staff of the substate ombudsman program shall forward all complaints to the Office of the State Long-Term Care Ombudsman within three working days of the date on which the complaint is received by the substate ombudsman program.

3. Staff of the substate ombudsman program shall forward all complaints regarding long-term care services provided directly by or under contract by the Area Agency on Aging to the Office of the State Long-Term Care Ombudsman within one working day of the date on which the complaint is received by the substate ombudsman program.

4. Staff of the substate ombudsman program shall forward all complaints regarding the Office of the State Long-Term Care Ombudsman to the ~~Virginia Department for the Aging~~ Virginia Department for Aging and Rehabilitative Services within one working day of the date on which the complaint is received by the substate ombudsman program.

E. If the substate ombudsman program utilizes volunteers to visit long-term care facilities, such utilization must be indicated in the Area Plan for Aging Services and specified in the contract. Such volunteers shall be screened and trained by the substate ombudsman program prior to their assuming their responsibilities.

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F. Each volunteer in a substate ombudsman program shall sign an agreement with the program which specifies the responsibilities of the volunteer, in accordance with the Area Plan for Aging Services, as approved, and the executed contract.

G. The substate ombudsman program shall assure that each volunteer has fulfilled the minimum training requirements established by the Office of the State Long-Term Care Ombudsman Program and has signed the agreement required by ~~22VAC5-20-590 F~~ 22VAC30-60-580 F.

H. The substate ombudsman program shall submit accurate and timely reports in accordance with instructions provided by the Office of the State Long-Term Care Ombudsman.

~~22VAC5-20-600, 22VAC30-60-590, Conflict of interest.~~

Staff and representatives of the Office of the State Long-Term Care Ombudsman and staff and representatives of the substate ombudsman program shall have no conflicts of interest with regard to long-term care facilities, long-term care providers, and long-term care issues, pursuant to the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia).

DOCUMENTS INCORPORATED BY REFERENCE
(~~22VAC5-20~~) (22VAC30-60)

OMB Circular A-110, ~~Attachment F~~ (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, November 19, 1993.

Government Auditing Standards, Amendment No. 3, January 2002.

OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations, Revised 6/24/97.

VA.R. Doc. No. R13-3315; Filed September 5, 2012, 9:49 a.m.

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Titles of Regulations: **22VAC40-200. Foster Care - Guiding Principles (repealing 22VAC40-200-10, 22VAC40-200-20).**

22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (adding 22VAC40-201-10 through 22VAC40-201-200).

22VAC40-210. Foster Care - Assessing the Client's Service Needs (repealing 22VAC40-210-10 through 22VAC40-210-40).

22VAC40-240. Nonagency Placement for Adoption - Consent (repealing 22VAC40-240-10, 22VAC40-240-20, 22VAC40-240-30).

22VAC40-250. Agency Placement Adoptions - AREVA (repealing 22VAC40-250-10, 22VAC40-250-20).

22VAC40-260. Agency Placement Adoptions - Subsidy (repealing 22VAC40-260-10, 22VAC40-260-20).

22VAC40-280. Nonagency Placements for Adoption - Adoptive Home Study (repealing 22VAC40-280-10, 22VAC40-280-20).

22VAC40-800. Family Based Social Services (repealing 22VAC40-800-10 through 22VAC40-800-170).

22VAC40-810. Fees for Court Services Provided by Local Departments of Social Services (repealing 22VAC40-810-10 through 22VAC40-810-50).

Statutory Authority: §§ 63.2-217 and 63.2-900 of the Code of Virginia.

Effective Date: November 1, 2012.

Agency Contact: Phyl Parrish, Policy Team Leader, Division of Family Services, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7926, FAX (804) 726-7895, TTY (800) 828-1120, or email phyl.parrish@dss.virginia.gov.

Summary:

This regulatory action repeals eight regulations and replaces them with one comprehensive new Permanency Services regulation that will encompass the full range of services for providing a child with a safe home with his family or in the most family-like setting possible while maintaining family connections. The regulation incorporates provisions including: (i) how local departments of social services (LDSS) address the provision of services to prevent children from coming into foster care; (ii) the process for assessing children entering foster care, establishing goals for those children, engaging in concurrent planning, and ensuring children are in the most appropriate and least restrictive placement; (iii) development of service plans, service delivery, court hearings and case reviews; (iv) provision of independent living services and closing of foster care cases; and (v) adoption processes, adoption assistance and the putative father registry. In addition, the regulation requires LDSS workers and supervisors to attend training in accordance with Department of Social Services (DSS) guidance.

Changes to the proposed regulation clarify language and include (i) addition of a definition of "administrative panel review" and "Putative Father Registry"; (ii) deletion of three unused definitions; (iii) modification of the definition of "child with special needs" and 22VAC40-201-160 to comply with changes to the Code of Virginia; (iv) removal of language from 22VAC40-201-70 concerning a priority in goal selection for children in foster care; and (v) if one of the three goals for children in foster care recognized by the federal Administration for Children and Families is not selected, the addition of a documentation requirement explaining why one of those three goals is not appropriate.

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

CHAPTER 201

PERMANENCY SERVICES - PREVENTION, FOSTER CARE, ADOPTION [,] AND INDEPENDENT LIVING

22VAC40-201-10. Definitions.

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

["Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis, and that is open to the participation of the birth parents or prior custodians and other individuals significant to the child and family, to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child.]

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Adoption assistance agreement" means a written agreement between the child-placing agency and the adoptive parents of a child with special needs to provide for the unmet financial and service needs of the child. [~~An adoption assistance agreement may be for a federal, state, or conditional subsidy.~~

"Adoption Manual" means Volume VII, Section III, Chapter C - Adoption/Agency Placement of the Service Program Manual of the Virginia Department of Social Services dated October 2009/March 2010.]

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoption search" means interviews and written or telephone inquiries made by a local department to locate and advise the biological parents or siblings of an adult adoptee's request, by Application for Disclosure or petition to the court, for identifying information from a closed adoption record.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption. The adoptive home study is included in the dual approval process.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to [~~the~~] adoption [~~process assistance~~] means [~~any a~~] child [~~in the care and responsibility of a child placing agency who:~~

- ~~1. Is legally free for adoption as evidenced by termination of parental rights.~~
- ~~2. Has one or more of the following individual characteristics that make the child hard to place:~~
 - ~~a. A physical, mental, or emotional condition existing prior to adoption in accordance with guidance developed by the department;~~
 - ~~b. A hereditary tendency, congenital problem, or birth injury leading to risk of future disability;~~
 - ~~c. A physician's or his designee's documentation of prenatal exposure to drugs or alcohol;~~
 - ~~d. Is five years of age or older;~~
 - ~~e. Has a minority racial or ethnic background;~~
 - ~~f. Is a member of a sibling group who is being placed with the same family at the same time;~~
 - ~~g. Has significant emotional ties with the foster parents with whom the child has resided for at least 12 months;~~

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~~when the adoption by the foster parent is in the best interest of the child; or~~

~~h. Has experienced a previous adoption disruption or dissolution or multiple disruptions of placements while in the custody of a child placing agency.~~

~~3. Has had reasonable but unsuccessful efforts made to be placed without adoption assistance.~~

~~4. Had one or more of the conditions stated in subdivision 2 a, b, or c of this definition at the time of adoption, but the condition was not diagnosed until after the entry of the final order of adoption and no more than a year has elapsed from the date of diagnoses who meets the definition of a child with special needs set forth in §§ 63.2-1300 and 63.2-1301 B of the Code of Virginia].~~

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team (CPMT)" means a team appointed by the local governing body to receive funds pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Comprehensive Services Act for At-Risk Youth and Families (CSA)" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Concurrent permanency planning" means a sequential, structured approach to case management which requires working towards a permanency goal (usually reunification) while at the same time establishing and working towards an alternative permanency plan.

"Custody investigation" means a method to gather information related to the parents and a child whose custody, visitation, or support is in controversy or requires determination.

"Department" means the State Department of Social Services.

"Dual approval process" means a process that includes a home study, mutual selection, interviews, training, and background checks to be completed on all applicants being considered for approval as a resource, foster or adoptive family home provider.

"Family Assessment and Planning Team (FAPT)" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs.

The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children placed away from their parents or guardians and for whom the local board has placement and care responsibility. ~~[Placements may be made in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre adoptive homes.]~~ Foster care also includes children under the placement and care of the local board who have not been removed from their home.

"Foster care maintenance payments" means payments to cover federally allowable expenses made on behalf of a child in foster care including the cost of food, clothing, shelter, daily supervision, [reasonable travel for the child to visit relatives and to remain in his previous school placement,] and other allowable expenses in accordance with guidance developed by the department.

["Foster Care Manual" means Chapter E - Foster Care of the Child and Family Services Manual of the Virginia Department of Social Services dated July 2011.]

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the CPMT where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of prevention, placement, treatment, and community services, including but not limited to independent living services, [for a planned period of time] as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a [~~non-eustodial~~ noncustodial] foster care agreement, entrustment, or court commitment before 18 years of age.

["~~Foster family placement~~" means placement of a child with a family who has been approved by a child placing agency to provide substitute care for children until a permanent placement can be achieved.]

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed

by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual Family Service Plan (IFSP)" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children (ICPC)" means a uniform law that has been enacted by all 50 states, the District of Columbia, [Puerto Rico,] and the U.S. Virgin Islands which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the local department obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the

parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs including, but not limited to, attorney [or other] fees directly related to the finalization of the adoption; transportation; court costs; and reasonable and necessary fees of [licensed] child-placing agencies.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Permanency planning indicator (PPI)" means a tool used in concurrent permanency planning to assess the likelihood of reunification. This tool assists the worker in determining if a child should be placed with a resource family and if a concurrent goal should be established.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

["Reassessment" means a subsequent review of the child's, birth parent's or prior custodian's, and resource parent's circumstances for the purpose of identifying needed services.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.]

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Resource parent" means a provider who has completed the dual approval process and has been approved as both a foster and adoptive family home provider.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for

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relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service plan" means a written document that describes the programs, care, services, and other support which will be offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

["~~Special service payments" means payments for services provided to help meet the adoptive or foster child's physical, mental, emotional, or dental needs.]~~

"SSI" means Supplemental Security Income.

"State pool fund" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse; or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visitation conducted pursuant to § 63.2-1212 of the Code of Virginia subsequent to the entry of an interlocutory order of adoption and the written report compiling the findings of the visitation which is filed in the circuit court.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia.

22VAC40-201-20. Foster care prevention services.

A. The local department shall first make reasonable efforts to keep the child in his home.

B. The local department shall [~~work with the birth parents or custodians to locate and~~ make diligent efforts to locate and] assess relatives or other alternative caregivers to support the child remaining in his home or as placement options if the child cannot safely remain in his home.

C. [~~Services~~ Foster care services], pursuant to § 63.2-905 of the Code of Virginia, shall be available to birth parents or custodians to prevent the need for foster care placement [~~to the extent that a child and birth parents or custodians meet all eligibility requirements~~].

D. Any services available to a child in foster care shall also be available to a child and his birth parents or custodians to prevent foster care placement and shall be based on an assessment of the child's and birth parents' or custodians' needs.

E. Any service shall be provided to prevent foster care placement or to stabilize the family situation provided the need for the service is documented in the local department's service plan or in the IFSP used in conjunction with CSA.

F. Children at imminent risk of entry into foster care shall be evaluated by the local department as reasonable candidates for foster care based on federal and state guidelines.

G. The local department shall consider a wrap around plan of care prior to removing a child from his home and document support and services considered and the reasons such support and services were not sufficient to maintain the child in his home.

[H. Within 30 days after removing the child from the custody of his parents, the local department shall make diligent efforts, in accordance with the Foster Care Manual, to notify in writing all adult relatives that the child is being removed or has been removed.]

22VAC40-201-30. Entering foster care.

A. A child enters foster care through a court commitment, entrustment agreement, or [~~non-custodial~~ noncustodial] foster care agreement. [Foster care children who have been committed to the Department of Juvenile Justice (DJJ) shall re-enter foster care at the completion of the DJJ commitment if under the age of 18.]

B. The entrustment agreement shall specify the rights and obligations of the child, the birth parent or custodian, and the child-placing agency. Entrustments shall not be used for educational purposes, to make the child eligible for Medicaid, or to obtain mental health treatment.

1. Temporary entrustment agreements may be revoked by the birth parent or custodian or child-placing agency prior to the court's approval of the agreement.

2. Permanent entrustment agreements shall only be entered into when the birth parent and the child-placing agency, after counseling about alternatives to permanent relinquishment, agree that voluntary relinquishment of parental rights and placement of the child for adoption are in the child's best interests. When a child-placing agency enters into a permanent entrustment agreement, the child-placing agency shall make diligent efforts to ensure the timely finalization of the adoption.

[3. Local departments shall submit a petition for approval of the entrustment agreement to the juvenile and domestic relations court pursuant to § 63.2-903 of the Code of Virginia.]

C. A child may be placed in foster care by a birth parent or custodian entering into a noncustodial foster care agreement with the local department where the birth parent or custodian

retains legal custody and the local department assumes placement and care of the child.

1. A noncustodial foster care agreement shall be signed by the local department and the birth parent or custodian and shall address the conditions for care and control of the child; and the rights and obligations of the child, birth parent or custodian, and the local department. Local departments shall enter into a noncustodial foster care agreement at the request of the birth parent or custodian when such an agreement is in the best interest of the child. When a noncustodial foster care agreement is executed, the permanency goal shall be reunification and continuation of the agreement is subject to the cooperation of the birth parent or custodian and child.

2. The plan for foster care placement through a noncustodial foster care agreement shall be submitted to the court for approval within 60 days of the child's entry into foster care.

3. When a child is placed in foster care through a noncustodial foster care agreement, all foster care requirements shall be met.

22VAC40-201-40. Foster care placements.

A. The local department shall ensure a child in foster care is placed in a licensed or approved home or facility that complies with all federal and state requirements for safety. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in a licensed or approved home or facility:

1. The local department shall make diligent efforts to locate and assess relatives as a foster home placement for the child, including in emergency situations.

2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.

3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation [~~and~~] provide continuity of connections [, and provide educational stability] for the child.

4. The local department shall make diligent efforts to place the child with siblings.

5. The local department shall, when appropriate, consider placement with a resource parent so that if reunification fails, the placement is the best available placement to provide permanency for the child.

6. The local department shall not delay or deny placement of a child into a foster family placement on the basis of race, color, or national origin of the foster or resource parent or child.

7. When a child being placed in foster care is of native American heritage and is a member of a nationally

recognized tribe, the local department shall follow all federal laws, regulations, and [~~polices~~ policies] regarding the referral of a child of native American heritage. The local department [~~shall~~ may] contact the Virginia Council on Indians [for information on contacting Virginia tribes] and [shall] consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

B. A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

C. Foster, adoptive, or resource family homes shall meet standards established by the [~~Board~~ board] and shall be approved by child-placing agencies. Group homes and residential facilities shall be licensed by the appropriate licensing agency. Local departments shall verify the licensure status of the facility prior to placement of the child.

D. Local departments shall receive approval from the department's office of the ICPC prior to placing a child out of state.

E. When a child is to be placed in a home in another local department's jurisdiction within Virginia, the local department intending to place the child shall notify the local department that approved the home that the home is being considered for the child's placement. The local department shall also verify that the home is still approved and shall consult with the approving local department about placement of the child.

F. When a foster, adoptive, or resource family is moving from one jurisdiction to another, the local department holding custody shall notify the local department in the jurisdiction to which the foster, adoptive, or resource family is moving.

G. When a child moves with a foster, adoptive, or resource family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

H. A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

I. In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child. The birth parent or prior custodian shall be involved in the decision-making process regarding the placement change prior to a final decision being made.

1. The service worker shall consider the child's best interest and safety needs when involving the birth parent or

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prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

2. In the case of an emergency placement change, the birth parent with residual parental rights or prior custodian and all other relevant parties shall be notified immediately of the placement change. The child-placing agency shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.

22VAC40-201-50. Initial foster care placement activities.

A. Information on every child in foster care shall be entered into the department's automated child welfare system in accordance with guidance in the initial placement activities section of the Foster Care Manual [~~August 2009~~].

B. The local department shall refer the child for all financial benefits to which the child may be eligible, including but not limited to Child Support, Title IV-E, SSI, other governmental benefits, and private resources.

C. The service worker shall ensure that the child receives a medical examination no later than 30 days after initial placement. The child shall be provided a medical evaluation within 72 hours of initial placement if conditions indicate such an evaluation is necessary.

D. The [local department shall collaborate with local educational agencies to ensure that the child remains in his previous school placement when it is in the best interests of the child. If remaining in the same school is not in the best interests of the child, the] service worker shall enroll the child in [an appropriate new] school as soon as possible but no more than 72 hours after placement.

1. The child's desire to remain in his previous school setting shall be considered in making the decision about which school the child shall attend. [Local departments shall allow a child to remain in his previous school placement when it is in the best interest of the child.]

2. The service worker, in cooperation with the birth parents or prior custodians, foster care providers, and other involved adults, shall coordinate the school placement.

22VAC40-201-60. Assessment.

A. Assessments shall be conducted in a manner that respectfully involves children and birth parents or prior custodians to give them a say in what happens to them. Decision making shall include input from children, youth, birth parents or prior custodians, and other interested individuals.

B. The initial foster care assessment shall result in the selection of a specific permanency goal. In accordance with guidance in the assessment section of the Foster Care Manual, [August 2009,] the local department shall complete the PPI during the initial foster care assessment to assist in determining if a concurrent goal should be selected.

C. The initial foster care assessment shall be completed within time frames developed by the department but shall not exceed 30 calendar days after acceptance of the child in a foster care placement.

1. When a child has been removed from his home as a result of abuse or neglect, the initial foster care assessment shall include a summary of the Child Protective Services' safety and risk assessments.

2. The history and circumstances of the child, the birth parents or prior custodians, or other interested individuals shall be assessed at the time of the initial foster care assessment to determine their service needs. The initial foster care assessment shall:

a. Include a comprehensive social history;

b. Utilize assessment tools designated by the department;

c. Be entered into the department's automated child welfare system; and

d. Include a description of how the child, youth, birth parents or prior custodians, and other interested individuals were involved in the decision making process.

D. The service worker shall refer the child; birth parents or prior custodians; and foster, adoptive or resource parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.

E. [~~Reassessments of response of~~ Assessments of the effectiveness of services to] the child; birth parents or prior custodians; and foster, adoptive, or resource [~~parents' to the provided services~~ parents] and the need for additional services shall occur at least every three months as long as the goal is to return home. [~~Reassessments~~ For all other goals, assessments of the effectiveness and need for additional services] shall occur at least every six months after placement for as long as the child remains in foster care. The [~~reassessments~~ assessments] shall be completed in accordance with guidance in the assessment section of the Foster Care Manual [~~August 2009~~].

22VAC40-201-70. Foster care goals.

A. Foster care goals are established [~~in order~~] to assure permanency planning for the child. [Priority shall be given to the goals listed in subdivisions 1, 2, and 3 of this subsection, which are recognized in federal legislation as providing children with permanency.] The [~~establishment~~ selection] of [~~lower ranking~~] goals [other than those in subdivisions 1, 2, and 3 of this subsection] must include documentation as to why [~~all higher ranking~~ each of these first three] goals were not selected. Foster care goals [~~, in order of priority,~~] are:

1. Return custody to parent or prior custodian.

2. Transfer of custody of the child to a relative other than his prior family.

3. Adoption.

4. Permanent foster care.

5. Independent living.

6. Another planned permanent living arrangement.

B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:

1. Approve the foster care service plan seeking to change the permanency goal to adoption; and

2. Terminate parental rights.

[Upon termination of parental rights, the local department shall provide an array of adoption services to support obtaining a finalized adoption.]

C. The goal of permanent foster care shall only be considered for children age 14 and older in accordance with guidance in the section on choosing a goal in the Foster Care Manual [~~August 2009~~].

D. When the goal for the youth is to transition to independent living, the local department shall provide services pursuant to guidance in the section on choosing a goal in the Foster Care Manual [~~August 2009~~].

E. The goal of another planned permanent living arrangement may be chosen when the court has found that none of the alternative permanency goals are appropriate and the court has found the child to:

1. Have a severe and chronic emotional, physical, or neurological disabling condition; and

2. Require long-term residential care for the condition.

F. These permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated. Although one goal may appear to be the primary goal, other goals shall be continuously explored and planned for as appropriate.

22VAC40-201-80. Service plans.

A. Every child in foster care shall have a current service plan. The service plan shall specify the assessed permanency goal and when appropriate the concurrent permanency goal, and shall meet all requirements set forth in federal or state law. The development of the service plan shall occur through shared decision-making between the local department; the child; the birth parents or prior custodians; the foster, adoptive, or resource parents; and any other interested individuals. All of these partners shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

B. A service plan shall be written after the completion of a thorough assessment. Service plans shall directly reference how the strengths identified in the foster care assessment will support the plan and the needs to be met to achieve the permanency goal, including the identified concurrent permanency goal, in a timely manner.

C. A plan for visitation with the birth parents or prior custodians, siblings, grandparents, or other interested individuals for all children in foster care shall be developed

and presented to the court as part of the service plan. A plan shall not be required if such visitation is not in the best interest of the child.

22VAC40-201-90. Service delivery.

A. Permanency planning services to children and birth parents or prior custodians shall be delivered as part of a total system with cooperation, coordination, and collaboration occurring among children and youth, birth parents or prior custodians, service providers, the legal community and other interested individuals.

B. Permanency planning for children and birth parents or prior custodians shall be an inclusive process providing timely notifications and full disclosure to the birth parents or prior custodians of the establishment of a concurrent permanency goal when indicated and the implications of concurrent permanency planning for the child and birth parents or prior custodians. Child-placing agencies shall also make timely notifications concerning placement changes, hearings and meetings regarding the child, assessments of needs and case progress, and responsiveness to the requests of the child and birth parents or prior custodians.

C. Services to children and birth parents or prior custodians shall continue until an assessment indicates the services are no longer necessary. Services to achieve concurrent permanency goals shall be provided to support achievement of both permanency goals.

D. In order to meet the child's permanency goals, services may be provided to extended family or other interested individuals and may continue until an assessment indicates the services are no longer necessary.

E. All children in foster care shall have a face-to-face contact with an approved case worker at least once per calendar month regardless of the child's permanency goal or placement and in accordance with guidance in the service delivery section of the Foster Care Manual [~~August 2009~~] and [~~Chapter C of~~] the Adoption Manual [~~October 2009~~]. The majority of each child's visits shall be in his place of residency.

1. The purpose of the visits shall be to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child.

2. The visits shall be made by individuals who meet the department's requirements consistent with 42 USC § 622(b).

F. Supportive services to foster, adoptive, and resource parents shall be provided.

1. The local department shall enter into a placement agreement developed by the department with the foster, adoptive, or resource parents. The placement agreement shall include, at a minimum, a code of ethics and mutual responsibilities for all parties to the agreement as required by § 63.2-900 of the Code of Virginia.

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2. Foster, adoptive, and resource parents who have children placed with them shall be contacted by a service worker as often as needed in accordance with 22VAC211-100 to assess service needs and progress.

3. Foster, adoptive, and resource parents shall be given full factual information about the child, including but not limited to, circumstances that led to the child's removal, and complete educational, medical and behavioral information. All information shall be kept confidential.

4. Foster, adoptive, and resource parents shall be given appropriate sections of the foster care service plan.

5. If needed, services to stabilize the placement shall be provided.

6. Respite care for foster, adoptive, and resource parents may be provided on an emergency or planned basis in accordance with criteria developed by the department.

7. The department shall make a contingency fund available to provide reimbursement to local departments' foster and resource parents for damages pursuant to § 63.2-911 of the Code of Virginia and according to [department] guidance [~~in the Foster Care Manual (section 12.16 of the Contingency Fund Policy)~~]. Provision of reimbursement is contingent upon the availability of funds.

22VAC40-201-100. Providing independent living services.

A. Independent living services shall be identified by the youth; foster, adoptive or resource family; local department; service providers; legal community; and other interested individuals and shall be included in the service plan. Input from the youth in assembling [~~the team~~ these individuals] and developing the services is required.

B. Independent living services may be provided to all youth ages 14 to 18 and may be provided until the youth reaches age 21.

C. The child-placing agency may offer a program of independent living services that meets the youth's needs such as education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. Child-placing agencies shall assess the youth's independent living skills and needs in accordance with guidance in the service delivery section of the Foster Care Manual [~~, August 2009,~~] and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 may continue to receive independent living services from the child-placing agency between the ages of 18 and 21 if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and

2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the

service agreement. The service agreement shall require, at a minimum, that the youth's living arrangement shall be approved by the local department and that the youth shall cooperate with all services; or

3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 and older is eligible to live in an independent living arrangement provided the child-placing agency utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a child-placing agency and chooses to discontinue receiving independent living services after age 18 but prior to his 21st birthday may request a resumption of independent living services [~~within 60 days of discontinuing these services. The child-placing agency shall restore independent living services in accordance with § 63.2-905.1 of the Code of Virginia.~~ in accordance with § 63.2-905.1 of the Code of Virginia.]

H. Child-placing agencies shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 shall be conducted to assure the effectiveness of service provision.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. File petitions in accordance with the requirements for the type of hearing.

2. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the child-placing agency shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

3. Inform the court of reasonable efforts made to achieve concurrent permanency goals in those cases where a concurrent goal has been identified.

B. An administrative panel review shall be held six months after a permanency planning hearing when the goals of adoption, permanent foster care, or independent living have been approved by the court unless the court requires more frequent hearings. The child will continue to have Administrative Panel Reviews or review hearings every six months until a final order of adoption is issued or the child reaches age 18.

C. The local department shall invite the child; the birth parents or prior custodians when appropriate; the child's foster, adoptive, or resource parents; placement providers; guardian ad litem; court appointed special advocate (CASA); and other interested individuals to participate in the administrative panel reviews.

D. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. All interested individuals, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

E. A supervisory review is required every six months for youth ages 18 to 21.

F. When a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

22VAC40-201-120. Funding.

A. The local department is responsible for establishing a foster child's eligibility for federal, state, or other funding sources and making required payments from such sources. State pool funds shall be used for a child's maintenance and service needs when other funding sources are not available.

B. The assessment and provision of services to the child and birth parents or prior custodians shall be made without regard to the funding source.

C. Local departments shall reimburse foster or resource parents for expenses paid by them on behalf of the foster child when the expenses are preauthorized or for expenses paid without preauthorization when the local department deems the expenses are appropriate.

D. The child's eligibility for Title IV-E funding shall be redetermined [~~annually or~~] upon a change in situation and in accordance with federal Title IV-E eligibility requirements, the Title IV-E Eligibility Manual, October 2005, and [~~Chapter C of~~] the Adoption Manual [~~, October 2009~~].

E. The service worker is responsible for providing the eligibility worker information required for the annual redetermination of Medicaid eligibility and information related to changes in the child's situation.

22VAC40-201-130. Closing the foster care case.

A. Foster care cases are closed or transferred to another service category under the following circumstances:

1. When the foster care child turns 18 years of age;
2. When the court releases the child from the local department's custody prior to the age of 18; [~~or~~]
3. When a voluntary placement agreement has expired, been revoked, or been terminated by the court [~~;~~]

4. When the foster care child is committed to DJJ; or
5. When the final order of adoption is issued.]

B. When the foster care case is closed for services, the case record shall be maintained according to the record retention schedules of the Library of Virginia.

C. Any foster care youth who has reached age 18 has the right to request information from his records in accordance with state law.

22VAC40-201-140. Other foster care requirements.

A. The director of a local department may grant approval for a child to travel out-of-state and out-of-country. The approval must be in writing and maintained in the child's file.

B. Pursuant to § 63.2-908 of the Code of Virginia, a foster or resource parent may consent to a marriage or entry into the military if the child has been placed with him through a permanent foster care agreement which has been approved by the court.

C. An employee of a local department, including a relative, cannot serve as a foster, adoptive, or resource parent for a child in the custody of that local department. The employee can be a foster, adoptive, or resource parent for another local department or licensed child-placing agency or the child's custody may be transferred to another local department.

D. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for service plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the service plan for the foster child (parent).

2. The child is eligible for maintenance payments, services, Medicaid, and child support services based on federal law and in accordance with guidance in the Foster Care Manual [~~, August 2009,~~] and the Adoption Manual [~~, October 2009~~].

E. When a child in foster care is committed to the Department of Juvenile Justice (DJJ), the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18, the local department shall maintain a connection with the child in accordance with guidance developed by the department.

22VAC40-201-150. Adoption Resource Exchange of Virginia.

A. The purpose of AREVA is to increase opportunities for children to be adopted by providing services to child-placing agencies having custody of these children. The services provided by AREVA include, but are not limited to:

1. Maintaining a registry of children awaiting adoption and a registry of approved parents waiting to adopt;
2. Preparing and [~~distributing a~~ posting an electronic] photo-listing of children with special needs awaiting

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adoption and a photo-listing of parents awaiting placement of a child with special needs;

3. Providing information and referral services for children who have special needs to link child-placing agencies with other adoption resources;

4. Providing ~~[on-going adoptive parent~~ ongoing targeted and child-specific] recruitment efforts for waiting children;

5. Providing consultation and technical assistance ~~[on child-specific recruitment]~~ to child-placing agencies ~~[in finding adoptive parents]~~ for waiting children; and

6. Monitoring local ~~[department's~~ departments'] compliance with legal requirements, guidance, and policy on registering children and parents.

B. Child-placing agencies shall comply with all of the AREVA requirements according to guidance in ~~[Chapter C of]~~ the Adoption Manual ~~[, October 2009]~~.

22VAC40-201-160. Adoption assistance.

A. An adoption assistance agreement shall be executed by the child-placing agency for a child who has been determined eligible for adoption assistance. Local departments shall use the adoption assistance agreement form developed by the department.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs as defined in 22VAC40-201-10 and meet the following criteria:

1. Be under 18 years of age ~~[; and~~ meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or]

2. Be ~~[under 18 years of age and]~~ in the placement and care of a child-placing agency at the time the petition for adoption is filed ~~[;]~~ and ~~[3. Be be]~~ placed by ~~[a the]~~ child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the child has resided for 18 months with the foster or resource parents who file a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. The types of adoption assistance for which a child may be eligible are:

1. Title IV-E adoption assistance if the child meets federal eligibility requirements.

2. State adoption assistance when the child's foster care expenses were paid from state pool funds ~~[; or when the child has a conditional agreement and payments 3. Conditional adoption assistance when payments and services]~~ are not needed at the time of placement into an adoptive home but may be needed later and the child's foster care expenses were paid from state pool funds. ~~[Conditional A conditional]~~ adoption assistance ~~[agreement]~~ allows the adoptive parents to apply for state adoption assistance after the final order of adoption.

~~[Conditional A conditional]~~ adoption assistance ~~[agreement]~~ shall not require annual certification.

D. Adoption assistance payments shall be negotiated with the adoptive parents taking into consideration the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources shall be explored to help defray the costs of adoption assistance.

E. Three types of payments ~~[shall may]~~ be made on behalf of a child who is eligible for adoption assistance.

1. ~~[Adoptive The adoptive]~~ parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.

a. The total amount of reimbursement is based on actual costs and shall not exceed \$2,000 per child per placement.

b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.

c. Nonrecurring expenses include:

(1) Attorney fees directly related to the finalization of the adoption;

(2) Transportation and other expenses incurred by adoptive parents related to the placement of the child. Expenses may be paid for more than one visit;

(3) Court costs related to filing an adoption petition; ~~[and]~~

(4) Reasonable and necessary fees ~~[of related to]~~ adoption ~~[charged by licensed]~~ child-placing agencies ~~[; and]~~

(5) Other expenses directly related to the finalization of the adoption.]

2. A maintenance payment shall be approved for a child who is eligible for adoption assistance ~~[, except those for whom a conditional adoption assistance will be provided,]~~ unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed. ~~[In these cases a conditional adoption assistance agreement may be entered into.]~~ The amount of maintenance payments made shall not exceed the ~~[maximum]~~ foster care ~~[board rate as established by the appropriation act]~~ maintenance payment that would have been paid during the period if the child had been in a foster family home].

a. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.

b. The ~~[basic board rate included as a component of the]~~ maintenance payments shall not be reduced below the amount specified in the ~~[initial]~~ adoption assistance agreement without the concurrence of the adoptive parents or a reduction mandated by the appropriation act.

c. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care [~~board~~ maintenance] rate and:

- (1) The child reaches a higher age grouping, as specified in guidance for foster care [~~board~~ maintenance] rates; or
- (2) Statewide increases are approved for foster care [~~board~~ maintenance] rates.

3. A special service payment is used to help meet the child's physical, mental, emotional, or nonroutine dental needs. The special service payment shall be directly related to the child's special needs [~~or day care~~]. Special service payments shall be time limited based on the needs of the child.

a. Types of expenses that are appropriate to be paid are included in [~~Chapter C of~~] the Adoption Manual [~~October 2009~~].

b. A special service payment may be used for a child eligible for Medicaid to supplement expenses not covered by Medicaid.

c. Payments for special services are negotiated with the adoptive parents taking into consideration:

- (1) The special needs of the child;
- (2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and
- (3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.

d. The rate of payment shall not exceed the prevailing community rate.

e. The special services adoption assistance agreement shall be separate and distinct from the adoption assistance agreement for maintenance payments and nonrecurring expenses.

F. When a child is determined eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement:

- 1. Shall be executed within 90 days of receipt of the application for adoption assistance;
- 2. Shall be signed before entry of the final order of adoption;
- 3. Shall specify the amount of payment and the services to be provided, including Medicaid; and
- 4. Shall remain in effect regardless of the state to which the adoptive parents may relocate.

G. Procedures for the child whose eligibility for adoption assistance is established after finalization shall be the same as for the child whose eligibility is established before finalization except the application shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs [and the child otherwise meets the eligibility requirements of subsection B of this

section for adoption assistance payments]. Application for adoption assistance after finalization shall be for state adoption assistance.

H. The adoptive parents shall annually submit an adoption assistance affidavit to the local department in accordance with guidance in [~~Chapter C of~~] the Adoption Manual [~~October 2009~~].

I. The local department is responsible for:

- 1. Payments and services identified in the adoption assistance agreement, regardless of where the family resides; and
- 2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due.

J. Adoption assistance shall be terminated when the child reaches the age of 18 unless the child has a physical or mental disability or an educational delay resulting from the child's disability which warrants continuation of the adoption assistance. If a child has one of these conditions, the adoption assistance may continue until the child reaches the age of 21.

K. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

- 1. The child is no longer receiving financial support from the adoptive parents; or
- 2. The adoptive parents are no longer legally responsible for the child.

L. Child-placing agencies are responsible for informing adoptive parents in writing that they have the right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. Applicants for adoption assistance shall have the right to appeal adoption assistance decisions related to:

- 1. Failure of the child-placing agency to provide full factual information known by the child-placing agency regarding the child prior to adoption finalization;
- 2. Failure of the child-placing agency to inform the adoptive parents of the child's eligibility for adoption assistance; and
- 3. Decisions made by the child-placing agency related to the child's eligibility for adoption assistance, adoption assistance payments, services, and changing or terminating adoption assistance.

22VAC40-201-170. Child placing agency's responsibilities for consent in non-agency adoptive placements.

A. At the request of the juvenile court, the child-placing agency shall:

- 1. Conduct a home study of the [~~perspective~~ prospective] adoptive home that shall include the elements in [§ §§] 63.2-1231 and [63.2-1205.1] of the Code of Virginia and [department] guidance in [Volume VII, Section III,] Chapter D [- Adoption/Non-Agency Placement and Other

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Court Services] of the [~~Adoption Manual Service Program Manual of the Virginia Department of Social Services~~], October 2009; and

2. Provide the court with a written report of the home study.

B. The child-placing agency shall make a recommendation to the court regarding the suitability of the individual to adopt.

C. If the child-placing agency suspects an exchange of property, money, services, or any other thing of value has occurred in violation of law in the placement or adoption of the child, it shall report such findings to the commissioner for investigation. The following exceptions apply:

1. Reasonable and customary services provided by a licensed or duly authorized child-placing agency, and fees paid for such services;

2. Payment or reimbursement for medical expenses directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings and for expenses incurred for medical care for the child;

3. Payment or reimbursement to birth parents for transportation necessary to execute consent to the adoption;

4. Usual and customary fees for legal services in adoption proceedings; and

5. Payment or reimbursement of reasonable expenses incurred by the adoptive parents for transportation in inter-country placements and as necessary for compliance with state and federal law in such placements.

22VAC40-201-180. Fees for court services.

The local department shall charge fees for the following court ordered services: (i) custody investigations; (ii) adoption searches; (iii) nonagency placement adoptions, investigation and reports; and (iv) visitation and reports. The process for determining and collecting such fees shall be in accordance with guidance developed by the department.

22VAC40-201-190. Virginia Putative Father Registry.

A. The department shall establish and maintain a putative father registry which is a confidential database.

B. A search of the Virginia Putative Father Registry shall be conducted for all adoptions except when the child has been adopted according to the laws of a foreign country or when the child was placed in Virginia from a foreign country for the purpose of adoption in accordance with § 63.2-1104 of the Code of Virginia.

C. Any petitioner who files a petition for termination of parental rights or for an adoption proceeding shall request a search of the Virginia Putative Father Registry. The certificate of search and finding must be filed with the court before an adoption or termination of parental rights proceeding can be concluded.

[D. The department may require additional information to determine that the individual requesting information from the Putative Father Registry is eligible to receive information in accordance with § 63.2-1251 of the Code of Virginia.]

22VAC40-201-200. Training.

A. Local department foster care and adoption workers and supervisory staff shall attend and complete initial in-service training in accordance with guidance in the Foster Care Manual [~~August 2009,~~] and [~~Chapter C of~~] the Adoption Manual [~~October 2009~~].

B. Local department foster care and adoption workers and supervisory staff shall complete an individual training needs assessment using a method developed by the department.

C. Local department foster care and adoption workers and supervisory staff shall attend and complete annual in-service training in accordance with guidance developed by the department.

DOCUMENTS INCORPORATED BY REFERENCE

[~~Foster Care Manual, August 2009, Department of Social Services (<http://www.dss.virginia.gov/family/fc/manual.cgi>).~~

~~Foster Care Manual, Volume VII, Section III, Chapter B, March 2007, Department of Social Services (http://spark.dss.virginia.gov/division/dfs/fc/files/procedures/general/contingency_fund_policy.pdf).~~

~~Title IV E Eligibility Manual, October 2005, Department of Social Services (http://spark.dss.virginia.gov/division/dfs/permanency/iv_eligibility/manual.cgi).~~

~~Adoption Manual, October 2009, Department of Social Services (<http://www.dss.virginia.gov/family/ap/manual.cgi>).~~

[Child & Family Services Manual, Chapter E - Foster Care, July 2011, Virginia Department of Social Services.](#)

[Service Program Manual, Volume VII, Section III, Chapter C - Adoption/Agency Placement, October 2009/March 2010, Virginia Department of Social Services.](#)

[Service Program Manual, Volume VII, Section III, Chapter D - Adoption/Agency Placement, October 2009, Virginia Department of Social Services.](#)

[Title IV-E Eligibility Manual \(E. Foster Care\), January 2012, Virginia Department of Social Services. \]](#)

VA.R. Doc. No. R08-1019; Filed September 4, 2012, 10:10 a.m.

Proposed Regulation

Title of Regulation: 22VAC40-740. Adult Protective Services (amending 22VAC40-740-10, 22VAC40-740-21, 22VAC40-740-31, 22VAC40-740-40 through 22VAC40-740-80; adding 22VAC40-740-45).

Statutory Authority: §§ 63.2-217 and 63.2-1606 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 23, 2012.

Agency Contact: Paige McCleary, Program Consultant, Division of Family Services, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, TTY (800) 828-1120, or email paige.mccleary@dss.virginia.gov.

Basis: Sections 63.2-217 and 63.2-1603 through 63.2-1610 of the Code of Virginia provide the legal basis for this regulation. These sections provide general authority for the development of regulations for program operation and authority for the Adult Protective Services Program. Section 63.2-1606 of the Code of Virginia requires that the board establish by regulation a process for imposing and collecting civil penalties against mandated reporters who fail to report and a process for appeal of the imposition of a penalty pursuant to § 2.2-4026 of the Administrative Process Act.

Purpose: This proposed regulatory action amends and provides a general review of 22VAC40-740, Adult Protective Services. 22VAC40-740 establishes standards for adult protective services (APS) investigations and the provision of services after an investigation has been completed. It also provides guidance for mandated reporting of adult abuse, neglect, and exploitation and the process for imposing a civil penalty on mandated reporters for failure to report. The regulation also addresses when and to whom APS information may be disclosed. The regulation ensures consistent definitions and actions are used for reporting adult abuse, neglect, and exploitation; for receiving and investigating those reports; and during the provision of services to adults.

The proposed regulatory action is necessary to ensure that regulation content appropriately defines terms used throughout the regulation, clearly addresses APS investigations and service provision, and outlines the process for the imposition of a civil penalty. Clarity in the regulation content helps APS workers meet the adults' safety and welfare needs throughout investigations and during the provision of services.

Proposed changes to the regulation also provide the opportunity for an alleged perpetrator to request a review of the local department of social services' investigation findings when the disposition is needs protective services and accepts, needs protective services and refuses, or need for protective services no longer exists. These changes ensure that alleged perpetrators are guaranteed due process.

Substance: Many of the proposed changes are technical, such as removing outdated or inaccurate definitions or guidance. Regulation content was clarified to comport with requirements regarding data entry requirements of the state web-based case management and reporting system (ASAPS). The section addressing the imposition of a civil penalty was clarified to provide improved guidance for a director of a local department of social services and more thoroughly explain how a mandated reporter may appeal a decision to impose a civil penalty. In addition, a review by the

commissioner's designee of the request to impose a civil penalty was added. A right of review of the local department of social services' investigative findings, which may be requested by the alleged perpetrator, was added. Regulation content describing the right to review was added to ensure the alleged perpetrator has a right to due process.

Issue: Amendments to the regulation content ensure that the needs of elderly individuals and adults with disabilities are met during investigations and service provision. Amendments to the section addressing civil penalties clarify the process and more thoroughly explain the responsibilities of individuals involved in the imposition of a civil penalty.

Most of the amendments to the regulation clarify but do not increase local department of social services staffs' responsibilities as amendments comport with current Department of Social Services guidance on entering information into ASAPS. However the addition of a review hearing for the perpetrator will require additional time on behalf of the local department of social services staff and director to prepare for and to conduct the right to review hearing.

The regulatory action poses no disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to amend its regulations that govern adult protective services to clarify regulatory content, add a review of requests to impose civil penalties and add a new section to lay out the due process rights of alleged perpetrators.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Most of the changes that the Board proposes for these regulations only move around current requirements or reword current requirements. Regulated entities are unlikely to incur any costs on account of these changes but will get the benefit of added clarity.

Current regulations allow civil fines to be leveled against mandated abuse reporters who fail to report suspected abuse of vulnerable adults. These proposed regulations add a requirement that all letters to affected mandated reporters go by certified mail with a return receipt requested and also add a process by which the commissioner's designee will review any requests to impose civil penalties. Board staff reports that these requirements will cost Local Departments of Social Services (LDSS) approximately \$5.00 per letter sent to mandated reporters who are subject to possible civil penalties. Mandated reporters will benefit from these regulatory changes that ensure every effort is made to make sure they stay informed and have a review process before civil penalties are imposed.

The Board also proposes to add new regulatory language that lays out the process by which individuals who have founded

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allegations of abuse, neglect or exploitation of a vulnerable adult may appeal that LDSS ruling. Board staff reports that adding this review process will cost the state approximately \$121,000. These costs are likely outweighed by the benefits of having due process protections that accrue to both the public at large and to alleged perpetrators.

Businesses and Entities Affected. These proposed regulatory changes will affect all 120 local Departments of Social Services.

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

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

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

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

Agency's Response to Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed action (i) clarifies regulation content that may be confusing or unclear; (ii) comports regulation text with guidance on the data entry requirements in the adult services/adult protective services web-based case management and reporting system; (iii) adds a review by the commissioner's designee of the request to impose a civil penalty; and (iv) adds a new section to address notifications to alleged perpetrators and the right of the perpetrator to request a review of the local department of social services' investigation findings that result in one of the following dispositions: needs protective services and accepts, needs protective services and refuses, or need for protective services no longer exists.

22VAC40-740-10. Definitions.

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement.

"Adult" means any person in the Commonwealth who is abused, neglected, or exploited, or is at risk of being abused, neglected, or exploited; and is 18 years of age or older and incapacitated, or is 60 years of age and older.

"Adult protective services" means the receipt, investigation and disposition of complaints and reports of adult abuse, neglect, and exploitation of adults 18 years of age and over who are incapacitated and adults 60 years of age and over by the local department of social services. Adult protective services also include the provision of casework and care management by the local department in order to stabilize the situation or to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation. If appropriate and available, adult protective services may include the direct provision of services by the local department or arranging for home-based care, transportation, adult day services, meal service, legal proceedings, alternative placements and other activities to protect the adult and restore self-sufficiency to the extent possible.

"ASAPS" means the state computer system used by local departments to document reports, provide case management for individuals who are receiving adult protective services, and produce data management and statistical information. ASAPS is the designated state automated system of record for adult protective services.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of adult abuse, neglect or exploitation or whose involvement may help ensure the safety of the adult.

"Commissioner" means the Commissioner of the Department.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person, and where the context plainly indicates, includes a "limited conservator" or a "temporary conservator."

"Department" or "DSS" means the Virginia Department of Social Services.

"Director" means the director, or his ~~delegated representative~~ designee, of the department of social services of the city or county in which the adult resides or is ~~found~~ located.

"Disposition" means the determination of whether or not adult abuse, neglect or exploitation has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage. This includes acquiring an adult's resources through the use of the adult's mental or physical incapacity, the disposition of the incapacitated adult's property by a second party to the advantage of the second party and to the detriment of the incapacitated adult, misuse of funds, acquiring an advantage through threats to withhold needed support or care unless certain conditions are met, or persuading an incapacitated adult to perform services including sexual acts to which the adult lacks the capacity to consent. Exploitation also includes making the adult the subject of sexual or degrading imagery including but not limited to photographs or audio or visual recordings.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person and managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Guardian ad litem" means an attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested. On the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided.

"Incapacitated person" means any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being. This definition is for the

purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures.

"Involuntary protective services" means those services authorized by the court for an adult who has been determined to need protective services and who has been adjudicated incapacitated and lacking the capacity to consent to receive the needed protective services.

"Lacks capacity to consent" means a preliminary judgment of ~~a local department of social services~~ social an adult protective services worker that an adult is unable to consent to receive needed services for reasons that relate to emotional or psychiatric ~~problems~~ conditions, intellectual disability, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The worker must make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for authorization to provide protective services on an emergency basis pursuant to § 63.2-1609 of the Code of Virginia.

"Legally incapacitated" means that the person has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable of taking care of himself or his estate.

~~"Legally incompetent" means a person who has been adjudicated incompetent by a circuit court because of a mental condition which renders him incapable of taking care of his person or managing his estate.~~

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Mandated reporters" means those persons who are required to report pursuant to § 63.2-1606 of the Code of Virginia when such persons have reason to suspect that an adult is abused, neglected, or exploited or is at risk of adult abuse, neglect, or exploitation.

"Mental anguish" means a state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, cause sorrow or fear, humiliate, change behavior or ridicule. There must be evidence that it is the perpetrator's ~~activity~~ action that has caused the adult's feelings of pain or distress.

"Neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided such services as are necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious

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nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is written or oral expression of consent by that adult. Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical and mental health and well-being, and it includes the adult's neglect of self. Neglect includes, but is not limited to:

1. The lack of clothing considered necessary to protect a ~~person's~~ an individual's health;
2. The lack of food necessary to prevent physical injury or to maintain life, including failure to receive appropriate food for adults with conditions requiring special diets;
3. Shelter that is not structurally safe; has rodents or other infestations which may result in serious health problems; or does not have a safe and accessible water supply, safe heat source or sewage disposal. Adequate shelter for an adult will depend on the impairments of an adult; however, the adult must be protected from the elements that would seriously endanger his health (e.g., rain, cold or heat) and could result in serious illness or debilitating conditions;
4. Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of an adult in his care;
5. The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical and/or mental injury or illness if it is not provided;
6. Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult such as dentures, eye glasses, hearing aids, walker, etc. It also includes the unauthorized administration of prescription drugs, over- or under-medicating, and the administration of drugs for other than bona fide medical reasons, as determined by a licensed health care professional; and
7. Self-neglect by an adult who is not meeting his own basic needs due to mental and/or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care.

"Notification" means informing designated ~~and appropriate~~ individuals or agencies of the action of the local ~~department's~~ department or DSS ~~action and the individual's rights~~.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Report" means an allegation by any person that an adult is in need of protective services. The term "report" shall refer to

both reports and complaints of abuse, neglect, and exploitation of adults. The report may be made orally or in writing to the local department or by calling the Adult Protective Services Hotline.

"Service plan" means a written plan of action to address the service needs of an adult in order to protect the adult, to prevent future abuse, neglect or exploitation, and to preserve the autonomy of the adult whenever possible.

"Unreasonable confinement" means the use of restraints (physical or chemical), isolation, or any other means of confinement without appropriate medical orders, when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others.

"Valid report" means the local department of social services has evaluated the information and allegations of the report and determined that the local department shall conduct an investigation because all of the following elements are present:

1. The alleged victim adult is 60 years of age or older or is 18 years of age or older and is incapacitated;
2. There is a specific adult with enough identifying information to locate the adult;
3. Circumstances allege abuse, neglect or exploitation or risk of abuse, neglect or exploitation; and
4. The local department receiving the report is a local department of jurisdiction as described in 22VAC40-740-21.

"Voluntary protective services" means those services provided to an adult who, after investigation by a local department, is determined to be in need of protective services and consents to receiving the services so as to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation.

22VAC40-740-21. The adult protective services investigation.

A. This section establishes the process for the adult protective services investigation and provides priority to situations that are most critical.

B. The validity of the report shall be determined. Investigations shall be initiated by the local department not later than 24 hours from the time a valid report was received in the local department.

1. To initiate the investigation, the ~~social adult protective~~ services worker ~~must~~ shall gather enough information concerning the report to determine (i) if the report is valid and (ii) if an immediate response is needed to ensure the safety of the alleged victim. Pertinent information may be obtained from the report, case record reviews, contact with the alleged victim, the reporter, friends, ~~and neighbors,~~ and service providers, ~~and other sources of information.~~

2. When determining the need for an immediate response, the ~~social~~ adult protective services worker shall consider the following factors:

- a. The imminent danger to the adult or to others;
- b. The severity of the alleged abuse, neglect or exploitation;
- c. The circumstances surrounding the alleged abuse, neglect or exploitation; and
- d. The physical and mental condition of the adult.

3. A face-to-face contact with the alleged victim shall be made as soon as possible but not later than five calendar days after the initiation of the investigation unless there are valid reasons that the contact could not be made. Those reasons shall be documented in ASAPS in the Adult Protective Services Assessment ~~Narrative~~ as described in 22VAC40-740-40. The timing of the interview with the alleged victim ~~should~~ shall occur in a reasonable amount of time pursuant to circumstances in subdivision 2 of this subsection.

~~C. The report shall be reduced to writing within 72 hours of receiving the report on a form prescribed by the department. Within 72 hours of receiving the report, the local department shall enter the report into ASAPS.~~

D. The purpose of the investigation is to determine whether the adult alleged to be abused, neglected or exploited or at risk of abuse, neglect or exploitation is in need of protective services and, if so, to identify services needed to provide the protection.

E. The local department shall conduct a thorough investigation of the report.

F. The investigation shall include a visit and private interview with the adult alleged to be abused, neglected or exploited.

G. The investigation shall include consultation with others having knowledge of the facts of the particular case.

H. Primary responsibility for the investigation when more than one local department may have jurisdiction under § 63.2-1605 of the Code of Virginia shall be assumed by the local department:

- 1. Where the subject of the investigation resides when the place of residence is known and when the alleged abuse, neglect or exploitation occurred in the city or county of residence;
- 2. Where the abuse, neglect or exploitation is believed to have occurred when the report alleges that the incident occurred outside the city or county of residence;
- 3. Where the abuse, neglect or exploitation was discovered if the incident did not occur in the city or county of residence or if the city or county of residence is unknown and the place where the abuse, neglect or exploitation occurred is unknown; or

4. Where the abuse, neglect or exploitation was discovered if the subject of the report is a nonresident who is temporarily in the Commonwealth.

I. When an investigation extends across city or county lines, local departments in those cities or counties shall assist with the investigation at the request of the local department with primary responsibility.

J. When the local department receives information on suspicious deaths of adults, local department staff shall immediately notify the appropriate medical examiner and law enforcement.

22VAC40-740-31. Application for the provision of services.

A. Local departments are authorized to receive and investigate reports of suspected adult abuse, neglect and exploitation pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2 of the Code of Virginia.

B. Upon completion of the investigation and the determination that the adult is in need of protective services, the adult protective services worker ~~must~~ shall obtain an application signed by the adult in need of services or his representative prior to service provision.

~~C. The application process is designed to assure the prompt provision of needed adult protective services including services to adults who are not able to complete and sign a service application.~~

~~D. Persons~~ C. A representative who may complete and sign an application for adult protective services on behalf of an adult who needs the service ~~include~~ includes:

- 1. The ~~adult who will receive the services or the~~ adult's legally appointed guardian or conservator;
- 2. Someone authorized by the adult; or
- 3. The local department.

D. The application process is designed to assure the prompt provision of needed adult protective services including services to adults who are not able to complete and sign a service application.

22VAC40-740-40. Assessment ~~narrative~~ and disposition.

A. An assessment ~~narrative~~ shall be required for all adult protective services investigations and shall be titled "Adult Protective Services Assessment ~~Narrative~~." The ~~narrative~~ must assessment shall address, but is not limited to, the following:

- 1. Allegations in the report or circumstances discovered during the investigation that meet the definitions of abuse, neglect or exploitation.
- 2. The extent to which the adult is physically, emotionally and mentally capable of making and carrying out decisions concerning his health and well-being.
- 3. The extent that the adult's environment, functional ability, physical health, mental or psychosocial health,

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support system, income, and resources contribute to the alleged abuse, neglect, or exploitation of the adult or places the adult at risk of abuse, neglect, or exploitation.

~~3.~~ 4. The risk of serious harm to the adult.

4. 5. The need for an immediate response by the adult protective services worker upon receipt of a valid report.

5. 6. The ability to conduct a private interview with the alleged victim, the alleged perpetrator (if known) and any collateral contacts having knowledge of the case.

B. After investigating the report, the adult protective services worker ~~must~~ shall review and evaluate the facts collected and make a disposition as to whether the adult is in need of protective services and, if so, what services are needed.

C. The disposition that the adult needs protective services shall be based on the preponderance of evidence that abuse, neglect or exploitation has occurred or that the adult is at risk of abuse, neglect or exploitation. The disposition shall be documented in ASAPS.

D. Possible dispositions.

1. Needs protective services and accepts. This disposition shall be used when:

a. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred or is occurring; or

b. A review of the facts shows a preponderance of evidence that the adult is at risk of abuse, neglect or exploitation and needs protective services in order to reduce that risk; and

c. The adult consents to receive services pursuant to § 63.2-1610 of the Code of Virginia; or

d. Involuntary services are ordered by the court pursuant to § 63.2-1609 or Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of Title 37.2 of the Code of Virginia.

2. Needs protective services and refuses. This disposition shall be used when:

a. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred or is occurring or the adult is at risk of abuse, neglect and exploitation; and

b. The adult refuses or withdraws consent to accept protective services pursuant to § 63.2-1610 of the Code of Virginia.

3. Need for protective services no longer exists. This disposition shall be used when the subject of the report no longer needs protective services. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred. However, at the time the investigation is initiated or during the course of the investigation, the adult who is the subject of the report ceases to be at risk of further abuse, neglect or exploitation.

4. Unfounded. This disposition shall be used when review of the facts does not show a preponderance of evidence that abuse, neglect or exploitation occurred or that the adult is at risk of abuse, neglect or exploitation.

5. Invalid. This disposition shall be used when, after the investigation has been initiated, the report is found not to have met the criteria of a valid report.

E. The investigation shall be completed and a disposition assigned by the local department within 45 days of the date the report was received. If the investigation is not completed within 45 days, the record shall document reasons.

F. ~~A notice~~ Notification of the completion of the investigation ~~must~~ shall be made in writing and shall be mailed to the reporter within 10 working days of the completion of the investigation.

G. Notification upon the completion of a facility investigation shall be made in writing and shall be mailed to appropriate individuals in accordance with DSS guidance.

H. The local department shall notify the alleged perpetrator in writing within 10 working days of the completion of the investigation, if the disposition is needs protective services and accepts, needs protective services and refuses, or need for protective services no longer exists. If licensing or regulatory agencies were also notified of the disposition, the notification shall state the name of these agencies and the date they were notified. The notification shall also state that if the alleged perpetrator disagrees with the findings of the investigation that he has the right to request a review by the director and to amend the record if there are any factual errors. The notification shall include information used by the local department to support the findings of the investigation.

~~G. I. The Adult Protective Services Program~~ local department shall respect the rights of adults with capacity to consider options offered by the ~~program~~ local department and refuse services, even if those decisions do not appear ~~to~~ reasonably to be in the best interests of the adult.

22VAC40-740-45. Right to review.

A. Right to review is the process by which the alleged perpetrator may request amendment of the record when the investigation has resulted in a disposition of needs protective services and accepts, needs protective services and refuses, or need no longer exists.

B. If the alleged perpetrator is found to have committed abuse, neglect, or exploitation, that alleged perpetrator may, within 30 calendar days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records.

C. The local department shall conduct an informal review hearing within 30 calendar days of receiving a timely notice of a request to review.

D. The director, or the director's designee, shall preside over the hearing. With the exception of the director, no person whose regular duties include substantial involvement with

adult abuse, neglect, or exploitation cases shall preside over the hearing.

E. The alleged perpetrator may be represented by counsel.

F. The alleged perpetrator shall be entitled to present (i) the testimony of witnesses, documents, factual data, or other submissions of proof or (ii) arguments.

G. The director or his designee shall have the authority to sustain, amend, or reverse the local department's findings.

H. The director or his designee shall notify the alleged perpetrator, in writing, of the results of the hearing within 30 calendar days of the date of the hearing. The decision of the director or his designee shall be final. Notification of the results of the hearing shall be mailed, certified with return receipt, to the alleged perpetrator.

22VAC40-740-50. Disclosure of adult protective services information.

A. This ~~chapter~~ section describes the protection of confidential information including a description of when such information must be disclosed, when such disclosure of the information is at the discretion of the local department, what information may be disclosed, and the procedure for disclosing the information.

B. ~~Department~~ DSS staff having legitimate interest shall have regular access to adult protective services records maintained by the local department.

C. The following agencies have licensing, regulatory, and legal authority for administrative action or criminal investigations, and ~~they have~~ a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their licensing, regulatory, and legal responsibilities:

1. Department of Behavioral Health and Developmental Services;
2. Virginia Office for Protection and Advocacy;
3. Office of the Attorney General, including the Medicaid Fraud Control ~~Program~~ Unit;
4. Department for Aging and Rehabilitative Services;
5. Department of Health, including the ~~Center for Quality Health Care Services and Consumer Protection~~ Office of Licensure and Certification and the Office of the Chief Medical Examiner;
6. Department of Medical Assistance Services;
7. Department of Health Professions;
8. Department for the Blind and Vision Impaired;
9. Department for the Deaf and Hard-of-Hearing;
- 9- ~~10.~~ 10. Department of Social Services, including the Division of Licensing Programs;
- 10- ~~11.~~ 11. The Office of the State Long-Term Care Ombudsman and local ombudsman;
- 11- ~~12.~~ 12. Law-enforcement agencies;

~~12.~~ 13. Medical examiners;

~~13.~~ 14. Adult fatality review teams;

~~14.~~ 15. Prosecutors; and

~~15.~~ 16. Any other entity deemed appropriate by the commissioner or ~~local department~~ director that demonstrates a legitimate interest.

D. The local department shall disclose all relevant information to representatives of the agencies identified in subsection C of this section except the identity of the person who reported the abuse, neglect or exploitation unless the reporter authorizes the disclosure of his identity or the disclosure is ordered by the court.

E. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory or legal authority for administrative action or criminal investigation.

F. Local departments may release information to the following persons when the local department has determined the person making the request has legitimate interest in accordance with § 63.2-104 of the Code of Virginia and the release of information is in the best interest of the adult:

1. Representatives of public and private agencies including community services boards, area agencies on aging and local health departments requesting disclosure when the agency has legitimate interest;
2. A physician who is treating an adult whom he reasonably suspects is abused, neglected or exploited;
3. The adult's legally appointed guardian or conservator;
4. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;
5. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;
6. An attorney representing a local department in an adult protective services case;
7. The Social Security Administration; or
8. Any other entity that demonstrates to the commissioner or ~~local department~~ director that legitimate interest is evident.

G. Local departments are required to disclose information under the following circumstances:

1. When disclosure is ordered by a court;
2. When a person has made an adult protective services report and an investigation has been completed; or
3. When a request for access to information is made pursuant to the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia).

H. Any or all of the following specific information may be disclosed at the discretion of the local department to agencies or persons specified in subsection F of this section:

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1. Name, address, age, race, and gender of the adult who is the subject of the request for information;
2. Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation;
3. Description of the incident or incidents of abuse, neglect, or exploitation;
4. Description of medical ~~problems~~ conditions to the extent known;
5. Disposition of the adult protective services report; and
6. The protective service needs of the adult.

I. The identity of the person who reported the suspected abuse, neglect or exploitation shall be held confidential unless the reporter authorizes the disclosure of his identity or disclosure is ordered by the court.

J. Agencies or persons who receive confidential information pursuant to subsection G of this section shall provide the following assurances to the local department:

1. The purpose for which information is requested is related to the protective services goal in the service plan for the adult;
2. The information will be used only for the purpose for which it is made available; and
3. The information will be held confidential by the department or individual receiving the information except to the extent that disclosure is required by law.

K. Methods of obtaining assurances. Any one of the following methods may be used to obtain assurances required in subsection J of this section:

1. Agreements between local departments and other community service agencies that provide blanket assurances required in subsection J of this section for all adult protective services cases; or
2. State-level agreements that provide blanket assurances required in subsection C of this section for all adult protective services cases.

L. Notification that information has been disclosed. When information has been disclosed pursuant to this ~~chapter~~ section, notice of the disclosure shall be given to the adult who is the subject of the information or to his legally appointed guardian. If the adult has given permission to release the information, further notification shall not be required.

22VAC40-740-60. Opening a case for service provision.

A. A range of services ~~must~~ shall be made available to any abused, neglected and exploited adult or to adults at risk of abuse, neglect or exploitation to protect the adult and to prevent any future abuse, neglect or exploitation.

1. Opening a case to adult protective services. ~~Once a disposition of the report and an assessment of the adult's needs and strengths have been made, the department shall~~

~~assess the adult's service needs.~~ A case shall be opened for ~~adult protective~~ services when:

- a. ~~The service needs are identified~~ The disposition is that the adult needs protective services;
- b. ~~The disposition is that the adult needs protective services~~ The services needs are identified; and
- c. The adult or the adult's legal guardian or conservator agrees to accept protective services or protective services are ordered by the court.

2. Service planning. A service plan ~~which that~~ is based on the investigative findings and ~~the assessment of~~ the adult's need for protective services shall be developed. The service plan is the basis for the activities that the worker, the adult, and other ~~persons~~ individuals will undertake ~~to provide the services necessary~~ to protect the adult. The service plan shall be documented in ASAPs.

3. Implementation of the service plan. Implementation of the service plan is the delivery of the services necessary to provide adequate protection to the adult. The services may be delivered directly, through purchase of service, through informal support, or through referral. The continuous monitoring of the adult's progress ~~and the system's response is a~~ towards reaching the service plan goals and revising the objectives and tasks in response to that progress are part of the implementation.

4. ~~Local departments are required to provide~~ If a local department is providing services beyond the investigation, these services are required to be provided to the extent that federal or state matching funds are made available.

22VAC40-740-70. Civil penalty for nonreporting.

A. ~~The department may~~ commissioner shall impose civil penalties when it is determined that a mandated reporter failed to report suspected adult abuse, neglect or exploitation pursuant to § 63.2-1606 of the Code of Virginia.

B. Civil penalties shall be imposed as follows:

1. For first offenses of nonreporting pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not more than \$500.
2. For second and subsequent offenses of nonreporting pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not less than \$100 and not more than \$1,000.

~~B. C. Civil penalties for all mandated reporters except law-enforcement officers shall be imposed as described in 22VAC40-740-80~~ determined by a court of competent jurisdiction, in its discretion.

22VAC40-740-80. Imposition of civil penalty.

A. Local department review and recommendation.

1. ~~Based on a decision by the local department~~ When a director or his designee determines that a mandated reporter failed to report as required by § 63.2-1606 of the Code of Virginia, the ~~local~~ director shall prepare a written

~~statement of fact in a format prescribed by the commissioner concerning the mandated reporter's failure to report and submit the statement of fact to the commissioner. The director or his designee also shall prepare a letter notifying the mandated reporter of the intent to request that a civil penalty be imposed. The letter shall state the mandated reporter's right to submit a written statement to the commissioner concerning the mandated reporter's failure to report. The date of the director's notification shall be the date of the letter to the mandated reporter. Any supporting documentation that the director considered in requesting the imposition of a civil penalty shall be provided to the mandated reporter. The letter, statement of fact, and any supporting documentation shall be sent to the mandated reporter by registered or certified mail, return receipt requested.~~

~~2. The local director or his designee shall notify the mandated reporter in writing within 15 calendar days from the date of the determination of the intent to recommend that a civil penalty be imposed. The notification will include a copy of the local director's statement of fact concerning the mandated reporter's failure to report. The notification shall state the mandated reporter's right to submit a written statement to the commissioner concerning the mandated reporter's failure to report. The date of the notification is the postage date. The director or his designee shall send a letter to the commissioner requesting that a civil penalty be imposed on the mandated reporter for failure to report. The statement of fact and the letter to the mandated reporter shall accompany the letter to the commissioner. Any supporting documentation that the director considered in requesting the imposition of a civil penalty shall be provided to the commissioner.~~

~~3. The mandated reporter's statement concerning his failure to report must be received by the commissioner within 45 days from the date of the local director's notification of intent to recommend the imposition of a civil penalty. A mandated reporter's statement received after the 45 days shall not be considered by the commissioner.~~

~~B. Review by the commissioner or his designee Statement from mandated reporter.~~

~~1. The commissioner or his designee shall review the local director's written statement of fact concerning the mandated reporter's failure to report and the mandated reporter's written statement in determining whether to impose a civil penalty.~~

~~2. In the case of law enforcement officers who are alleged to have not reported as required, the commissioner or his designee shall forward the recommendation to a court of competent jurisdiction.~~

~~3. The commissioner or his designee shall impose a civil penalty upon a mandated reporter who is determined to have not reported as required pursuant to § 63.2-1606 of~~

~~the Code of Virginia. Penalties shall be imposed as follows:~~

~~a. For first offenses of nonreporting pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not more than \$500.~~

~~b. For second and subsequent offenses pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not less than \$100 and not more than \$1,000.~~

~~4. The commissioner or his designee shall notify the mandated reporter whether a civil penalty will be imposed and, if so, the amount of the penalty. This written notice shall describe the reasons for the imposition of the civil penalty. The date of notification shall be deemed to be the date the mandated reporter received written notice of the alleged violation. This notice shall include specifics of the violation charged and shall be sent by overnight express mail or by registered or certified mail, return receipt requested.~~

The mandated reporter may prepare a written statement concerning his failure to report and provide the statement to the commissioner. The commissioner must receive the mandated reporter's written statement within 45 calendar days from the date of the director's letter to the mandated reporter.

C. Review by the commissioner's designee.

1. The commissioner's designee shall review the director's statement of fact, the mandated reporter's written statement, and any supporting documentation provided by the director in determining whether to impose a civil penalty. A statement received after the time required by 22VAC40-740-80 B shall not be considered by the commissioner.

2. In the case of law-enforcement officers who are alleged not to have reported as required, the commissioner or his designee shall forward a recommendation to the court of competent jurisdiction.

3. The commissioner's designee shall notify the mandated reporter in writing whether a civil penalty will be recommended. The written notification shall include specifics of the violation charged, the reasons for the imposition of the civil penalty and the amount of the penalty. The letter shall be sent to the mandated reporter by registered or certified mail, return receipt requested, no later than 30 calendar days after the commissioner receives the mandated reporter's written statement. The date of the notification shall be the date of the commissioner's designee's letter to the mandated reporter. The designee also shall send a copy of the letter to the director who recommended the imposition of the civil penalty. If the commissioner's designee recommends imposition of a civil penalty, the mandated reporter shall have 30 calendar days from the date of the letter to submit a written statement requesting that the commissioner reconsider the designee's decision. A statement received after the time required by

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this subsection shall not be considered by the commissioner.

D. Review by the commissioner. If the mandated reporter submits a written request for review, the commissioner shall review his designee's recommendation and the mandated reporter's request for review and decide whether a civil penalty shall be imposed. The commissioner shall notify the mandated reporter in writing whether a civil penalty will be imposed and the amount of the penalty. The letter shall include specifics of the violation charged and describe the reason for the imposition of the civil penalty. The letter shall be sent to the mandated reporter by registered or certified mail, return receipt requested, no later than 30 calendar days after the commissioner receives the mandated reporter's written request to reconsider the designee's decision. The date of the notification shall be the date of the commissioner's letter.

E. If the mandated reporter does not request a review by the commissioner within the time required by subdivision C 3 of this section, the commissioner shall notify the mandated reporter in writing that a civil penalty will be imposed. The written notification shall include specifics of the violation charged, the reasons for the imposition of the civil penalty, and the amount of the penalty. The letter shall be sent to the mandated reporter by registered or certified mail, return receipt requested.

5. F. If a civil penalty is imposed, a copy of the notice commissioner's letter to the mandated reporter shall be sent to the appropriate licensing, regulatory, or administrative agency agencies and to the ~~lead~~ director who recommended the imposition of the penalty.

6. G. Any mandated reporter has the right to appeal the commissioner's decision to impose a civil penalty in accordance with § 2.2-4026 of the Code of Virginia and pursuant to Part 2 A of the Rules of the Supreme Court of Virginia.

VA.R. Doc. No. R11-2684; Filed September 4, 2012, 2:59 p.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

VIRGINIA AVIATION BOARD

Proposed Regulation

Title of Regulation: 24VAC5-20. Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (amending 24VAC5-20-10, 24VAC5-20-120 through 24VAC5-20-280, 24VAC5-20-300, 24VAC5-20-330).

Statutory Authority: §§ 5.1-2.2, 5.1-2.15, and 5.1-7 of the Code of Virginia.

Public Hearing Information:

November 16, 2012 - 10 a.m. - Metropolitan Washington Airports Authority, 1 Saarinen Circle, Dulles, VA

Public Comment Deadline: November 23, 2012.

Agency Contact: Susan H. Simmers, Senior Airport Planner, Department of Aviation, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3632 ext: 105, FAX (804) 236-3635, or email susan.simmers@doav.virginia.gov.

Basis: Under § 5.1-2.2 (5) of the Code of Virginia, the Virginia Aviation Board has the authority to promulgate such rules and regulations relating to airports, landing fields, and other aviation facilities as may be necessary to promote and develop safe aviation practices and operations.

In addition, under § 5.1-7 of the Code of Virginia, the Virginia Aviation Board may, by regulation, adopt any other requirements for the licensure of airports or landing areas that are related to the safety of aircraft using airports or landing areas, which must be licensed in accordance with the section.

The general powers and duties of the Virginia Aviation Board are provided in § 5.1-2.2 and § 5.1-2.2:1. Other actions for which the Virginia Aviation Board has been authorized to participate are found in § 5.1- 2.5 through § 5.1-2.23.

Purpose: The purpose of the proposed action is to consider changes to the regulations regarding airport licensure, with a focus on 24VAC5-20-140, Minimum requirements for licensing, and 24VAC5-20-275, Conditional licenses. The proposed change for 24VAC5-20-140 would align state minimum requirements more closely with Federal Aviation Administration (FAA) standards. The proposed change for 24VAC5-20-275 would modify the process for licensing airports not in compliance with state minimum licensing standards. The modification would offer better defined solutions to address noncompliant conditions and would lead to finite resolutions not currently realized, thereby improving the efficiency of the licensing process. The changes for minimum licensing requirements and conditional licenses will benefit the operation and safety of the statewide air transportation system. Without this proposed regulatory action, some public-use airports would remain in a noncompliant and less safe condition. Noncompliant conditions at airports may jeopardize the continuance of a public-use license, which could lead to the closure of an airport. The proposal also reflects a recent change to the Code of Virginia, updates procedural information and citations, reduces redundancy, and provides consistency throughout the chapter.

Substance:

24VAC5-20-140, Minimum requirements for licensing: The section is amended so that the state minimum standards more closely align with FAA standards.

24VAC5-20-145, Waiver of minimum requirements: The section is amended by updating procedural information and revised considerations for waivers.

24VAC5-20-275, Conditional license: The section is amended to provide procedural changes and solutions to address noncompliant conditions at airports. The modifications include the introduction of a "Day/Visual Flight Rule (VFR) Use Only License," a new conditional license that allows restricted operations at noncompliant airports.

24VAC5-20-330, Aviation facilities constructed in whole or in part with state funds: The section is amended for consistency with Virginia Aviation Board policies.

24VAC5-20-160, Public waters landing rights: The section is amended to incorporate information on seaplane bases.

24VAC5-20-10, Definitions: The section is amended to incorporate by reference terms defined in the Code of Virginia, which would reduce the number of terms in the section. In addition, terms to support proposed changes would be added, previously missing terms would be added, terms not used in the chapter would be removed, and terms used and defined in 24VAC5-20-400 Appendix A: Airport Safety Zoning Ordinance, would be removed. The following sections are amended by updating procedural information:

24VAC5-20-120, Licenses

24VAC5-20-150, Transfer of licenses

24VAC5-20-170, Private or personal airports

24VAC5-20-190, Determination of hazard

24VAC5-20-200, Obstruction criteria

24VAC5-20-210, Obstruction permit process criteria

24VAC5-20-280, Sanctions, notice and appeals

The following sections are amended to provide consistency within the chapter:

24VAC5-20-180, Fees

24VAC5-20-300, Hazards

The following sections are amended by updating citation references:

24VAC5-20-220, Model airport safety zoning ordinance

24VAC5-20-280, Sanctions, notice and appeals

Issues: Section 5.1-7 of the Code of Virginia requires that any airport operated as a public-use facility must be licensed by the Virginia Department of Aviation (DOAV); presently there are 64 public-use airports in the Commonwealth that meet the statutory requirement. Of those airports, 26 airports do not meet current state minimum licensing requirements set forth in 24VAC5-20-140 and have been issued conditional licenses in accordance with § 5.1-7 of the Code of Virginia and 24VAC5-20-275. Most of the existing noncompliant conditions are caused by natural growth. Many of the 26 airports have received multiple conditional licenses as the noncompliant conditions are not being addressed. As the conditional licenses expire, DOAV staff must continually repeat the agency's licensing process, which includes on-site

inspections, resulting in an inefficient use of agency resources.

The majority of noncompliant conditions are caused by natural growth obstructions in safety areas. DOAV provides technical and funding assistance to airport sponsors for obstruction removal, whether the obstruction was identified through the licensing process or other inspection processes. The funding ratio for obstruction removal projects is 80% state participation and 20% local participation. This funding assistance would continue after the proposed regulations are in place.

In spite of this assistance and the temporary status of conditional licenses, noncompliant conditions continue to exist on or at airports. The Virginia Aviation Board and DOAV want to implement a more structured, efficient process of consistently addressing noncompliant conditions and their inherent safety concerns, so that airports can retain their public-use licenses instead of having their licenses revoked in accordance with § 5.1-7 of the Code of Virginia and 24VAC5-20-280. Major elements of the proposed process would be the requirement for a written mitigation plan prepared by an airport and Virginia Aviation Board recommendations that would result in the definite resolution of the noncompliant condition. State funding for mitigation plans, obstruction removal, and other compliance related safety projects is available to public-use airport sponsors, whether public and private entities. Modification of the state minimum licensing requirements to align more closely with current FAA standards would be a preparatory action for the proposed process.

If a public-use airport license is revoked, the airport would be removed from the statewide air transportation system, and the airport sponsor would face the option of operating the facility as a private use airport or closing the airport. The sponsor would no longer be eligible to receive any funding from DOAV. In addition, a sponsor of an airport facility no longer operating as a public-use airport would be required to reimburse the Commonwealth, on a pro-rata basis, for all outstanding financial obligations awarded through DOAV.

Many of the airports with existing noncompliant conditions would meet the proposed minimum requirements for airport licensing and would not be placed under conditional airport licenses. Over time, the number of airports no longer meeting the requirements would lessen. Of those airports that would still have noncompliant conditions under the proposed regulations, the scope of the work and associated costs to address the noncompliant conditions would be reduced as the requirements are less restrictive. In addition, the proposal offers a "Day/Visual Flight Rules (VFR) Use Only" license, a conditional license that allows restricted operations at an airport, thereby keeping the airport in the system and open to the public, but on a limited basis during daylight hours only.

Currently, license inspections are conducted every seven years, and the identification of noncompliant conditions

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during those inspections initiates the conditional license process. The proposed regulation for conditional licenses would allow the conditional license process to be initiated any time noncompliant conditions are identified. Earlier intervention will reduce the extent of the noncompliant conditions that must be addressed, especially those caused by natural growth, which in turn will reduce the costs to meet and maintain compliance with the minimum regulations.

Implementation of these regulatory proposals would increase safety, increase standardization, reduce costs for the state and airport sponsors, increase administrative efficiency, and increase Virginia Aviation Board participation in the conditional license process.

In addition, other sections in 24VAC5-20 contain procedural information that needs to be updated or text that needs to be changed for clarity and consistency within the chapter.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Aviation (Board) proposes to amend these regulations in order to implement a more structured, efficient process of consistently addressing noncompliant airport licensure conditions and their inherent safety concerns, so that airports can retain their public-use licenses instead of having their licenses revoked. More specifically, the Board proposes to: 1) amend obstruction requirements so that they can be feasibly met by public-use airports, 2) create a "Day/Visual Flight Rules (VFR) Use Only" license for those airports that would still have noncompliant conditions under the proposed regulations, 3) allow the conditional license process to be initiated any time noncompliant conditions are identified, and 4) make other amendments for clarification and improved communication.

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

Estimated Economic Impact. Section 5.1-7 of the Code of Virginia requires that any airport operated as a public-use facility must be licensed by the Virginia Department of Aviation (DOAV); presently there are 64 public-use airports in the Commonwealth that meet the statutory requirement. Of those airports, 26 airports do not meet current state minimum licensing requirements set forth in 24VAC5-20-140 and have been issued conditional licenses in accordance with § 5.1-7 of the Code of Virginia and 24VAC5-20-275. Many of the 26 airports have received multiple conditional licenses as the noncompliant conditions are not being addressed. As the conditional licenses expire, DOAV staff must continually repeat the agency's licensing process, which includes on-site inspections, resulting in an inefficient use of agency resources.

The majority of noncompliant conditions are caused by natural growth obstructions in safety areas. DOAV provides technical and funding assistance to airport sponsors for obstruction removal, whether the obstruction was identified

through the licensing process or other inspection processes. The funding ratio for obstruction removal projects is 80% state participation and 20% local participation.

In spite of this assistance and the temporary status of conditional licenses, noncompliant conditions continue to exist on or at public-use airports. The Virginia Aviation Board and DOAV want to implement a more structured, efficient process of consistently addressing noncompliant conditions and their inherent safety concerns, so that airports can retain their public-use licenses instead of having their licenses revoked in accordance with § 5.1-7 of the Code of Virginia and 24VAC5-20-280. State funding for mitigation plans, obstruction removal, and other compliance related safety projects is available to public-use airport sponsors, whether public or private.

If a public-use airport license is revoked, the airport would be removed from the statewide air transportation system, and the airport sponsor would face the option of operating the facility as a private-use airport or closing the airport. The sponsor would no longer be eligible to receive any funding from DOAV. In addition, a sponsor of an airport facility no longer operating as a public-use airport would be required to reimburse the Commonwealth, on a prorata basis, for all outstanding financial obligations awarded through DOAV.

Many of the airports with existing noncompliant conditions would meet the proposed minimum requirements for airport licensing and would not be placed under conditional airport licenses. Over time, the number of airports no longer meeting the requirements would lessen. Of those airports that would still have noncompliant conditions under the proposed regulations, the scope of the work and associated costs required for these airports to work toward full compliance would be reduced as the requirements are less restrictive. The Board proposes to create a "Day/Visual Flight Rules (VFR) Use Only" license, a conditional license that allows restricted operations at an airport, for those airports that have yet to become fully compliant, thereby keeping the airport in the system and open to the public, but on a limited basis during daylight hours only.

Currently, license inspections are conducted every seven years, and the identification of noncompliant conditions during those inspections initiates the conditional license process. The Board proposes to allow the conditional license process to be initiated any time noncompliant conditions are identified. Earlier intervention will reduce the extent of the noncompliant conditions that must be addressed, especially those caused by natural growth, which in turn will reduce the costs to meet and maintain compliance with the regulations.

Businesses and Entities Affected. The proposed amendments affect the 64 public-use airports in the Commonwealth, 9 of which are owned by small businesses.

Localities Particularly Affected. The localities particularly affected by this action are those that own public-use airports,

either independently or through participation in an authority or commission.

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

Effects on the Use and Value of Private Property. The proposed amendments are likely to make it easier for the 10 privately owned public-use airports to comply with requirements for full licensure.

Small Businesses: Costs and Other Effects. The proposed amendments will likely reduce obstruction removal costs for the 9 public-use airports that are owned by small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments will likely reduce obstruction removal costs in developing airport property.

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

Agency's Response to Economic Impact Analysis. The Virginia Department of Aviation concurs with the analysis performed by the Department of Planning and Budget on the proposed regulatory action regarding of the minimum airport licensing requirements and related licensing issues found in 24VAC5-20, Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia.

Summary:

The proposed regulatory action (i) aligns the state airport licensing requirements more closely with Federal Aviation Administration standards; (ii) provides a new process to address noncompliant conditions, including issuance of a new "Day/Visual Flight Rule Use Only" conditional airport license; (iii) updates procedural information and citations; (iv) reduces redundancy; and (v) provides consistency throughout the chapter.

Part I
Definitions

24VAC5-20-10. Definitions.

~~Whenever used in this chapter, unless the context or subject matter requires otherwise, the following words or terms have the meaning herein ascribed to them, respectively: Words or terms defined in § 5.1-1 of the Code of Virginia are incorporated by reference. The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:~~

"Aircraft" means any contrivance now known or hereafter invented, ~~which~~ that is controlled, used, and usually occupied by a person for the purpose of navigation and transportation through the air, excepting "hang glider" as defined in § 5.1-1 of the Code of Virginia. Commonly recognized names for aircraft include, but are not limited to, planes, helicopters, seaplanes, ultralights, and hot air balloons.

"Airline" means an air carrier operation under Federal Aviation Regulations ~~found in~~ 14 CFR Part 119, 14 CFR Part 121, 14 CFR Part 129, or 14 CFR Part 135 providing scheduled passenger service.

~~"Airman" means any individual, including the person in command, and any pilot, mechanic, or member of the crew, who engages in the navigation of aircraft while under way within Virginia airspace; any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft, aircraft engines, propellers or accessories; and any individual who serves in the capacity of aircraft dispatcher.~~

~~"Airport" means any area of land or water which is used or intended for use for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities including rights-of-way, easements and all airport buildings and facilities located thereon.~~

~~"Airspace" means all that space above the land and waters within the boundary of this state.~~

"Airport sponsor" means an entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other obligations required for an airport.

"Antique aircraft" means any aircraft constructed by the original manufacturer, or his licensee, on or before December 31, 1945.

"Approach surface" means a surface longitudinally centered on the extended runway centerline and extending outward and

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upward. For non Federal Aid Airports, the surface extends at a slope of 15:1 from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

1. 1,200 feet at a distance of 5,000 feet for that end of a runway with only visual approaches.
2. 2,000 feet at a distance of 5,000 feet for that end of a runway having or proposing to have a nonprecision instrument approach procedure.

~~See also 14 CFR 77.25, 77.28, and 77.29 for design standards as they apply to federal aid airports.~~

"Aviation" means activities and infrastructure related to transportation by air, including but not limited to (i) the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories; (ii) the design, establishment, design, construction, extension, operation, improvement, repair, or maintenance of airports or landing areas, including but not limited to; and (iii) navigable airspace, or other air navigation facilities, and air instruction.

"Board" means the Virginia Aviation Board.

"Civil aircraft" means ~~any aircraft other than a public aircraft.~~

"Commercial operator" means a person, except an airline, who operates any aircraft for the purpose of rental or charter or for ~~any other purpose~~ purposes from which revenue is derived.

~~"Conical surface" for a nonfederal aid airport means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 15:1 for a horizontal distance of 4,000 feet. See also 14 CFR 77.25, 77.28 and 77.29 for standards as they apply to federal aid airports.~~

"Contract carrier permit" means a permit issued by the department to contract carriers operating under Federal Aviation Regulations 14 CFR Part 61, 14 CFR Part 135, or 14 CFR Part 141 for transport of passengers or freight on demand by air. Owners of aircraft who contract to provide flight instruction in their aircraft for profit are required to have a contract carrier permit.

"Day/VFR Use Only License" means a conditional airport license issued with the restriction that operations at the airport can only occur between sunrise and sunset and only under Visual Flight Rules (VFR) for the purpose of allowing continuing operations at an airport that is not in compliance with the minimum requirement for approach surfaces.

"Department" means the Department of Aviation.

"Effective runway length" means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway and the far end thereof.

~~"Hazards" for airports "Hazard" means any a fixed or mobile structure, or object, or natural growth, or use of land which that obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such the landing or taking off of aircraft.~~

~~"Helipad" means a rectangular or square specially prepared surface that may be turf or paved, which is designated specifically for the purpose of landing and takeoff of helicopter aircraft small designated area, usually with a prepared surface, on an airport, heliport, landing/takeoff area, apron/ramp, or movement area used for the takeoff, landing, or parking of helicopters.~~

~~"Heliport" means any (i) an identifiable area on land, water, or structure, including any a building or facilities thereon, used or intended to be used for the landing and takeoff of helicopters; or other rotorcraft; or (ii) appurtenant areas which that are used, or intended for use, for heliport buildings or other heliport facilities including rights-of-way, easements, and all heliport buildings and facilities located thereon.~~

~~"Heliport approach surface" means a surface beginning at each end of the heliport primary surface with the same width as the primary surface, and extending outward and upward. Reference 14 CFR 77.25, 77.28, and 77.29 for design standards.~~

~~"Heliport primary surface" means the area of the primary surface coinciding in size and shape with the designated takeoff and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.~~

~~"Heliport transitional surface" means a surface extending outward and upward from the lateral boundaries of the heliport primary surface and from the approach surfaces. Reference 14 CFR 77.25, 77.28, and 77.29 for design standards.~~

~~"Horizontal surface" means a horizontal plane 150 feet above the established airport elevation. Reference 14 CFR 77.25, 77.28, and 77.29 for design standards.~~

~~"Imaginary surfaces" are those surfaces as defined herein for nonfederal aid airports and in 14 CFR 77.25. Reference 14 CFR 77.25, 77.28, and 77.29 for the definitions and design standards.~~

~~"Intrastate air transportation" means air transportation between two or more airports within Virginia, or air transportation to and from the same airport in Virginia without an intermediate stop outside Virginia.~~

~~"Landing area" means any local specific site, whether over land or water, including airports and intermediate landing fields, which is used or intended to be used for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing or repair of aircraft, or for receiving or discharging passengers or cargo.~~

~~"Noncommercial dealer" means a person who owns and offers for sale a minimum of three aircraft during any~~

consecutive 12-month period, which aircraft are not used for personal use, rental, charter, or for any a purpose from which revenue is derived.

"Obstacle" means ~~any a~~ any a fixed or mobile object that is ~~located on an area intended for the surface movement of aircraft, or that extends above a defined imaginary surface intended to protect aircraft in flight, that interferes with the siting or operation of navigational aids, or that may control the establishment of instrument procedures.~~ An obstacle could be located on an area intended for the ground movement of aircraft or would extend above the approach surfaces intended to protect aircraft in flight or the runway object free area.

"Obstruction" means ~~any an~~ an object, obstacle, or structure, ~~man-made or otherwise, which that~~ penetrates ~~any of the imaginary surfaces approach surfaces or runway object free area~~ at an aircraft landing area. The obstruction may be man-made or of natural growth, including trees.

"Obstruction clearance plane" means a plane sloping upward from the runway at a slope of ~~15:1 to the horizontal and tangent to or clearing~~ meeting the appropriate requirements to clear all obstructions within a specified area ~~surrounding the runway as shown in a profile view of that area. For federal aid airports the slope of the plane is 20:1.~~

"Person" means ~~any individual, corporation, government, political subdivision of the Commonwealth, or governmental subdivision or agency, business trust, estate, trust, partnership, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.~~

"Primary surface" means a surface longitudinally centered on a runway. ~~When the runway has a specially prepared hard surface, the primary surface extends 100 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The minimum width of a primary surface is 200 feet. See also 14 CFR 77.25, 77.28, and 77.29 for standards as they apply to federal aid airports.~~

"Public aircraft" means ~~an aircraft used exclusively for the service of any state or political subdivision thereof, or the federal government.~~

"Private-use Landing Area License" means a license issued for a facility not open for public use, including airports, heliports, helipads, and seaplane bases, that is within five nautical miles of a licensed public-use airport, in accordance with § 5.1-7 of the Code of Virginia.

"Runway" means a rectangular surface area that may be turf, paved, or water course, ~~which that~~ is designed specifically for the purpose of approaching and landing and taking-off and departing of aircraft.

"Runway object free area" means an imaginary area centered on the runway centerline that is clear of aboveground objects protruding above the runway centerline, except for allowable objects necessary for air navigation or aircraft ground maneuvering purposes.

"Runway safety area" means a rectangular area, symmetrical about the runway centerline, which includes the runway, runway shoulders, and ~~stopways~~ safety overruns, if present. The portion abutting the edge of the runway shoulders, runway ends, and ~~stopways~~ safety overruns is cleared, drained, graded, and usually turfed. Under normal conditions, the runway safety area is capable of supporting snow removal, firefighting, and rescue equipment and of accommodating the occasional passage of aircraft without causing major damage to the aircraft.

"~~Stopway~~" or "~~overrun~~" "Safety overrun" or "stopway" means ~~any an~~ an area beyond the takeoff runway, no less wide than the runway and centered upon the extended centerline of the runway, able to support ~~the airplane an aircraft~~ an aircraft during an aborted takeoff without causing structural damage to the ~~airplane aircraft~~ aircraft, and designated by the airport authorities for use in decelerating the ~~airplane aircraft~~ aircraft during an aborted takeoff.

"Seaplane base" means an area of water used or intended to be used for the landing and takeoff of aircraft, together with appurtenant shoreside buildings and facilities.

"Structure" means any (i) a man-made object, including a mobile object, constructed or erected by man, including but not limited to buildings, towers, cranes, smokestacks, earth formations, overhead transmission lines, flag poles, and ship masts or (ii) natural objects, including but not limited to trees.

"Threshold" means the beginning of that portion of the runway identified for the landing of aircraft. A threshold may be displaced, or moved down the runway, to provide for adequate safety provisions.

"Transitional surface" for nonfederal aid airports means a surface extending outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 5 to 1 from the sides of the primary surface and from the sides of the approach surfaces until they intersect the horizontal surface. See also 14 CFR 77.25, 77.28, and 77.29 for standards as they apply to federal aid airports.

"Ultralight" means any an aircraft that (i) is used or intended to be used for manned operation in the air by a single occupant, (ii) is used or intended to be used for recreation and sport purposes only, and (iii) does not have any U.S. a United States or foreign air worthiness certificate, and (iv) weighs less than 254 pounds empty weight, excluding floats and safety devices ~~which that~~ are intended for deployment in a potentially catastrophic situation; and (v) ~~that~~ has a fuel capacity not exceeding 5-U.S. five United States gallons; and (vi) is not capable of more than 55 knots calibrated airspeed at full power in level flight and has a power-off stall speed ~~which that~~ does not exceed 24 knots calibrated airspeed.

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Part III Airports and Landing Areas

24VAC5-20-120. Licenses.

~~A. Airports and landing areas, except private landing areas as defined set forth in § 5.1-7.2 of the Code of Virginia, shall be licensed by the department pursuant to § 5.1-7 of the Code of Virginia and 24VAC5-20-140. Such airports and landing areas or persons operating any airport or landing area proposing to add or extend the runways of such airport or landing area shall apply for an amended license pursuant to § 5.1-7 of the Code of Virginia. An initial license or renewal thereof will be issued following review and determination of the department for compliance with § 5.1-7 of the Code of Virginia and 24VAC5-20-140. Private landing areas as defined in § 5.1-7.2 of the Code of Virginia shall only be registered as provided for in 24VAC5-20-170. An application for a license shall be executed by the applicant or a duly authorized agent, under oath, on forms prescribed by the department, and shall be filed with the department.~~

~~B. Airports and landing areas which that are issued licenses pursuant to § 5.1-7 of the Code of Virginia shall be open to the general public on a nondiscriminatory basis. An application for such a license shall be signed by the airport sponsor, under oath, on a form prescribed by the department and submitted to the department by the applicant or his duly authorized agent under oath on forms prescribed by the department accompanied by the required supporting documents as specified on the form. Such An initial license, or renewal thereof, will be issued following department review and determination of compliance with § 5.1-7 of the Code of Virginia and 24VAC5-20-140. A license shall remain in effect for the period specified until modified, suspended, amended or revoked by the department.~~

~~C. Airport sponsors proposing to add or extend runways of an airport or landing area shall apply for a modified license pursuant to § 5.1-7 of the Code of Virginia.~~

~~D. If an airport or landing area should continually cease to be open to the public for one year and the airport sponsor wants to reopen the facility to the public, the airport sponsor must reapply for a license in accordance with § 5.1-7 of the Code of Virginia and 24VAC5-20-120 and must be in compliance with 24VAC5-20-140.~~

~~E. Licenses must be renewed every seven years or at the discretion of the department based on demonstrated need. Starting October 1995, the department will stagger license renewals by regions of the Commonwealth according to Virginia Aviation Board areas of responsibility as follows: Southwest region—September 30, 1996; West Central region—September 30, 1997; Blue Ridge region—September 30, 1998; Northern Virginia region—September 30, 1999; Central region—September 30, 2000; Richmond/Northern Neck region—September 30, 2001; and Hampton Road/Eastern Shore region—September 30, 2002. License expirations shall be staggered in accordance with criteria set by the~~

~~department, which include, but are not limited to, changes in legislation, standards, policy, processes, and procedures.~~

24VAC5-20-140. Minimum requirements for licensing.

~~A. The minimum standards which requirements that are required for initial and continued licensing under § 5.1-7 of the Code of Virginia will shall provide for:~~

~~1. An effective runway length of 2,000 feet, with 100 feet of overrun on each end, and unobstructed approach surfaces of 15:1 horizontal to vertical slope at each end of the runway.~~

~~2. An unobstructed primary surface(s) which is 2,200 feet in length and 200 feet in width.~~

~~3. An unobstructed transition surface(s) of 5:1 slope on either side of the primary and approach surfaces.~~

~~4. A minimum runway width of 50 feet, and minimum runway safety area width of 120 feet.~~

~~5. Aerial ingress and egress shall be available from both ends of the rectangular dimension of a runway.~~

1. An effective runway length of at least 2,000 feet for each direction of operation;

2. A minimum runway width of 50 feet;

3. A minimum runway safety area length equal to the length of the runway plus 100 feet at each end of the runway;

4. A minimum runway safety area width of 120 feet centered on the runway centerline;

5. A minimum unobstructed approach surface of 15:1 horizontal to vertical slope at each end of the runway;

6. An approach surface that is centered along the runway centerline and that begins at the threshold at a width of 250 feet, expands uniformly for a distance of 2,250 feet to a width of 700 feet, and continues at the width of 700 feet for a distance of 2,750 feet;

7. A minimum unobstructed runway object free area length equal to the length of the runway;

8. A minimum unobstructed runway object free area width of 250 feet centered on the runway centerline; and

6. 9. A displaced threshold, if an approach surface to either physical end of the runway is obstructed and the obstacle cannot be removed, that shall be located down the runway at the point where the obstruction clearance plane intersects the runway centerline.

7. An airport runway licensed specifically and solely for the purpose of accommodating short takeoff and landing aircraft may, at the discretion of the department, be less than 2,000 feet in length; however, all other dimensional standards will apply.

8. A heliport used for commercial public use purposes will provide for minimum dimensions of 75 feet by 75 feet. The heliport will have unobstructed primary, approach, and

~~transition surfaces in accordance with their definitions in this chapter.~~

B. The minimum requirements for the initial and continued licensing of an airport under the conditional Day/VFR Use Only License in accordance with 24VAC5-20-275 shall provide for:

1. An effective runway length of 2,000 feet in each direction of operation;
2. A minimum runway width of 50 feet;
3. A minimum runway safety area length equal to the length of the runway plus 100 feet at each end of the runway;
4. A minimum runway safety area width of 120 feet centered on the runway centerline;
5. A minimum unobstructed approach surface of 15:1 horizontal to vertical slope at each end of the runway; and
6. An approach surface that is centered along the runway centerline and that begins at the threshold at a width of 120 feet, expands uniformly for a distance of 500 feet to a width of 300 feet, and continues at the width of 300 feet for a distance of 2,500 feet.

C. The minimum requirements for the initial and continued licensing of a heliport open for public use under § 5.1-7 of the Code of Virginia shall provide for minimum standard dimensions as provided in the Federal Aviation Administration Advisory Circular 150/5390-2B Heliport Design, effective September 30, 2004.

D. The minimum requirements for the initial and continued licensing of a seaplane base open for public use under § 5.1-7 of the Code of Virginia shall provide for minimum standard dimensions as provided in the Federal Aviation Administration Advisory Circular 150/5395 Seaplane Bases, effective June 29, 1994.

~~9.~~ E. In addition to the investigation required for safety provisions as outlined in § 5.1-7 of the Code of Virginia, a detailed consideration of the economic, social, and environmental effects of the airport location shall be conducted for applications for new and modified licenses. These considerations shall include one or more public hearings as required to assure consistency with the goals and objectives of such planning as has been carried out by the community.

~~10.~~ F. Proof of financial responsibility prescribed in Chapter 8.2 (§ 5.1-88.7 et seq.) of Title 5.1 of the Code of Virginia must be furnished at the time of application of license, and such this financial responsibility thereafter must be maintained.

24VAC5-20-145. Waiver of minimum requirements.

~~Subdivisions 1, 2, 3, 4, and 5 of 24VAC5-20-140 may be waived upon application to the board setting forth the reasons that these standard(s) sought to be waived cannot be met.~~ A. Upon application by an airport sponsor, setting forth the

reason or reasons that one or more requirements sought to be waived cannot be met, the board may waive compliance of requirements of 24VAC5-20-140. In the waiver, the board shall specify the minimum requirement or requirements covered by the waiver and set terms for the waiver, including the time period for the waiver.

B. Considerations for granting the waiver shall be limited to topographical impossibility, possible financial expense to the Virginia Aviation Fund, volume and type of traffic and safety experience at the airport (i) a determination of no hazard based on a Federal Aviation Administration airspace evaluation and implementation of mitigation recommendations if applicable, (ii) a determination of impracticality due to topography, or (iii) a benefit cost analysis proving improvements as financially unfeasible.

~~Any~~ C. An airport having a license issued prior to October 1, 1995, and not meeting one or more minimum standards requirements for licensure in effect for that period on October 1, 1995, shall be exempt from having to comply with those noncomplying standards requirements for as long as the airport remains an active public-use facility unless those noncomplying requirements are caused by natural growth. Should such airport cease to be open to the public for one year, and subsequently reopen, it shall be required to comply with all applicable minimum standards for licensure.

~~All airports or landing areas that hold licenses as of September 30, 1995, that do not meet the minimum standards in effect on September 30, 1995, do not need to apply for a waiver in order to be relicensed. In compliance with § 5.1-7 of the Code of Virginia, the department shall issue a conditional license to all airports which were licensed as public use airports on October 1, 1995, which did not meet the minimum standards for licensure in effect on that date.~~

24VAC5-20-150. Transfer of licenses.

A. No license issued by the department for the operation of an airport or landing area may be transferred by the licensee without first obtaining the approval of the department.

B. Application for approval of a transfer of a license shall be made on forms the form prescribed by the department and accompanied by the required supporting documents as specified on the form. Approval may be granted only after satisfactory evidence has been submitted which that shows that the proposed transferee (i) is capable of operating the airport or landing area in accordance with the laws of this Commonwealth and these regulations; and (ii) is financially responsible per Chapter 8.2 (§ 5.1-88.7 et seq.) of Title 5.1 of the Code of Virginia; and has paid or guaranteed payment of all financial commitments due the Commonwealth under Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia or this chapter.

C. Before such a transfer shall be made, the transferee by written agreement shall assume the unfulfilled obligation to the Commonwealth to operate the airport or landing area under any and all agreements executed by any prior licensee

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or licensees of such airport or landing area to procure state funds for ~~such~~ the airport or landing area.

~~D. Upon conveyance, death, dissolution, or bankruptcy of a licensee, the airport license may be transferred department should be notified of the occurrence within 60 days, and the airport license may be transferred upon approval of the department. Transfer shall be effected within 180 days after death or dissolution of the licensee or the airport license shall become null and void.~~

24VAC5-20-160. ~~Public waters landing rights~~ Seaplane bases.

~~Counties, cities, and towns shall have the power to establish, maintain, and operate airports and landing areas and other navigation facilities in, over, and upon any public waters of this Commonwealth, or any submerged land under such public waters, within the limits or jurisdiction of or bordering on such counties, cities or towns. Any such areas established shall follow all the applicable permitting and licensing requirements of Part III of this chapter (24VAC5-20-120 et seq.). Seaplane bases may be established in, over, and upon any waters of this Commonwealth or any submerged land under such waters. Seaplane bases used or intended for public use need to be licensed in accordance with 24VAC5-20-120 and 24VAC5-20-140. Seaplane bases not used or intended for public use need to be registered or licensed in accordance with 24VAC5-20-170.~~

24VAC5-20-170. ~~Private or personal airports or landing areas.~~

~~Any A. A person establishing or owning property utilized for landing aircraft that is solely for private or personal use, and which is not open to the general public, a private landing area, including airports, heliports, helipads, and seaplane bases, shall be required only to register the landing area facility if it is not within more than five nautical miles of from a licensed public-use airport. Registration shall be accomplished on forms provided by the department.~~

~~Any B. A person establishing private or personal airports or owning a private landing area, including airports, heliports, helipads, and seaplane bases, within five nautical miles of a licensed public-use airport shall be licensed required to secure a Private-use Landing Area License for the facility if the applicant airport does not pose a hazard to the airspace and utilization by aircraft of the licensed public-use airport in question. Licenses for private use airports that are within five nautical miles of a licensed public use airport These licenses shall be issued once, and do not have to be renewed.~~

~~Prior to final registration or licensing of a private or personal airport, the applicant airport shall provide to the department written information from the local government having jurisdiction over such airport that such airport has received approval from the locality C. Application for the registration or licensing of a private landing area, including airports, heliports, helipads, and seaplane bases, shall be made on the form prescribed by the department and accompanied by the~~

~~required supporting documents as specified on the form, including written documentation with respect to zoning, special use permit, or any other land use requirements.~~

~~D. Aircraft landing at these landing areas and nonpublic use airports private landing areas, including airports, heliports, helipads, and seaplane bases, shall have prior approval of the landowners or controlling agency when reasonably practical. Aircraft landing at other than licensed public-use airports without such prior approval shall not be removed therefrom without the consent of the owner or lessee of such the property.~~

~~E. Privately-owned or publicly-owned hospitals may establish and maintain airports, heliports, helipads, or landing areas and may restrict the public use of these facilities to the takeoff and landing of aircraft for hospital related uses only.~~

24VAC5-20-180. Fees.

~~A. The fee for issuing a license of a public use airport or landing area for an airport, heliport, seaplane base, or landing area open for public use in accordance with 24VAC5-20-120 shall be \$25. The fee for each a license renewal or amendment, modification, or transfer shall be \$25.~~

~~B. No fee is charged for licensing a private use airport private-use landing area under 24VAC5-20-120 or registering a private use airport private-use landing area under 24VAC5-20-170.~~

Part IV Obstructions to Airspace

24VAC5-20-190. Determination of hazard.

~~The Department of Aviation airport sponsor shall conduct be responsible for insuring that an aeronautical study is conducted, when needed to satisfy the requisites requirements of this regulation, and to determine the effect of any a structure, either man-made or natural, that penetrates any imaginary surface the approach surfaces or runway object free area upon the safe and efficient operation of any a licensed, military, or government air navigation facility or airport. This determination shall be made based on criteria as defined by 24VAC5-20-200. If a structure constitutes an "obstruction" in accordance with these standards criteria, it shall be presumed to be a "hazard" until determined otherwise the by Virginia Aviation Board the board.~~

24VAC5-20-200. Obstruction criteria.

~~In conducting any A study required by this chapter the department may shall consider, but not be limited to, at least the following factors: (i) Federal Aviation Regulations 14 CFR 77.25, 14 CFR 77.28, and 14 CFR 77.29; Airport Traffic Patterns (ii) airport traffic patterns; IFR Airways and Routes (iii) Instrument Flight Rules (IFR) airways and routes; VFR (iv) Visual Flight Rules (VFR) routes and designated practice areas; and (v) terminal airspace; and (vi) instrument approach procedures.~~

24VAC5-20-210. Obstruction permit procedure.

A. This process shall not be applicable in those counties, cities, and towns ~~which that~~ have satisfied the local ordinance provisions of ~~§ 15.1-491.02~~ 15.2-2294 of the Code of Virginia. ~~See 24VAC5-20-220.~~

~~Any~~ B. A person seeking an obstruction permit from the board, as required by § 5.1-25.1 of the Code of Virginia, pertaining to structures hazardous to air navigation shall ~~submit to the department a permit request on such forms as prescribed by the department, including any ancillary data required by the department~~ provide to the department a copy of Federal Aviation Administration Form 7460-1 Notice of Proposed Construction or Alternation submitted to the Federal Aviation Administration and a copy of the response from the Federal Aviation Administration when available.

C. Upon receipt of ~~such a~~ request, the department shall (i) ~~notify the applicant of said receipt and supply available information pertaining to the obstruction analysis, with the date and location of the applicable board meeting;~~ (ii) conduct an analysis of the request using the criteria in 24VAC5-20-190 and 24VAC5-20-200 within ~~90~~ 120 days from the date of receipt, unless it advises the applicant that ~~such the~~ analysis will ~~take longer~~ require additional time; (iii) ~~supply the applicant with available information pertaining to the obstruction analysis and the date and location of the board meeting at which the request will be presented to the board;~~ and (iii) ~~shall~~ forward to the board its analysis in the form of a staff report with the ~~concurrent~~ recommendations regarding the permit request.

D. The board shall consider ~~each a~~ permit request at the next regularly scheduled meeting, following the completion of the department staff report. Its consideration may include, but is not limited to, the department's staff report, ~~any~~ verbal and written testimony of the applicant, ~~any~~ analysis ~~of~~ by the Federal Aviation Administration, and ~~any~~ comments from the local jurisdiction or jurisdictions where the structure is to be located. All decisions issued by the board shall be issued in writing stating the reasons for same. ~~Any~~ An affirmative decision may be accompanied by conditions deemed appropriate by the board including, but not limited to, obstruction marking, lighting, and similar safety features.

E. The applicant, if given an affirmative decision by the board, shall not be relieved by that decision of ~~any~~ local, state, or federal requirements as to zoning, building, variance, or other permits as may be required.

24VAC5-20-220. Model airport safety zoning ordinance.

~~Any~~ A county, city, or town in the Commonwealth seeking to comply with the mandate of ~~§ 15.1-491.02~~ 15.2-2294 of the Code of Virginia to enact local obstruction ordinances shall abide by the following:

1. The Model Airport Safety Zoning Ordinance developed by the ~~Department of Aviation~~ department shall be used as

a guide by localities. A copy of ~~such the model~~ ordinance is found in Appendix A (24VAC5-20-400) of this chapter.

2. The provisions of ~~any a~~ locally adopted ordinance shall be in substantial conformity with the Model Airport Safety Zoning Ordinance. Substantial conformity shall include, but not be limited to, protection of airspace from intrusions as described in Articles 3, 4, and 7 of the ~~Model~~ model.

3. The department may, at the request of a local governing body, review ~~any an~~ ordinance submitted prior to adoption by ~~such a~~ locality. In conducting its review, the department shall make an evaluation regarding the integrity of ~~such an~~ ordinance with respect to the requisites of the Model Airport Safety Zoning Ordinance. The review of the department may include, but not be limited to, the evaluation with respect to the ~~Model Ordinance model ordinance,~~ any comments of the locality, and its opinion concerning the expected effectiveness of the ordinance as it relates to the general intent of ~~§ 15.1-491.02~~ 15.2-2294 of the Code of Virginia.

Part VI
Modification, Suspension, Amendment or Revocation of Licenses

24VAC5-20-275. Conditional licenses.

A. ~~If at any time an airport or landing area cannot~~ does not meet ~~all of the minimum requirements for licensure that have been adopted by the department, or having met those requirements cannot maintain compliance,~~ the department ~~may issue conditional licenses to allow time for the airport or landing areas to take steps to meet those requirements~~ licensing as set forth in 24VAC5-20-140, a conditional use license shall be issued for a period of 180 days. Such ~~conditional~~ Conditional licenses shall specify the ~~nonstandard requirements and dictate the time allowable for the standards to be brought into compliance, that time being the same as the duration of the conditional license with which the airport is not in compliance.~~ Upon receipt of notification of nonconformance, the airport sponsor shall issue the appropriate Notice to Airmen for the noncompliant conditions in accordance with 24VAC5-20-140. The Notice to Airmen shall remain in place until the noncompliant condition is resolved.

B. ~~Within 60 days of notification of nonconformance, the airport sponsor must submit a written mitigation plan to the department that includes, but is not limited to, means of resolving noncompliant conditions, a schedule for the performance of the mitigation, and, if applicable, the cost to the Commonwealth. The airport sponsor or designee must present the mitigation plan to the board at the meeting specified in the notification of nonconformance. In response to the presentation, the board will recommend at least one of the following to the department:~~

1. Extend the conditional use license for a specified time period;

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2. Issue a "Day/VFR Use Only License";
3. Issue a waiver in accordance with 24VAC5-20-145;
4. Revoke the public-use license in accordance with 24VAC5-20-280.

Failure by the airport sponsor or designee to submit a written mitigation plan or failure to present the plan to the board will result in at least one of the actions above being implemented.

C. At any time an airport sponsor may request the department to reclassify its license. Upon reclassification of a license, the airport sponsor shall issue an appropriate Notice to Airmen for a minimum period of 180 days.

24VAC5-20-280. Sanctions, ~~notice~~ notices, and appeals.

A. The department may immediately temporarily ~~suspend or~~ modify ~~any or suspend~~ a license or permit issued pursuant to Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia and this chapter for violation of any of the provisions of the aviation laws of Virginia or of this chapter, at the instance of any person, upon duly sworn affidavit of ~~such the~~ person, or upon its own motion. ~~Such A~~ sanction shall be effective upon receipt of written notice of the sanction by the licensee at his last known address as disclosed by the records of the department. ~~Such A~~ temporary sanction shall be effective for a period not to exceed 90 days.

B. The department may ~~permanently suspend or~~ revoke ~~any a~~ license or permit issued pursuant to Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia and this chapter for violation of any of the provisions of the aviation laws of Virginia or of this chapter, at the instance of ~~any a~~ person, by duly sworn affidavit of ~~such the~~ person, or ~~on upon~~ its own motion. ~~Such An~~ action shall be effective 10 days after receipt of written notice of the action by the licensee at his last known address as disclosed by the records of the department, unless the licensee shall, before that time, show cause why ~~such the~~ sanction should not be imposed.

Temporary or permanent suspensions C. Suspensions or revocations by the department may be appealed by filing a written notice of appeal with the director of the department within 10 days of receipt of the notice of sanction, requesting an opportunity to be heard and to present evidence in an informal fact finding as defined in the Administrative Process Act (§ 9-6.14-1 2.2-4000 et seq. of the Code of Virginia). ~~Such an An~~ opportunity will be afforded by the director ~~not later than~~ within 21 days ~~after of~~ receipt by him of the written notice of appeal. The director will give written notice to the licensee of his decision to affirm, modify, or rescind the sanction within 10 days after this hearing.

D. The sanctions enumerated in this regulation shall be cumulative with other enforcement powers conferred upon the department by these regulations or by statute, and no action taken hereunder shall limit the jurisdiction of the department to impose other penalties authorized by these regulations or by statute. From the case decision of the

director of the department, an appeal lies as set out in the Administrative Process Act, (§ 9-6.14-1 2.2-4000 et seq. of the Code of Virginia).

24VAC5-20-300. ~~Airport hazards~~ Hazard notification.

~~Commercial, public use~~ Public-use airport and landing area owners, operators, and managers shall maintain vigilance as to airport conditions and shall notify the nearest Federal Aviation Administration Flight Service Station and the ~~Department of Aviation department~~ whenever ~~any~~ known hazards to aircraft exist at ~~such an~~ airport or landing area. Known hazards are ~~any~~ conditions ~~which that~~ create an unsafe situation and ~~include uncut grass on any runway in excess of eight inches in height.~~

24VAC5-20-330. Aviation facilities constructed in whole or in part with state funds.

Before ~~any~~ funds appropriated by the General Assembly of Virginia for the promotion of aviation, ~~or~~ the construction or improvement of aviation facilities at ~~any county, municipal or privately owned, commercial, a~~ public-use airport, ~~or heliport, or seaplane base owned by a county, city, town, individual, corporation, authority, or commission may be~~ allocated, the owner thereof shall enter into a written agreement with the department, acting through the director, ~~which that~~ shall provide for operation of ~~such the~~ airport, ~~or heliport, or seaplane base~~ as a public-use facility for a minimum period of 20 years or as specified within a written agreement. The ~~owner~~ airport sponsor of ~~any such an~~ aviation facility and ~~his or~~ its transferees, successors, and assignees who fails to fulfill the period of operation specified in any such agreement shall be liable for the return of ~~any such these~~ state funds on a pro rata basis.

~~Privately owned or publicly owned hospitals may establish and maintain airports and may restrict the public use of such airports to takeoff and landing of any aircraft for medical emergencies only; such airports may be funded in accordance with this chapter.~~

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 (24VAC5-20)

[Application for Public-use Airport License or License Modification, 200 DOAVAS 20101201 Airport License Application \(12/10\).](#)

[Application for Public-use Airport License Renewal, 200 DOAVAS 20101201 Airport License Renewal Application \(12/10\).](#)

[Application for Private-use Airport Registration or License, 200 DOAVAS 20101201 Private Airport Registration Application \(12/10\).](#)

[Notice of Proposed Construction or Alteration, FAA Form 7460-1 \(5/07\).](#)

DOCUMENTS INCORPORATED BY REFERENCE
(24VAC5-20)

[Advisory Circular, AC No. 150/5390-2B, Subject: Helicopter Design, September 30, 2004, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW, Washington, DC 20591 \(\[www.faa.gov/regulations_policies/advisory_circulars\]\(http://www.faa.gov/regulations_policies/advisory_circulars\)\).](#)

[Advisory Circular, AC No.: 150/5395-1, Subject: Seaplane Bases, June 29, 1994, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW, Washington, DC 20591 \(\[www.faa.gov/regulations_policies/advisory_circulars\]\(http://www.faa.gov/regulations_policies/advisory_circulars\)\).](#)150/5395-1 (6/29/94)

VA.R. Doc. No. R11-2811; Filed September 4, 2012, 3:00 p.m.

GENERAL NOTICES/ERRATA

CRIMINAL JUSTICE SERVICES BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Criminal Justice Services is conducting a periodic review of 6VAC20-40, Rules Relating to Compulsory Minimum Training Standards for Undercover Investigative Officers.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins September 24, 2012, and ends October 15, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Stephanie L. Morton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, email stephanie.morton@dcjs.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

DEPARTMENT OF FORENSIC SCIENCE

Approved Breath Alcohol Testing Devices

This list of approved breath alcohol testing devices replaces the list published in the Virginia Register (26:7) December 7, 2009.

Statutory Authority: §§ 9.1-1101, 18.2-267, and 18.2-268.9 of the Code of Virginia.

In accordance with 6VAC40-20-90 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following breath test device is approved for use in conducting breath tests:

The Intox EC/IR II with the Virginia test protocol, manufactured by Intoximeters, Inc., St. Louis, Missouri, utilizing an external printer.

In accordance with 6VAC40-20-100 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, for evidential breath test devices, mouthpieces that are compatible with the specific testing device are approved as supplies for use in conducting breath tests on approved breath test devices.

In accordance with 6VAC40-20-180 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following devices are approved for use as preliminary breath test devices:

1. The ALCO-SENSOR, ALCO-SENSOR II, ALCOSENSOR III, ALCO-SENSOR IV, and ALCOSENSOR FST manufactured by Intoximeters, Inc., St Louis, Missouri.
2. The CMI SD 2 and INTOXILYZER 400PA, manufactured by Lion Laboratories, Barry, United Kingdom.
3. The CMI SD 5 manufactured by CMI, Inc., Owensboro, Kentucky.
4. The LIFELOC PBA 3000*, LIFELOC FC10, LIFELOC FC10Plus and LIFELOC FC20, manufactured by Lifeloc Inc., Wheat Ridge, Colorado. *When used in the direct sensing mode only.
5. The ALCOTEST 6510 and ALCOTEST 6810 manufactured by Draeger Safety Diagnostics, Inc., Durango, Colorado.
6. The ALCOVISOR JUPITER, ALCOVISOR MERCURY and MARK V, manufactured by PAS Systems International, Inc., Fredericksburg, Virginia.

Contact: Stephanie Merritt, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-4107.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 28, 2012. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Eighty-Six (12)

Virginia's Instant Game Lottery 1366; "Hasbro Arcade" Final Rules for Game Operation (effective August 24, 2012)

Director's Order Number Eighty-Seven (12)

Virginia's Instant Game Lottery 1373; "\$1,000,000 Mega Fortune" Final Rules for Game Operation (effective August 24, 2012)

Director's Order Number Eighty-Eight (12)

Virginia's Instant Game Lottery 1358; "Ice Chest" Final Rules for Game Operation (effective August 24, 2012)

Director's Order Number Eighty-Nine (12)

Virginia's Instant Game Lottery 1313; "Double Hot Dice" Final Rules for Game Operation (effective August 24, 2012)

Director's Order Number Ninety-One (12)

Virginia's Instant Game Lottery 1359; "Lucky Roulette!" Final Rules for Game Operation (effective August 24, 2012)

Director's Order Number Ninety-Two (12)

Virginia's Instant Game Lottery 1380; "\$2,000 Spin" Final Rules for Game Operation (effective August 24, 2012)

Director's Order Number Ninety-Three (12)

Virginia's Instant Game Lottery 1381; "Hit \$500!" Final Rules for Game Operation (effective August 24, 2012)

Director's Order Number Ninety-Four (12)

Virginia Lottery's "Redskins VIP Bus Trip Sweepstakes" Final Rules for Game Operation (effective August 28, 2012)

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works 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 BOARD OF HEALTH

Title of Regulation: 12VAC5-31. Virginia Emergency Medical Services Regulations (amending 12VAC5-31-10, 12VAC5-31-20, 12VAC5-31-50, 12VAC5-31-60, 12VAC5-31-80, 12VAC5-31-90, 12VAC5-31-100, 12VAC5-31-120, 12VAC5-31-160, 12VAC5-31-170, 12VAC5-31-180, 12VAC5-31-200 through 12VAC5-31-240, 12VAC5-31-290, 12VAC5-31-330, 12VAC5-31-370 through 12VAC5-31-400, 12VAC5-31-420, 12VAC5-31-430, 12VAC5-31-460, 12VAC5-31-480, 12VAC5-31-500 through 12VAC5-31-540, 12VAC5-31-560, 12VAC5-31-570, 12VAC5-31-590, 12VAC5-31-650, 12VAC5-31-700, 12VAC5-31-710, 12VAC5-31-750, 12VAC5-31-760, 12VAC5-31-770, 12VAC5-31-790, 12VAC5-31-800 through 12VAC5-31-830, 12VAC5-31-860 through 12VAC5-31-910, 12VAC5-31-950, 12VAC5-31-960, 12VAC5-31-1010, 12VAC5-31-1030, 12VAC5-31-1040, 12VAC5-31-1140, 12VAC5-31-1210, 12VAC5-31-1250, 12VAC5-31-1260, 12VAC5-31-1270, 12VAC5-31-1810 through 12VAC5-31-1860, 12VAC5-31-1880, 12VAC5-31-1890, 12VAC5-31-1950, 12VAC5-31-2330, 12VAC5-31-2570, 12VAC5-31-2740; adding 12VAC5-31-610, 12VAC5-31-875, 12VAC5-31-885, 12VAC5-31-940, 12VAC5-31-970, 12VAC5-31-1050, 12VAC5-31-1165, 12VAC5-31-1305 through 12VAC5-31-1615; repealing 12VAC5-31-840, 12VAC5-31-1060, 12VAC5-31-1280, 12VAC5-31-1290, 12VAC5-31-1300, 12VAC5-31-1310 through 12VAC5-31-1710).

Publication: 29:1 V.A.R. 32-103 September 10, 2012.

Correction to Final Regulation:

Page 73, 12VAC5-31-1305, first sentence, change "September" to "October"

Page 74, 12VAC5-31-1325, first sentence, change "September 10, 2015" to "April 10, 2016"

Page 74, 12VAC5-31-1337 B, line 1, after "valid" delete "EMT" and insert "[EMT AEMT]" and line 3, after "his" delete "EMT Advanced" and insert "[EMT Advanced Advanced EMT]"

Page 76, 12VAC5-31-1355, first sentence, change "September 10, 2014" to "October 10, 2016"

Page 89, 12VAC5-31-1535 B 1, line 2, delete "24" and insert "[24 60]"

Page 89, 12VAC5-31-1543, first sentence, change "September 20, 1014" to "October 10, 2014"

General Notices/Errata

Page 90, 12VAC5-31-1544, first sentence, change "September" to "October"

VA.R. Doc. No. R08-877; Filed September 6, 2012, 3:04 p.m.

DEPARTMENT OF STATE POLICE

Title of Regulation: **19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations (amending 19VAC30-70-1, 19VAC30-70-3 through 19VAC30-70-10, 19VAC30-70-30, 19VAC30-70-40 through 19VAC30-70-230, 19VAC30-70-260, 19VAC30-70-290, 19VAC30-70-310, 19VAC30-70-330, 19VAC30-70-340, 19VAC30-70-350, 19VAC30-70-360, 19VAC30-70-390, 19VAC30-70-430, 19VAC30-70-450, 19VAC30-70-460, 19VAC30-70-490, 19VAC30-70-500, 19VAC30-70-510, 19VAC30-70-530, 19VAC30-70-550, 19VAC30-70-570, 19VAC30-70-580, 19VAC30-70-660; adding 19VAC30-70-9.1, 19VAC30-70-11, 19VAC30-70-25, 19VAC30-70-31, 19VAC30-70-32, 19VAC30-70-690).**

Publication: 28:24 VA.R. 1861-1933 July 30, 2012.

Correction to Final Regulation:

Page 1886, 19VAC30-70-110 B 9, delete "or CV boots are" and unstrike "is", "CV boots," and the comma after "joints"

VA.R. Doc. No. R12-2928; Filed September 7, 2012, 1:16 p.m.