VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $209.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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

PUBLICATION SCHEDULE AND DEADLINES

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

December 2012 through January 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 **(Tuesday)**	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 **(Tuesday)**	January 13, 2014
30:11	January 8, 2014	January 27, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

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

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

Name of Petitioner: American Academy of Dental Hygiene.

Nature of Petitioner's Request: To amend 18VAC60-20-50 by adding the American Academy of Dental Hygiene to the list of approved sponsors for continuing education.

Agency Plan for Disposition of Request: The petition will be published on December 31, 2012, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov to receive public comment ending January 25, 2013. The request to amend regulations and any comments for or against the petition will be considered by the board at its meeting scheduled for March 8, 2013.

Public Comment Deadline: January 25, 2013.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R13-13; Filed November 29, 2012, 10:08 a.m.

Agency Decision

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

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

Name of Petitioner: Tabitha McGlaughlin.

Nature of Petitioner's Request: To amend 18VAC60-20-50, Requirements for continuing education, to include Ursus Lifesavers and Aquatics as approved providers for BLS training.

Agency Decision: Request denied.

Statement of Reason for Decision: The petition was considered by the board at its meeting on December 7, 2012. Since the board does not have the time and resources to properly evaluate each potential provider of continuing education, it has relied on those nationally recognized organizations listed in 18VAC60-20-50 of its regulations. If the petitioner's business offered courses under the auspices of one or more such organizations, the continuing education hours would be acceptable. Therefore, the board declined to initiate a rulemaking process and voted to retain 18VAC60-20-50 as currently written.

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

VA.R. Doc. No. R13-01; Filed December 10, 2012, 2:38 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider repealing **8VAC20-440, Regulations Governing the Employment of Professional Personnel** and promulgating **8VAC20-441, Regulations Governing the Employment of Professional Personnel.** The purpose of the proposed action is to promulgate new regulations for the employment of professional personnel. The new regulations will address (i) aligning the regulations with the Code of Virginia revisions, (ii) reviewing definitions, (iii) examining the phases of employment, and (iv) other areas of the regulations as needed. The entire regulation will be examined.

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

Statutory Authority: § 22.1-302 of the Code of Virginia.

Public Comment Deadline: January 30, 2013.

Agency Contact: Patty S. Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

VA.R. Doc. No. R13-3478; Filed December 4, 2012, 8:56 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider repealing **8VAC20-542, Regulations Governing the Review and Approval of Education Programs in Virginia** and promulgating **8VAC20-543, Regulations Governing the Review and Approval of Education Programs in Virginia.** The purpose of the proposed action is to promulgate new standards for the accreditation of professional education programs and the review and approval of education programs in Virginia. The new regulations will address (i) requirements for the approval of programs to prepare instructional personnel at institutions of higher education; (ii) the accountability measures required for program approval; (iii) requirements for professional studies, including clinical experiences; (iv) the competencies required to be completed in all programs that must be aligned, among other standards, with the Standards of Learning; and (v) other areas of program approval as needed. The entire regulation will be examined.

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

Statutory Authority: § 22.1-298 of the Code of Virginia.

Public Comment Deadline: January 30, 2013.

Agency Contact: Patty S. Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

VA.R. Doc. No. R13-3477; Filed December 4, 2012, 8:58 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-211, Resource, Foster and Adoptive Family Home Approval Standards.** This regulation addresses standards for resource, foster, and adoptive homes approved by local departments of social services. The purpose of the proposed action is to clarify (i) the circumstances under which variances can be allowed to make state regulations consistent with state and federal law and (ii) that resource parents are mandated reporters and as such must be trained. These changes are needed as a result of changes made to the Code of Virginia during the 2012 General Assembly session. Additionally, requirements for maintaining approval are being updated based upon recommendations from regional specialists and input from the department's workgroup.

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

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Public Comment Deadline: January 30, 2013.

Agency Contact: Em Parente, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7538, FAX (804) 726-7895, or email em.parente@dss.virginia.gov.

VA.R. Doc. No. R13-3458; Filed December 11, 2012, 8:09 a.m.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department for the Blind and Vision Impaired has **WITHDRAWN** the Notice of Intended Regulatory Action to repeal **22VAC45-50, Regulation Governing Provisions of Services in Vocational Rehabilitation,** and promulgate **22VAC45-51, Regulations Governing Provisions of Services in Vocational Rehabilitation,** that was published in 25:4 VA.R. 570 October 27, 2008.

Statutory Authority: §§ 51.5-65 and 51.5-71 of the Code of Virginia.

Agency Contact: Susan D. Payne, Program Director, Vocational Rehabilitation, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3351, TTY (804) 371-3140, or email susan.payne@dbvi.virginia.gov.

VA.R. Doc. No. R09-1168; Filed December 4, 2012, 1:46 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Final Regulation

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50, 4VAC15-20-100, 4VAC15-20-130, 4VAC15-20-210).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) update the department's "List of Native and Naturalized Fauna of Virginia" consistent with current scientific and common names and knowledge of the wildlife of the Commonwealth; (ii) revise the definition of "wheelchair," define "other power-driven mobility devices," and comply with the provisions of the Americans with Disabilities Act of 1990 as pertains to the use of such devices on department-owned lands; (iii) add the black rail to the Virginia List of Endangered and Threatened Species, thereby prohibiting the taking, transportation, possession, or sale of these rare native species without a permit, remove the bald eagle from that list, and adopt the updated and modified federal list of endangered and threatened wildlife species; and (iv) add the marbled crayfish to the list of Nonindigenous Aquatic Nuisance Species whose introduction into Virginia would be detrimental to the native fish and wildlife or the economy of the Commonwealth, thereby prohibiting the importation, possession, transportation, sale, and release of this species within Virginia without a permit.

Changes since publication of the proposed remove (i) the Virginia northern flying squirrel and (ii) the snuffbox, spectaclecase, and sheeprose molluscs from the list of endangered or threatened species in 13VAC15-20-130.

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal" and "domestic animal."

In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2010~~ 2012 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia which have established wild, self-sustaining populations, as included in the department's ~~2010~~ 2012 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus.

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries) including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa domestica), including pot-bellied pig.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

Domesticated races of red fox (Vulpes) where their coat color can be distinguished from wild red fox.

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated races of European rabbit (Oryctolagus cuniculus).

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (Columba domestica and Columba livia) and domesticated races of pigeons.

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.

4VAC15-20-100. Prohibited use of vehicles on department-owned lands.

It shall be unlawful on department-owned lands to drive through or around gates designed to prevent entry with any type of motorized vehicle or to use such vehicles to travel anywhere on such lands except on roads open to vehicular traffic. Any motor-driven [~~conveyance~~ vehicle] shall conform with all state laws for highway travel; provided, that this requirement shall not apply to the operation of motor vehicles for administrative purposes by department-authorized personnel on department-owned lands. ~~A motorized wheelchair suitable for use in an indoor pedestrian area is not considered a motorized vehicle and, therefore, is not covered by any restrictions on the use of motorized vehicles on department-owned lands. For purposes of this section, the term "wheelchair" means a device designed solely for use by a mobility impaired person for locomotion that is suitable for use in an indoor pedestrian area.~~ Nothing in this section shall be construed to prohibit the department from allowing the use of wheelchairs or other power-driven mobility devices by individuals with mobility disabilities in accordance with the federal Americans with Disabilities Act of 1990 (P.L. 101-336, 104 Stat. 327).

For the purposes of this section, the term "wheelchair" means a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor, locomotion. "Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistive mobility devices, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended as of [~~April 6~~ August 13,] 2012, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to § 29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter,variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, longhead	Percina macrocephala
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula

Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum tigrinum

Threatened:

Salamander, Mabee's	Ambystoma mabeei
Treefrog, barking	Hyla gratiosa

3. Reptiles:

Endangered:

Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia reticularia

Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

4. Birds:

Endangered:

Plover, Wilson's	Charadrius wilsonia
Rail, black	Laterallus jamaicensis
Wren, Bewick's	Thryomanes bewicki bewickii

Threatened:

~~Eagle, bald~~	~~Haliaeetus leucocephalus~~
Falcon, peregrine	Falco peregrinus
Sandpiper, upland	Bartramia longicauda
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica

5. Mammals:

Endangered:

Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
[~~Squirrel, Virginia northern flying~~]	[~~Glaucomys sabrinus fuscus~~]
Vole, rock	Microtus chrotorrhinus

Threatened:

Shrew, Dismal Swamp southeastern	Sorex longirostris fisheri

6. Molluscs:

Endangered:

Ghostsnail, thankless	Holsingeria unthanksensis
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio cordatum	Pleurobema
Pigtoe, pyramid	Pleurobema rubrum
[~~Snuffbox~~]	[~~Epioblasma triquetra~~]
Springsnail,	Fontigens bottimeri

Appalachian	
Springsnail (no common name)	Fonitgens morrisoni
[~~Spectaclecase~~]	[~~Cumberlandia monodonta~~]
Supercoil, spirit	Paravitrea hera

Threatened:

Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pearlymussel, slabside	Lexingtonia dolabelloides
Pigtoe, Atlantic	Fusconaiamasoni
Pimpleback	Quadrula pustulosa pustulosa
Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
[~~Sheepnose~~]	[~~Plethobasus cyphyus~~]
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

8. Crustaceans:

Endangered:

Crayfish, Big Sandy	Cambarus veteranus

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

4VAC15-20-210. Definitions; nonindigenous aquatic nuisance species.

A. In addition to the species already listed in § 29.1-571 of the Code of Virginia, the board hereby designates the following species as nonindigenous aquatic nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Fish.

a. Black carp (Mylopharyngodon piceus) ~~.~~

2. Invertebrates.

a. New Zealand mudsnail (Potamopyrgus antipodarum) ~~.~~

b. Rusty crayfish (Orconectes rusticus) ~~.~~

c. Chinese mitten crab (Eriocheir sinensis)

d. Marbled crayfish (Marmorkrebs – genus Procambarus)

B. It shall be unlawful to take, possess, transport, import, sell, or offer for sale within the Commonwealth any nonindigenous aquatic nuisance species except as authorized by law or regulation.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-20)

~~2010 List of Native and Naturalized Fauna of Virginia, Virginia Department of Game and Inland Fisheries.~~

List of Native and Naturalized Fauna of Virginia, March 2012, Virginia Department of Game and Inland Fisheries.

VA.R. Doc. No. R12-3325; Filed December 5, 2012, 4:57 p.m.

Final Regulation

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) add the marbled crayfish to the list of predatory and undesirable species thereby prohibiting the importation, possession, or sale of that species without a permit and (ii) update the list to reflect current common and scientific names.

4VAC15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:			
Order	Family	Genus/Species	Common Name
Anura	~~Buforidae~~ Bufonidae	~~Bufo marinus~~ Rhinella marina	~~Giant or marine toad*~~ Cane toad*
	Pipidae	Hymenochirus spp. Pseudohymenochiris merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	Ambystoma tigrium mavortium	Barred tiger salamander
		A. t. diaboli	Gray tiger salamander
		A. t. melanostictum	Blotched tiger salamander
BIRDS:			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan
FISH:			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cyprinidae	Aristichyhys nobilis	Bighead carp*
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodom piceus	Black carp*
		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby
		Neogobius melanostomus	Round goby
Perciformes	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*

Siluriformes	Clariidae	All species	Air-breathing catfish
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
MAMMALS:			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs*, Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except Mustela putorius furo)	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	~~Hyenas*~~ Hyenas and Aardwolves*
	~~Protelidae~~	~~Proteles cristatus~~	~~Aardwolf*~~
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Lepridae	Lepus europeaeous	European hare
		Oryctolagus cuniculus	European rabbit
Rodentia		All species native to Africa	All species native to Africa
	Sciuridae	Cynomys spp.	Prairie dogs
MOLLUSKS:			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena polymorpha	Zebra mussel
REPTILES:			
Order	Family	Genus/Species	Common Name
Squamata	Alligatoridae	All species	Alligators, caimans*
	Colubridae	Boiga irregularis	Brown tree snake*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*

CRUSTACEANS:			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Orconectes rusticus	Rusty crayfish
		Procambarus sp.	Marbled crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A, except members of the Cervidae family, African rodents, and prairie dogs, that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§ 2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.

F. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

G. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidea, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

H. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R12-3326; Filed December 11, 2012, 1:21 a.m.

Final Regulation

Title of Regulation: **4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-25).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) establish creel and length limits on yellow perch in Lake Moomaw; (ii) establish creel and length limits on red drum, spotted sea trout (speckled trout), grey trout (weakfish), and southern flounder in Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries; and (iii) adjust

length limits on largemouth, smallmouth, spotted, or striped bass in certain locations.

4VAC15-320-25. Creel and length limits.

The creel limits (including live possession) and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass, spotted bass		5 per day in the aggregate; No statewide length limits	**Lakes**	
			Briery Creek Lake	No bass ~~14~~ 16 to 24 inches, only 1 per day longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 bass less than 14 inches
			Claytor Lake	No bass less than 12 inches
			Flannagan Reservoir	No bass less than 12 inches
			Lake Gaston	Only 2 of 5 bass less than 14 inches
			Leesville Reservoir	Only 2 of 5 bass less than 14 inches
			Lake Moomaw	No bass less than 12 inches
			Philpott Reservoir	No bass less than 12 inches
			Quantico Marine Base waters	No bass 12 to 15 inches
			Smith Mt. Lake and its tributaries below Niagara Dam	Only 2 of 5 bass less than 14 inches
			Rivers	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell counties	No bass 11 to 14 inches
			Dan River and tributaries down stream from the ~~Brantley Steam Plant~~ Union Street Dam, Danville	Only 2 of 5 bass less than 14 inches

			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No bass 14 to 22 inches, only 1 per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA – WV state line and its tributary Little River downstream from Little River Dam in Montgomery County (This does not include Claytor Lake which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA-TN state line	No bass less than 20 inches, only 1 per day longer than 20 inches
			North Fork Shenandoah River – Rt. 42 bridge, Rockingham Co. downstream to the confluence with S. Fork Shenandoah at Front Royal	No bass 11 to 14 inches
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No bass less than 15 inches from March 1 through June 15
			Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte Co.	Only 2 of 5 bass less than 14 inches

			Shenandoah River – Confluence of South Fork and North Fork rivers, Front Royal, downstream, to the Warren Dam, near Front Royal	No bass 11 to 14 inches
			Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Rt. 17/50 bridge downstream to VA - WV state line	No bass 11 to 14 inches
			South Fork Shenandoah River -	
			Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah	No bass 11 to 14 inches
			Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal	No bass 11 to 14 inches
			Staunton River -	
			Leesville Dam (Campbell County) downstream to the ~~U.S. Route 360 Bridge (Halifax/Charlotte County Line) near Clover, VA~~ mouth of Difficult Creek, Charlotte County	No smallmouth bass less than 20 inches, only 1 per day longer than 20 inches

striped bass	landlocked striped bass and landlocked striped bass x white bass hybrids	4 per day in the aggregate; No fish less than 20 inches	Buggs Island (Kerr) reservoir including the Staunton River to Leesville Dam and the Dan River to ~~Brantly Steam Plant~~ Union Street Dam (Danville)	October 1 - May 31: 2 per day in the aggregate; No striped bass or hybrid striped bass less than ~~26~~ 24 inches; June 1 - September 30: 4 per day in the aggregate; No length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate; November 1 - May 31: No striped bass 26 to 36 inches; June 1 - October 31: No length limit
			Lake Gaston	4 per day in the aggregate October 1 - May 31: No striped bass or hybrid striped bass less than 20 inches June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		
	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day; No striped bass less than 18 inches		

white bass		5 per day; No statewide length limits		
walleye		5 per day; No walleye less than 18 inches	New River upstream of Buck Dam in Carroll County	No walleye less than 20 inches
			Claytor Lake and the New River upstream of Claytor Lake Dam to Buck Dam in Carroll County	February 1 - May 31: 2 walleye per day; no walleye 19 to 28 inches; June 1 - January 31: 5 walleye per day; no walleye less than 20 inches
sauger		2 per day; No statewide length limits		
yellow perch		No statewide daily limit; No statewide length limits	Lake Moomaw	10 per day
chain pickerel		5 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs	No daily limit
northern pike		2 per day; No pike less than 20 inches		
muskellunge		2 per day; No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to the VA - WV state line, including Claytor Lake	1 per day No muskellunge less than 42 inches
bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit

crappie (black or white)		25 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Flannagan and South Holston reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County.	No daily limit
			Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with Roanoke bass; No rock bass less than 8 inches
Roanoke bass		No statewide daily limit; No statewide length limits	Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with rock bass; No Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit
	blue catfish	20 per day, only 1 blue catfish per day longer than 32 inches	All rivers below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
	yellow, brown, and black bullheads	No daily limit; No length limits		

American shad and hickory shad	James River above the fall line (14th Street Bridge), the Meherrin River above Emporia Dam, the Chickahominy River above Walkers Dam, the Appomattox River above Harvell Dam, the Pamunkey River and the Mattaponi River above the Rt. 360 bridge, and the Rappahannock River above the Rt. 1 bridge, and Virginia waters of Lake Gaston and Buggs Island (Kerr) Reservoir and tributaries to include the Dan and Staunton rivers	No possession (catch and release only)		
	(below the fall line) in tidal rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		
	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	10 per day in the aggregate No length limits		
anadromous (coastal) alewife and blueback herring	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		

	Meherrin River, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	No possession		
red drum	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	1 per day; No drum less than 18 inches or greater than 27 inches		
spotted sea trout (speckled trout)	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	4 per day; No sea trout less than 14 inches		
grey trout (weakfish)	Back Bay and tributaries including Lake Tecumseh and North Landing River and its tributaries	1 per day; No grey trout less than 12 inches		
southern flounder	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	6 per day; No flounder less than 15 inches		
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			
nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.			

VA.R. Doc. No. R12-3327; Filed December 11, 2012, 1:47 a.m.

Final Regulation

Title of Regulation: **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, Etc. (amending 4VAC15-350-70).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) add crossbows as a legal method of bow and arrow angling for nongame fish to help eliminate confusion with this fishing method and (ii) allow the harvest of bowfin and catfish with bow and arrow below the fall line in tidal rivers of the Chesapeake Bay.

4VAC15-350-70. Taking common carp, northern snakehead, bowfin, catfish, and gar with bow and arrow or crossbow.

A. Season. Except as otherwise provided by local legislation or as posted, it shall be lawful to take common carp, northern

snakehead, and gar from the public inland waters of the Commonwealth and bowfin and catfish from below the fall line in tidal rivers of the Chesapeake Bay, except waters stocked with trout, by means of bow and arrow or crossbow.

B. Poison arrows or explosive-head arrows prohibited. It shall be unlawful to use poison arrows or arrows with explosive heads at any time for the purpose of taking common carp, northern snakehead, bowfin, catfish, or gar in the public inland waters of the Commonwealth.

C. Fishing license required. All persons taking fish in the manner mentioned in this section shall be required to have a regular fishing license.

D. Creel limits. Common carp, northern snakehead, bowfin, catfish, and gar – unlimited, provided that any angler taking northern snakehead immediately kill such fish and notify the department, as soon as practicable, of such actions.

VA.R. Doc. No. R12-3328; Filed December 11, 2012, 2:09 a.m.

Final Regulation

REGISTRAR'S NOTICE: For the following watercraft regulations, the Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 (Boating Laws) of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-370. Watercraft: In General (amending 4VAC15-370-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, 29.1-701, and 29.1-735 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendment reduces the distance allowed to operate or anchor a vessel from within 840 feet to within 600 feet below the Leesville Dam.

4VAC15-370-40. Vessels prohibited within certain areas below John H. Kerr Dam and Leesville Dam.

It shall be unlawful to operate or anchor any vessel within 600 feet below the John H. Kerr Dam or within ~~840~~ 600 feet below the Leesville Dam.

VA.R. Doc. No. R12-3329; Filed December 11, 2012, 2:21 a.m.

Final Regulation

Title of Regulation: **4VAC15-390. Watercraft: Safe and Reasonable Operation of Vessels (amending 4VAC15-390-50).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, 29.1-701, and 29.1-735 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments replace the term "right of way" with the term "responsibility between vessels," consistent with changes to the U.S. Coast Guard's Navigation Rules of the Road.

4VAC15-390-50. ~~Right of way~~ Responsibility between vessels.

A. The operator of a motorboat underway shall keep his vessel out of the way of:

1. A vessel not under command;

2. A vessel restricted in its ability to maneuver;

3. A vessel engaged in fishing with nets or other commercial fishing apparatus that restricts maneuverability; and

4. A sailing vessel.

B. The operator of a sailing vessel underway shall keep his vessel out of the way of:

1. A vessel not under command;

2. A vessel restricted in its ability to maneuver; and

3. A vessel engaged in fishing with nets or other commercial fishing apparatus that restricts maneuverability.

C. The operator of a vessel engaged in fishing with nets or other commercial fishing apparatus that restricts maneuverability when underway shall, so far as possible, keep his vessel out of the way of:

1. A vessel not under command; and

2. A vessel restricted in its ability to maneuver.

D. The pilot of a seaplane on the water shall, in general, keep his seaplane well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, he shall comply with the ~~right of way~~ responsibility between vessels provisions above.

E. When two sailing vessels are approaching one another, so as to involve risk of collision, the operator of one of them shall keep out of the way of the other as follows:

1. When each has the wind on a different side, the vessel that has the wind on the left side shall keep out of the way of the other;

2. When both have the wind on the same side, the vessel that is to windward (upwind) shall keep out of the way of the vessel that is to leeward (downwind); and

3. If a vessel with the wind on the left side sees a vessel to windward (upwind) and cannot determine with certainty whether the other vessel has the wind on the left or on the right side, it shall keep out of the way of the other.

For the purpose of this section, the windward (upwind) side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

VA.R. Doc. No. R12-3330; Filed December 11, 2012, 2:33 a.m.

Final Regulation

Title of Regulation: **4VAC15-400. Watercraft: Accident and Casualty Reporting (amending 4VAC15-400-20).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, and 29.1-701 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments allow for boating operators involved in an accident that requires a written report to make the required immediate notification to any member of the department instead of to a sworn officer within the law-enforcement division only.

4VAC15-400-20. Immediate notification of reportable accident.

When an accident occurs that requires a written report in accordance with 4VAC15-400-30, the operator shall, without delay, by the quickest means available, notify the department in Richmond, Virginia, or the most immediately available member of the ~~department's law-enforcement (game warden) force~~ department, of:

1. The date, time, and exact location of the occurrence;

2. The major details of the accident including the name of each person who died or disappeared;

3. The number and name of the vessel; and

4. The names and addresses of the owner and operator.

When the operator of a vessel cannot give the notice required by the foregoing, each person, on board the vessel shall notify the department or a member of its law-enforcement force, or determine that the notice has been given.

VA.R. Doc. No. R12-3331; Filed December 11, 2012, 2:49 a.m.

Final Regulation

Title of Regulation: **4VAC15-410. Watercraft: Boating Safety Education (amending 4VAC15-410-20, 4VAC15-410-40, 4VAC15-410-110, 4VAC15-410-120, 4VAC15-410-140, 4VAC15-410-150).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, 29.1-701, and 29.1-735.2 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments: (i) provide for the issuance of a Lifetime Boater's Card as certification of compliance with boating safety education requirements to an individual who is or was previously registered as a commercial fisherman; and provide that for the purpose of operating a recreational vessel a registered commercial fishing license is considered valid regardless of whether the license is current; (ii) raise the passing score for the boating safety education Proctored Virginia Challenge Exam from 70% to 80% and require anyone failing an equivalencey exam the second time, in order to receive a completion card, to complete an approved boating safety course online or in the classroom; (iii) establish that a person who has not completed a NASBLA-approved course that is accepted by the department may not supervise an operator of a vessel who has also not completed such course; (iv) establish that for specified described purposes certain licenses, certificate, or registration to operate a vessel or a pleasure craft are considered valid regardless of whether such authorization is current; (v) increase the fee charged for a replacement Virginia Boater Education Card from $8 to $10, making it uniform with the fee for an original card; and (vi) amend definitions and standards as necessary to support the above.

4VAC15-410-20. Definitions.

As used in this chapter, unless the context clearly requires a different meaning, the following words and terms shall have the following meanings:

"Approved course provider" is any individual, business, or organization that makes available to the boating public a boating safety education course approved by the National Association of State Boating Law Administrators and accepted by the department. An approved course provider shall have executed and have on file a valid cooperative agreement with the department. Persons who simply provide classroom instruction for an approved course provider shall not be considered an approved course provider. The department will make information regarding such approved courses and providers readily available for public access.

"Board" means the Board of Game and Inland Fisheries.

"Boating safety education course" means a course offered in the classroom, through the Internet, or through an electronic format such as CD-ROM that provides a course content and test questions that have been reviewed and approved by the National Association of State Boating Law Administrators in accordance with the National Boating Education Standards, updated January 1, 2008, and accepted by the department. A boating safety education course shall include no less than 50 test questions, which shall include at least 10 test questions specific about Virginia boating laws.

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

"Dockside safety checklist" means a document provided by the department that consists of selected facts about Virginia boating laws and safe boat operation that a rental or livery agent or motorboat leasing business is required to present to those who rent or lease a motorboat or personal watercraft. The dockside safety checklist must be reviewed and initialed by the person operating the motorboat before the boat can be rented/leased and operated.

"Equivalency exam" means a written examination that is developed by the department to test the knowledge of information included in the curriculum of a boating safety education course (may also be referred to as a challenge exam). The equivalency exam is intended to provide experienced and knowledgeable boaters with the opportunity to meet the boating safety education compliance requirement set forth in § 29.1-735.2 of the Code of Virginia without having to take and successfully complete a boating safety education course. The equivalency exam shall be comprised of no less than 75 or more than 100 test questions, shall include no less than 25 questions specific about Virginia boating laws, shall be proctored by an individual(s) specifically designated by the department , and shall be completed without the use of any reference material. A minimum score of at least ~~70%~~ 80% shall be considered passing.

"Motorboat" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion and for this chapter shall mean with a motor of 10 horsepower or greater.

"NASBLA" means the National Association of State Boating Law Administrators.

"NASBLA-approved course" means a boating safety education course that has been reviewed and approved by NASBLA.

"Onboard direct supervision" as referenced in § 29.1-735.2 B 6 and 9 of the Code of Virginia occurs when a person maintains close visual and verbal contact with, provides adequate direction to, and can immediately assume control of a motorboat from the operator of a motorboat. A person who is water skiing, or is in the cabin of a motorboat and not at the helm/wheel is not considered to be in a position capable of providing direct supervision.

"Operate" means to navigate or otherwise control the movement of a motorboat or vessel.

"Optional Virginia Boater Education Card" means a card authorized for issuance by the department to persons who (i) can show they have met the minimum standard of boating safety education course competency, (ii) possess a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government, (iii) possess a Canadian Pleasure Craft Operator's Card, or (iv) possess a valid commercial fisherman registration pursuant to § 28.2-241 of the Code of Virginia. For the purpose of this subsection a license is considered valid regardless of whether the license is current. This card may be issued as a replacement boating safety course card.

"Personal watercraft" means a motorboat less than 16 feet in length that uses an inboard motor powering a jet pump as its primary motive power and that is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

"Proctored" means that the written equivalency exam has been administered under the direct supervision of (i) a designated member of the United States Coast Guard Auxiliary or the United States Power Squadrons®, (ii) a designated department employee or a department volunteer boating safety instructor, or (iii) an individual who has been approved for such purpose by the department.

"Temporary operator's certificate" means a nonrenewable document issued with the certificate of number for the motorboat or personal watercraft, if the boat is new or was sold with a transfer of ownership. A temporary operator's certificate shall be issued only by the department, by any person authorized by the director to act as an agent to issue a certificate of number pursuant to § 29.1-706 of the Code of Virginia, or by a license agent of the department authorized to issue a temporary registration certificate for a motorboat or personal watercraft. A temporary operator's certificate shall allow the owner(s) to operate a motorboat with a motor of 10 horsepower or greater or personal watercraft in Virginia for 90 days.

"Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"Waters of the Commonwealth" means any public waters within the territorial limits of the Commonwealth.

4VAC15-410-40. Provisions for compliance and minimum standards for boating safety education course competency.

A. A person shall be considered in compliance with the requirements for boating safety education if he meets one or more of the following provisions pursuant to § 29.1-735.2 B 1 through 9 of the Code of Virginia:

1. Completes and passes a boating safety education course;

2. Passes an equivalency exam;

3. Possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card. For the purposes of this subsection a license is considered valid regardless of whether the license is current;

4. Possesses a temporary operator's certificate;

5. Possesses a rental or lease agreement from a motorboat or personal watercraft rental or leasing business that lists the person as the authorized operator of the motorboat;

6. Operates the motorboat under onboard direct supervision of a person who meets the requirements of this section;

7. Is a nonresident temporarily using the waters of Virginia for a period not to exceed 90 days (which means operating a boat not registered in Virginia), and meets any applicable boating safety education requirements of the state of residency, or possesses a Canadian Pleasure Craft Operator's Card;

8. Has assumed operation of the motorboat or personal watercraft due to the illness or physical impairment of the initial operator, and is returning the motorboat or personal watercraft to shore in order to provide assistance or care for the operator; or

9. Is or was previously registered as a commercial fisherman pursuant to § 28.2-241 of the Code of Virginia or is under the onboard direct supervision of the commercial fisherman while operating the commercial fisherman's boat. For the purpose of operating a recreational vessel, a registered commercial fishing license is considered valid regardless of whether the license is current.

B. The minimum standards for boating safety education course competency required by the department are:

1. Successful completion of a classroom boating safety education course in person and a passing score of at least 70% on a written test administered closed-book at the conclusion of the course by the designated course instructor(s) or other designated course assistant;

2. Successful completion of a classroom boating safety education course in person and a passing score of at least 90% on a written test administered open-book at the conclusion of the course by the designated course instructor(s) or other designated course assistant;

3. Successful completion of a boating safety education course offered through the Internet or through an electronic format such as CD-ROM and a passing score of at least 90% on a self-test administered in conjunction with the course material; or

4. A score of at least ~~70%~~ 80% on a proctored equivalency exam.

4VAC15-410-110. Equivalency exam criteria.

A. The department shall develop and make available a written equivalency exam to test the knowledge of information included in the curriculum of a boating safety education course. Such exam shall provide experienced and knowledgeable boaters with the opportunity to meet the boating safety education compliance requirement set forth in § 29.1-735.2 of the Code of Virginia without having to take and successfully complete a boating safety education course.

B. The equivalency exam shall be proctored by an individual(s) specifically designated by the department. The use of reference materials shall not be allowed while the exam is being administered and the exam shall be completed in a single session with a time limit not to exceed three hours. A person who fails an equivalency exam [the second time] is required to complete a NASBLA approved boating safety education course that is accepted by the department.

C. The equivalency exam shall be comprised of no less than 75 nor more than 100 exam questions and a minimum score of at least ~~70%~~ 80% shall be considered passing. Upon successful completion, an exam certificate and/or card shall be issued to the person completing the exam.

4VAC15-410-120. Requirements for motorboat rental and leasing businesses and the dockside safety checklist program.

A. Any person, business, or organization that provides a motorboat with a motor of 10 horsepower or greater or personal watercraft for rent or lease shall provide the rental/lease boat operator with a dockside safety checklist provided by the department. Other persons authorized to operate such boat shall also be provided with the dockside safety checklist.

B. A dockside safety checklist shall consist of selected facts about Virginia boating laws and safe boat operation.

C. The authorized operator(s) of the rental/leased boat shall review and initial each item in the dockside safety checklist before they may operate the boat being rented or leased.

D. The dockside safety checklist for the authorized operator(s) shall be retained on board the boat being rented or leased, along with the rental or lease agreement from the motorboat rental or leasing business, when the boat is being operated.

E. Any person who presents documentation that he has met the minimum standards for boating safety education course competency in accordance with 4VAC15-410-40 B or possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card or possesses a valid commercial fisherman registration pursuant to § 28.2-241 of the Code of Virginia shall be exempt from the dockside safety checklist requirements. For the purpose of

this subsection a license is considered valid regardless of whether the license is current.

F. Pursuant to § 29.1-735.2 B 6 and 8 of the Code of Virginia, a person may be allowed to operate the rented/leased boat without completing the dockside safety checklist as long as he is operating under the onboard direct supervision of a person (i) who has completed ~~the dockside safety checklist~~ a NASBLA approved boating safety course that is accepted by the department or (ii) who is otherwise exempt from the dockside safety checklist requirement or has assumed operation of the boat due to the illness or physical impairment of the initial operator, and is returning the boat to shore in order to provide assistance or care for the operator.

4VAC15-410-140. ~~Optional~~ Virginia Boater Education ~~Card~~ Cards.

A. The department may establish an optional long-lasting and durable Virginia Boater Education Card for issuance to persons who can show that they have met the minimum standard of boating safety education course competency or who possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card or possesses a commercial fisherman registration pursuant to § 28.2-241 of the Code of Virginia.

B. To obtain an optional Virginia Boater Education Card, a person must provide to the department:

1. A completed application on a form provided by the department. The application shall require the applicant's name, current mailing address, and date of birth. The applicant must also sign a statement declaring that statements made on the form are true and correct and that all documents submitted with the form are true and correct copies of documents issued to the applicant. Incomplete applications will be returned to the applicant;

2. A copy of the documentation (such as the boating safety education course completion certificate/wallet card or equivalency exam completion certificate/card) that indicates that the minimum standards for boating safety education course competency have been met. Such documents must contain the name of the individual applying for the Virginia Boater Education Card. The department may require the applicant to provide the original document in the event that the copy submitted with the application is illegible or if the authenticity of the copy is not certain.

C. Upon receipt by the applicant, the optional Virginia Boater Education Card will serve in lieu of any other certificates or cards that have been issued to the bearer as a result of meeting the minimum standards for boating safety education course competency. As such, the Virginia Boater Education Card will not be transferable or revocable and will have no expiration date.

D. A person may apply, on a form provided by the department, for a replacement Virginia Boater Education Card. A replacement card may be issued if the original card is lost, stolen or destroyed, if misinformation is printed on the card, or if the bearer has legally changed their name. The application shall include an affidavit stating the circumstances that led to the need for replacement of the original card.

4VAC15-410-150. Fees.

A. Pursuant to § 29.1-735.2 E of the Code of Virginia, the board may establish fees for boating safety courses and certificates provided by the department. Such fees shall not exceed the cost of giving such instruction for each person participating in and receiving the instruction.

B. The department shall not charge a fee for the provision of its state course for basic boating education delivered in a conventional classroom setting.

C. Fees charged by an approved course provider for boating safety education courses are set by the course provider, but must be clearly communicated to the student prior to taking the course.

D. The fee for issuance of an optional Virginia Boater Education Card, which will serve in lieu of a previously-obtained boating safety education course certificate/card, ~~shall be $10. The fee for issuance of~~ or a replacement Virginia Boater Education Card shall be ~~$8.00~~ $10.

VA.R. Doc. No. R12-3332; Filed December 11, 2012, 0:55 a.m.

Final Regulation

Title of Regulation: **4VAC15-430. Watercraft: Safety Equipment Requirements (amending 4VAC15-430-30, 4VAC15-430-40, 4VAC15-430-110).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, 29.1-701, and 29.1-735 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) rescind the requirement that vessels less than 16 feet in length carry a U.S. Coast Guard (USGC) Approved Type IV throwable personal floatation device; (ii) amend the exemptions for vessels required to carry or exempted from carrying a USCG Approved Type IV throwable device, consistent with the Code of Federal Regulations; and (iii) clarify that carrying visual distress signals on board recreational vessels beyond the required minimum number of serviceable and unexpired distress signals is not a violation.

4VAC15-430-30. Personal flotation devices required.

A. Except as provided in 4VAC15-430-40, it shall be unlawful to use a recreational vessel unless at least one PFD of the following types is on board for each person:

1. Type I PFD;

2. Type II PFD; or

3. Type III PFD.

B. Except as provided in 4VAC15-430-40, it shall be unlawful to use a recreational vessel of 16 feet or greater unless one Type IV PFD is on board in addition to the total number of PFDs required in subsection A of this section.

C. Notwithstanding the provisions of § 29.1-742 of the Code of Virginia, it shall be unlawful to operate a personal watercraft unless each person riding on the personal watercraft or being towed by it is wearing a Type I, Type II, Type III or Type V PFD.

4VAC15-430-40. Personal flotation device exemptions.

A. A Type V PFD may be used in lieu of any PFD required under 4VAC15-430-30, provided:

1. The approval label on the Type V PFD indicates that the device is approved:

a. For the activity in which the vessel is being used; or

b. As a substitute for a PFD of the type required on the vessel in use;

2. The PFD is used in accordance with any requirements on the approval label;

3. The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual; and

4. The PFD is being worn.

B. ~~Personal watercraft, kayaks, canoes, inflatable rafts and vessels less than 16 feet in length that are registered in another state~~ The following vessels are exempted from the requirements for carriage of the additional Type IV PFD required by 4VAC15-430-30.

1. Personal watercraft.

2. Nonmotorized canoes and kayaks 16 feet in length and over.

~~C.~~ 3. Racing shells, rowing sculls, racing canoes, and racing kayaks ~~are exempted from the requirements for carriage of any Type PFD required by 4VAC15-430-30~~.

~~D.~~ 4. Sailboards ~~are exempted from the requirements for carriage of any Type PFD required by 4VAC15-430-30~~.

~~E.~~ 5. Vessels of the United States used by foreign competitors while practicing for or racing in competition ~~are exempted from the carriage of any PFD required under 4VAC15-430-30, provided the vessel carries one of the sponsoring foreign country's acceptable flotation devices for each foreign competitor on board~~.

4VAC15-430-110. Visual distress signal stowage, serviceability, marking.

A. It shall be unlawful to use a vessel unless the visual distress signals required by 4VAC15-430-80 are readily accessible.

B. It shall be unlawful to use a vessel unless each signal required by 4VAC15-430-80 is in serviceable condition and the service life of the signal, if indicated by a date marked on the signal, has not expired. Signals in addition to the minimum required are not considered to be in violation of this subsection if the minimum requirement has been met.

C. It shall be unlawful to use a vessel unless each signal required by 4VAC15-430-80 is legibly marked with a U.S. Coast Guard approval number or certification statement.

VA.R. Doc. No. R12-3333; Filed December 11, 2012, 2:57 a.m.

MARINE RESOURCES COMMISSION

Final Regulation

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.

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).**

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

Effective Date: December 11, 2012.

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

Summary:

This amendment sets the recreational season for the harvest of black sea bass from May 19 through October 14 and from November 1 through November 19.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 25. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from May 19 through October 14 and from November 1 through ~~December 31~~ November 19.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass except during an open recreational season.

VA.R. Doc. No. R13-3518; Filed December 11, 2012, 2:56 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with the fourth enactment of Chapters 216 and 864 of the 2012 Acts of Assembly, which exempt the actions of the board relating to the adoption of regulations necessary to implement the provisions of the acts; however, the board is required to utilize a regulatory advisory panel to assist in the development of necessary regulations and provide an opportunity for public comment on all regulations.

Title of Regulation: **9VAC5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (Rev. MN) (amending 9VAC5-91-20, 9VAC5-91-30, 9VAC5-91-180, 9VAC5-91-290, 9VAC5-91-320, 9VAC5-91-740, 9VAC5-91-750; adding 9VAC5-91-185).**

Statutory Authority: § 46.2-1180 of the Code of Virginia; § 182 of the federal Clean Air Act; 40 CFR Part 51, Subpart S.

Effective Date: December 15, 2012.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, TTY (804) 698-4021, or email mary.major@deq.virginia.gov.

Summary:

The amendments conform the regulation to state law for the testing of emissions, including remote sensing, from motor vehicles located or primarily operated in Northern Virginia. Specifically, Chapters 216 and 824 of the 2012 Acts of Assembly amended § 46.2-1178 C of the Code of Virginia to require the establishment by regulation of the following on-road testing requirements:

1. On and after July 1, 2012, and before July 1, 2013, an on-road clean screen program shall be limited to no more than 10% of the motor vehicles that are eligible for emissions inspection during the applicable 12-month period.

2. On and after July 1, 2013, and before July 1, 2014, an on-road clean screen program shall be limited to no more than 20% of the motor vehicles that are eligible for emissions inspection during the applicable 12-month period.

3. On and after July 1, 2014, an on-road clean screen program shall be limited to no more than 30% of the motor vehicles that are eligible for emissions inspection during the applicable 12-month period.

After a public comment period, the board did not include remote OBD III (on-board diagnostic system) as a requirement. Clean screen vehicles will be identified using only infrared light remote sensing.

9VAC5-91-20. Terms defined.

"Aborted test" means an emissions inspection procedure that has been initiated by the inspector but stopped and not completed due to inspector error or a vehicular problem that prevents completion of the test. Aborted tests are not tests that cannot be completed due to a "failed/invalid" result caused by an exhaust dilution problem or an engine condition that prevents the inspection from being completed.

"Acceleration Simulation Mode (ASM) 50-15 equipment" means dynamometer-based emissions test equipment used to perform an enhanced emissions test in one or more, discreet, simulated road speed and engine load modes.

"Acceleration Simulation Mode (ASM) 25-25 standards" means the standards utilized for one of the discreet modes of the ASM test of the enhanced emission inspection program.

"Access code" means the security phrase or number which allows authorized station personnel, the department, and analyzer service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department. Depending on the assigned function, the access code is a personal password, a state password or a service password. Access code is not an identification number, but is used as an authenticator along with the identification number where such number is needed to perform specific tasks.

"Actual gross weight" means the gross vehicle weight rating (GVWR).

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Affected motor vehicle" means any motor vehicle or replica vehicle which:

1. Was manufactured or designated by the manufacturer as a model year less than 25 calendar years prior to January 1 of the present calendar year according to the formula, the current calendar year minus 24, except those identified by remote sensing as specified in subdivision 5 of this definition;

2. Is designed for the transportation of persons or property;

3. Is powered by an internal combustion engine;

4. For the Northern Virginia Emissions Inspection Program, has an actual gross weight of 10,000 pounds or less; and

5. For vehicles subject to the remote sensing requirements of 9VAC5-91-180, was designated by the manufacturer as model year 1968 or newer.

The term "affected motor vehicle" does not mean any:

1. Vehicle powered by a clean special fuel as defined in § 46.2-749.3 of the Code of Virginia, provided the federal Clean Air Act permits such exemptions for vehicles powered by clean special fuels;

2. Motorcycle;

3. Vehicle that at the time of its manufacture was not designed to meet emissions standards set or approved by the federal government;

4. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia;

5. Firefighting equipment, rescue vehicle, or ambulance;

6. Vehicle for which no testing standards have been adopted by the board;

7. Tactical military vehicle; or

8. Qualified hybrid motor vehicle if such vehicle obtains a rating from the U.S. Environmental Protection Agency of at least 50 miles per gallon during city fuel economy tests unless identified by the remote sensing requirements of 9VAC5-91-180 as violating the on-road high emitter emissions standards for on-road testing.

"Air intake systems" means those systems that allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Air system" means a system for providing supplementary air to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Alternative fuel" means an internal combustion engine fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% volume of gasoline.

"Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference method, but that has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

~~"Acceleration Simulation Mode (ASM) test" means a dynamometer based emissions test performed in one or more, discreet, simulated road speed and engine load modes, and equipment which can be used to perform any such test.~~

"Authorized personnel" means department personnel, an individual designated by analyzer manufacturer, station owner, licensed emissions inspector, station manager or other person as designated by the station manager.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air and fuel charge into useful power to include but not limited to valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity and post-combustion emissions control device integrity.

"Basic test and repair program" means a motor vehicle emissions inspection system established by this chapter that designates the use of an OBD-II (on-board diagnostic system) with wireless capability and a two-speed idle analyzer as the only authorized testing equipment. Only those computer software programs and emissions testing procedures necessary to comply with the applicable provisions of Title I of the federal Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs.

"Bi-fuel" means any motor vehicle capable of operating on one of two different fuels, usually gasoline and an alternative fuel, but not a mixture of the fuels. That is, only one fuel at a time.

"Board" means the State Air Pollution Control Board or its designated representative.

"Calibration" means establishing or verifying the response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations that are used as references for establishing or verifying the response curve of a measurement device.

"Canister" means a mechanical device capable of adsorbing and retaining hydrocarbon vapors.

"Catalytic converter" means a post combustion device that oxidizes hydrocarbons, carbon monoxide gases, and may also reduce oxides of nitrogen.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this chapter, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this chapter; (ii) the requirement of compliance with the emissions standards has been temporarily waived; or (iii) the affected motor vehicle has failed the emissions inspection.

"Certified emissions repair facility" means a facility, or portion of a facility, that has obtained a certification in

accordance with Part VII (9VAC5-91-500 et seq.) to perform emissions related repairs on motor vehicles.

"Certified emissions repair technician" means a person who has obtained a certification in accordance with Part VIII (9VAC5-91-550 et seq.) to perform emissions related repairs on motor vehicles.

"Certified enhanced analyzer system" or "analyzer system" means the complete system that samples and reads concentrations of hydrocarbon, carbon dioxide, nitric oxides and carbon monoxide gases and that is approved by the department for use in the Enhanced Emissions Inspection Program in accordance with Part X (9VAC5-91-640 et seq.). The system includes the exhaust gas handling system, the exhaust gas analyzer, evaporative system pressure test equipment, associated automation hardware and software, data media, the analyzer system cabinet, the dynamometer and appurtenant devices, vehicle identification equipment, and associated cooling and exhaust fans and gas cylinders.

"Certified thermometer" means a laboratory grade ambient temperature-measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least 1°F with increments of 1°, with protective shielding.

"Chargeable inspection" means a completed inspection on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for (i) inspections for which a certificate of emissions inspection has not been issued, (ii) inspections that are conducted by the department for referee purposes, (iii) inspections which were ordered due to on-road test failures but which result in an emissions inspection "pass" at an inspection station, or (iv) the first reinspection done at the same station that performed the initial inspection within 14 days. An inspection ordered by the department due to an on-road test failure that results in a confirmation test failure at an emissions inspection station is a chargeable inspection.

"Clean screen vehicle" means a vehicle that has been identified by the on-road inspector as having met the criteria in 9VAC5-91-185 A or B and is eligible to participate in the on-road clean screen program.

"Clean screen vehicle notification" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this chapter, that (i) indicates that an affected motor vehicle has satisfactorily complied with the clean screen vehicle emissions standards for on-road testing, and (ii) may be used by the motor vehicle owner to voluntarily comply with the vehicle registration requirements of § 46.2-1183 of the Code of Virginia. The notification shall also indicate that the motor vehicle owner may obtain an emissions inspection from an emissions inspection station.

"Clean screen vehicle standard" means any provision of 9VAC5-91-185 that prescribes an emission limitation, or other criteria used to select clean screen vehicles.

"Confirmation test" means an emissions inspection required due to a determination that the vehicle exceeds the ~~exhaust~~ on-road high emitter emissions standards prescribed in ~~Table III B in 9VAC5-91-180 for on-road testing through remote sensing~~ 9VAC5-91-180 B. The confirmation emissions inspection procedure may include an exhaust test (ASM or TSI), OBD system test or both.

"Consent order" means a mutual agreement between the department and any owner, operator, emissions inspector, or emissions repair technician that such owner or other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this chapter. A consent order may include agreed upon civil charges. Such orders may be issued without a formal hearing.

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 400 and 1,250 revolutions per minute (rpm), or at another idle speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software and peripheral equipment used to conduct emissions inspections and manage the enhanced emissions inspection program.

"Data medium" or "data media" means the medium contained in the certified analyzer system and used to electronically record test data.

"Day" means a 24-hour period beginning at midnight.

"Dedicated alternative fuel vehicle" means a vehicle that was configured by the vehicle manufacturer to operate only on one specific fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% by volume of gasoline.

"Dedicated-fuel vehicle" means a vehicle that was designed and manufactured to operate and operates on one specific fuel.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dual fuel" means a vehicle that operates on a combination of fuels, usually gasoline or diesel and an alternative fuel, at the same time. That is, the mixed fuels are introduced into the combustion chamber of the engine.

"Emissions control equipment" means any part, assembly or equipment originally installed by the manufacturer in or on a motor vehicle for the sole or primary purpose of reducing emissions.

"Emissions control systems" means any system consisting of parts, assemblies or equipment originally installed by the

manufacturer in or on a motor vehicle for the primary purpose of reducing emissions.

"Emissions inspection" means an emissions inspection of a motor vehicle performed by an emissions inspector employed by or working at an emissions inspection station or fleet emissions inspection station, using the tests, procedures, and provisions set forth in this chapter.

"Emissions inspection station" means a facility or portion of a facility that has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this chapter.

"Emissions inspector" means, except for an on-road emissions inspector, a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law and is qualified in accordance with this chapter.

"Emissions standard" means any provision of Part III (9VAC5-91-160 et seq.) or Part XIV (9VAC5-91-790 et seq.) that prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"Empty weight (EW)" means that weight stated as the EW on a Virginia motor vehicle registration or derived from the motor vehicle title or manufacturer's certificate of origin. The EW may be used to determine emissions inspection standards.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection ~~including procedures, emissions standards, and equipment required by 40 CFR Part 51, Subpart S or equivalent and consistent with applicable requirements of the federal Clean Air Act. The director will administer the enhanced emissions inspection program. Under the Virginia Motor Vehicle Emissions Control Law, the program requires that affected motor vehicles, unless otherwise exempted, receive biennial inspections at official emissions inspection stations, which may be test and repair facilities, in accordance with this chapter. Nothing in this program shall bar enhanced emissions inspection stations or facilities from also performing vehicle repairs.~~ system established by this chapter that designates, as the only authorized testing equipment for emissions inspection stations, (i) the use of the ASM 50-15 (acceleration simulation mode or method) together with an OBD-II (on-board diagnostic system) with wireless capability, (ii) the use of the ASM 50-15 together with the use of a dynamometer, and (iii) two-speed tailpipe testing equipment. Possession and availability of a dynamometer shall be required for enhanced emissions inspection stations. Only those computer software programs and emissions testing procedures necessary to comply with applicable provisions of Title I of the federal Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs. An enhanced emissions inspection program shall include remote sensing and an on-road clean screen program as provided in this chapter.

"EPA" means the United States Environmental Protection Agency.

"Equivalent test weight (ETW)" or "emission test weight" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

"Evaporative system pressure test" or "pressure test" means a physical test of the evaporative emission control system on a motor vehicle to determine whether the evaporative system vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions. Such testing shall only be conducted at emissions inspection stations upon installation of approved equipment and software necessary for performing the test, as determined by the director.

"Exhaust gas analyzer" means an instrument that is capable of measuring the concentrations of certain air pollutants in the exhaust gas from a motor vehicle.

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Fleet" means 20 or more motor vehicles that are owned, operated, leased or rented for use by a common owner.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

"Flexible-fuel vehicle" means any motor vehicle capable of operating on two or more fuels, either one at a time or any mixture of two or more different fuels.

"Formal hearing" means a board or department process that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Fuel control systems" means those mechanical, electro-mechanical, galvanic or electronic parts or assemblies which regulate the air-to-fuel ratio in an engine for the purpose of providing a combustible charge.

"Fuel filler cap pressure test" or "gas cap pressure test" means a test of the ability of the fuel filler cap to prevent the release of fuel vapors from the fuel tank under normal operating conditions.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of gases.

"Gas span check" means a procedure using known concentrations of gases to verify the gas span adjustment of an analyzer.

"Gross vehicle weight rating (GVWR)" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number. If the GVWR can be determined it shall be one element used to determine emissions inspection standards and test type. If the GVWR is unavailable, the department may make a determination based on the best available evidence including manufacturer reference, information coded in the vehicle identification number, or other available sources of information from which to make the determination.

"Heavy duty gasoline vehicle (HDGV)" means a heavy duty vehicle using gasoline as its fuel.

"Heavy duty vehicle (HDV)" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a loaded vehicle weight or GVWR of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

~~"High emitter index" means the method of categorizing the probable emissions inspection failure rates of engine families. Values within the index are determined by computing the percentile of the historical emissions inspection failure rate of a specific engine family, i.e., a specific group of vehicles with the same vehicle type, year, make and engine size, to the historical emissions inspection failure rate of all engine families in a specific model year group. Failure rates are based on the most recent full year of emissions inspection test data from the Virginia Motor Vehicle Emissions Control Program. Vehicles with an index value above 75 are considered "high emitters."~~

"High emitter value" means the values in Table III-B of 9VAC5-91-180 that are used to determine vehicles in violation of the on-road high emitter emissions standard.

"Identification number" means the number assigned by the department to uniquely identify department personnel, an emissions inspection station, a certified emissions repair facility, a licensed emissions inspector, a certified emissions repair technician or other authorized personnel as necessary for specific tasks.

"Idle mode" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer as curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"Ignition systems" means those parts or assemblies that are designed to cause and time the ignition of a compressed air and fuel charge.

"Implementation plan" means the plan, including any revision thereof, that has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and that implements the relevant requirements of the federal Clean Air Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

"Initial inspection" means the first complete emissions inspection of a motor vehicle conducted in accordance with the biennial inspection requirement and for which a valid vehicle emissions inspection report was issued. Any test following the initial inspection is a retest or reinspection.

"Inspection area" means in reference to an emissions inspection station, (i) the area that is occupied by the certified analyzer system and the vehicle being inspected or (ii) for only an OBD II test, the area within wireless range that is on the property on which the inspection station is located.

"Inspection fee" means the amount of money that (i) the emissions inspection station may collect from the motor vehicle owner for each chargeable inspection or (ii) an on-road emissions inspector may collect from the motor vehicle owner in response to a clean screen vehicle notification.

"Light duty gasoline vehicle (LDGV)" means a light duty vehicle using gasoline as its fuel.

"Light duty gasoline truck (LDGT1)" means a light duty truck 1 using gasoline as its fuel.

"Light duty gasoline truck (LDGT2)" means a light duty truck 2 using gasoline as its fuel.

"Light duty truck (LDT)" means any affected motor vehicle which (i) has a loaded vehicle weight or GVWR of 6,000 pounds or less and meets any one of the criteria below; or (ii) is rated at more than 6,000 pounds GVWR but less than 8,500 pounds GVWR and has a basic vehicle frontal area of 45 square feet or less; and meets one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.

2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.

3. Equipped with special features enabling off-street or off-highway operation and use.

"Light duty truck 1 (LDT1)" means any light duty truck rated at 6,000 pounds GVWR or less. LDT1 is a subset of light duty trucks.

"Light duty truck 2 (LDT2)" means any light duty truck rated at greater than 6,000 pounds GVWR. LDT2 is a subset of light duty trucks.

"Light duty vehicle (LDV)" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight (LVW)" or "curb weight" means the weight of a vehicle and its standard equipment; i.e., the empty weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

"Locality" means a city, town, or county created by or pursuant to state law.

"Mobile fleet emissions inspection station" means a facility or entity that provides emissions inspection equipment or services to a fleet emissions inspection station on a temporary basis. Such equipment is not permanently installed at the fleet facility but is temporarily located at the fleet facility for the sole purpose of testing vehicles owned, operated, leased or rented for use by a common owner.

"Model year" means, except as may be otherwise defined in this chapter, the motor vehicle manufacturer's annual production period which includes the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"Motor vehicle" means any motor vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle and that:

1. Is designed for the transportation of persons or property; and

2. Is powered by an internal combustion engine.

"Motor vehicle dealer" means a person who is licensed by the Department of Motor Vehicles in accordance with §§ 46.2-1500 and 46.2-1508 of the Code of Virginia.

"Motor vehicle emissions" means any emissions related information that can be captured through (i) a basic test and repair inspection, (ii) enhanced emissions inspection, or (iii) on-road testing.

"Motor vehicle inspection report" means a printed certificate of emissions inspection that is a report of the results of an emissions inspection. It indicates whether the motor vehicle has (i) passed, (ii) failed, or (iii) obtained a temporary emissions inspection waiver. It may also indicate whether the emissions inspection could not be completed due to an exhaust dilution or an engine condition that prevents the inspection from being completed. The report shall accurately identify the motor vehicle and shall include inspection results, recall information provided by the department, warranty and repair information, and a unique identification number.

"Motor vehicle owner" means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

"Nonconforming vehicle" means a vehicle not manufactured for sale in the United States to conform to emissions standards established by the federal government.

"Normal business hours" for emissions inspection stations, means a daily eight-hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, state holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "normal business hours." Emissions inspection stations may, with the approval of the department, substitute a combined total of eight hours, between 8 a.m. and 6 p.m., over a weekend period for one weekday as their "normal business hours" for conducting emission inspections. Emissions inspection stations shall post inspection hours.

"Northern Virginia emissions inspection program" means the emissions inspection program required by this chapter in the Northern Virginia program area.

"Northern Virginia program area" or "program area" means the territorial area encompassed by the boundaries of the following localities: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"On-board diagnostic system (OBD system)" means the computerized emissions control diagnostic system installed on model year 1996 and newer affected motor vehicles.

"On-board diagnostic system test (OBD) system test" means an evaluation of the OBD system pursuant to 40 CFR 86.094-17 according to procedures specified in 40 CFR 85.2222 and this chapter.

"On-board diagnostic vehicle (OBD vehicle)" means a model year 1996 and newer model affected motor vehicle equipped with an on-board diagnostic system and meeting the requirements of 40 CFR 85.2231.

"On-road clean screen program" means a program that allows a motor vehicle owner to voluntarily certify compliance with emissions standards by means of on-road remote sensing.

"On-road emissions inspector" means the entity or entities authorized by the Department of Environmental Quality to

perform on-road testing, including on-road testing in accordance with the on-road clean screen program.

"On-road emissions measurement" means data obtained through on-road testing.

"On-road high emitter emissions standard" means any provision of 9VAC5-91-180 that prescribes an emission limitation, or other emission control requirements for motor vehicle emissions. The on-road high emitter emissions standard shall be determined by multiplying the high emitter value in Table III-B of 9VAC5-91-180 with the appropriate ASM 25-25 standard in 9VAC5-91-810 or the TSI standard in Table III-A of 9VAC5-91-160.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Operated primarily" means motor vehicle operation that constitutes routine operation into or within the program area as evidenced by observation using remote sensing equipment at least three times in a 60-day period with no less than 30 days between the first and last observation. The director may increase the number of observations required for compliance determination if, in his discretion, based on program experience, such an increase would not significantly adversely impact the objectives of this chapter. The term "operated primarily" shall be used to identify motor vehicle operation that is subject to the exhaust emission standards for on-road testing through remote sensing set forth in 9VAC5-91-180. The term "operated primarily" shall not be used to identify motor vehicle operation that will subject the vehicle to the compliance provisions set forth in 9VAC5-91-160 and 9VAC5-91-170 for biennial emissions inspections.

"Order" means any decision or directive of the board or the director, including orders, consent orders, and orders of all types rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this chapter. Unless specified otherwise in this chapter, orders shall only be issued after the appropriate administrative proceeding.

"Original condition" means the condition of the vehicle, parts, and components as installed by the manufacturer but not necessarily to the original level of effectiveness.

"Owner" means any person who owns, leases, operates, controls or supervises a facility or motor vehicle.

"Party" means any person who actively participates in the administrative proceeding or offers comments through the public participation process and is named in the administrative record. The term "party" also means the department.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Qualified hybrid motor vehicle" means a motor vehicle that (i) meets or exceeds all applicable regulatory requirements, (ii) meets or exceeds the applicable federal motor vehicle emissions standards for gasoline-powered passenger cars, and (iii) can draw propulsion energy both from gasoline or diesel fuel and a rechargeable energy storage system.

"Reconstructed vehicle" means every vehicle of a type required to be registered under Title 46.2 (§ 46.2-100 et seq.) of the Code of Virginia, materially altered from its original construction by the removal, addition or substitution of new or used essential parts. Such vehicles, at the discretion of the Department of Motor Vehicles, shall retain their original vehicle identification number, line-make, and model year.

"Referee station" means those facilities operated or used by the department to (i) determine program effectiveness, (ii) resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in Appendix A of 40 CFR Part 60.

"Reinspection" or "retest" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is due to a previous failure. Any inspection that occurs 120 days or less following the most recent chargeable inspection is a retest.

"Rejected" or "rejected from testing" means that the vehicle cannot be inspected due to conditions in accordance with 9VAC5-91-420 C or 9VAC5-91-420 G 3.

"Remote sensing" means the ~~observation, measurement, and recordation of motor vehicle exhaust emissions from motor vehicles while traveling on roadways or in specified areas by specialized equipment. Such equipment may use light sensing and electronic stimuli in conjunction with devices, including videographic and digitized images, to detect and record vehicle identification information, such as registration or other identification numbers.~~ measurement of motor vehicle emissions through electronic or light-sensing equipment from a remote location such as the roadside. Remote sensing equipment may include devices to detect and record the vehicle's registration or other identification numbers.

"Replica vehicle" means every vehicle of a type required to be registered under Title 46.2 (§ 46.2-100 et seq.) of the Code of Virginia not fully constructed by a licensed manufacturer but either constructed or assembled from components. Such components may be from a single vehicle, multiple vehicles, a kit, parts, or fabricated components. The kit may be made up of "major components" as defined in § 46.2-1600 of the Code of Virginia, a full body, or a full chassis, or a combination of these parts. The vehicle shall resemble a

vehicle of distinctive name, line-make, model, or type as produced by a licensed manufacturer or manufacturer no longer in business and is not a reconstructed or specially constructed vehicle. Any vehicle registered as a replica vehicle shall meet emission requirements as established for the model year of which the vehicle is a replica.

"Sensitive mission vehicle" means any vehicle which, for law enforcement or national security reasons, cannot be tested in the public inspection system and must not be identified through the fleet testing system. For such vehicles, an autonomous fleet testing system may be established by agreement between the controlling agency and the director.

"Span gas" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the department and are so labeled.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as defined in this section.

"Specific engine family" means a group of motor vehicles with the same vehicle type, make, year, and engine size.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of H_g (29.92 inches of H_g).

"Standardized instruments" means laboratory instruments calibrated with precision gases traceable to the National Institute of Standards and Technology and accepted by the department as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"Tactical military vehicle" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

"Tampering" means to alter, remove or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test" means an emissions inspection of a vehicle, or any portion thereof, performed by an emissions inspector at an emissions inspection station, using the procedures and provisions set forth in this chapter.

"Test and repair" means motor vehicle emissions inspection stations that perform emissions inspections and may also perform vehicle repairs. No provision of this chapter shall bar emissions inspection stations from also performing vehicle repairs.

"Thermostatic air cleaner" means a system that supplies temperature-regulated air to the air intake system during engine operation.

"True concentration" means the concentration of the gases of interest as measured by a standardized instrument that has been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

"Two-speed idle test (TSI)" means a vehicle exhaust emissions test, performed in accordance with section (II) of 40 CFR Part 51, Appendix B to Subpart S, which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

"Vehicle emissions index" means the ranking of probable emissions inspection failure-rates of affected motor vehicles. Values within the index are determined by calculating a percentile of the historical emissions inspection failure-rates of a specific engine family, and comparing that to the historical emissions inspection failure-rates of all engine families in a specific model year group. Motor vehicles with the highest percentage of failure rates have the highest ranking on the index. Failure rates are based on the two most recent calendar years of emissions inspection test data from the Virginia Motor Vehicle Emissions Control Program.

"Vehicle specific power (VSP)" means an indicator expressed as a function of vehicle speed, acceleration, drag coefficient, tire rolling resistance and roadway grade that is used to characterize the load a vehicle is operating under at the time and place a vehicle is measured by remote sensing equipment. It is calculated using the following formula:

VSP = 4.39 x Sine (Site Grade in Degrees/57.3) x Speed + K1

x Speed x Acceleration + K2 x Speed + K3 x $Speed^3$.

Where:

VSP = vehicle specific power indicator;

Sine = the trigonometric function that for an acute angle is the ratio between the side opposite the angle when it is considered part of a right triangle and the hypotenuse;

Site Grade in Degrees = slope of road where remote sensing measurement is taken;

K1, K2 and K3 = empirically determined coefficients specific to the weight class of the vehicle;

Speed = rate of motion in miles per hour of vehicle at the time remote sensing measurement is taken; and

Acceleration = change in speed in miles per hour per second.

For light duty vehicles the values for K1, K2 and K3 are respectively 0.22, 0.0954 and 0.0000272. Based on EPA guidance, the department may develop different values for K1, K2 and K3 that are applicable to heavy duty vehicles or to specific classes of light duty vehicles.

"Virginia Motor Vehicle Emissions Control Program" means the program for the inspection and control of motor

vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Visible smoke" means any air pollutant, other than visible water droplets, consisting of black, gray, blue or blue-black airborne particulate matter emanating from the exhaust system or crankcase. Visible smoke does not mean steam.

"Zero gas" means a gas, usually air or nitrogen, which is used as a reference for establishing or verifying the zero point of an exhaust gas analyzer.

Part II
General Provisions

9VAC5-91-30. Applicability and authority of the department.

A. The provisions of this chapter, unless specified otherwise, apply to the following:

1. Any owner of an affected motor vehicle, including new motor vehicles, specified in subsection B of this section. References made to responsibilities or requirements applicable to an affected motor vehicle shall mean that the owner shall be responsible for compliance with all applicable provisions of this chapter.

2. Any owner of an emissions inspection station or fleet emissions inspection station under the auspices of the enhanced emissions inspection program. References made to responsibilities or requirements of emissions inspection stations or fleet emissions inspection stations shall mean that the owner, permittee or certificate holder, as appropriate, shall be responsible for compliance with all applicable provisions of this chapter.

3. Any person who conducts an emissions inspection under the auspices of the enhanced emissions inspection program.

4. Any owner of an emissions repair facility performing emissions repairs on motor vehicles affected by this chapter. References made to responsibilities or requirements of certified emissions repair facilities shall mean that the owner, permittee or certificate holder, as appropriate, shall be responsible for compliance with all applicable provisions of this chapter.

5. Any emissions repair technician performing emissions repairs on motor vehicles affected by this chapter.

6. Any on-road emissions inspector conducting on-road testing.

B. The provisions of this chapter, unless specified otherwise, apply to the following affected motor vehicles:

1. Any affected motor vehicle, including new motor vehicles, registered by the Virginia Department of Motor Vehicles and garaged within the Northern Virginia program area.

2. Any affected motor vehicle, including new motor vehicles, registered by the Virginia Department of Motor Vehicles and garaged outside of the Northern Virginia program area but operated primarily in the Northern Virginia program area.

3. Any affected motor vehicle, including new motor vehicles not registered by the Department of Motor Vehicles but operated primarily in the Northern Virginia program area.

4. Any affected motor vehicle, including new motor vehicles owned or operated as part of a fleet located outside the Northern Virginia program area but operated primarily in the Northern Virginia program area.

C. As provided in the Virginia Motor Vehicle Emissions Control Law, affected motor vehicles shall be submitted for biennial emissions inspections and shall be in compliance with this chapter.

1. Motor vehicles having obtained a valid enhanced emissions inspection pass from another program area or another state within the most recent 12 months may be determined by the director to be in compliance with the enhanced emissions inspection required by this chapter for initial registration in Virginia. The valid period for such emissions inspection shall be one year. The proof of emissions inspection results from an enhanced emissions inspection program shall be presented to the Department of Motor Vehicles in such cases. The vehicle and proof of compliance may be presented to the department for verification purposes in order to resolve questions or disputes. Such vehicles are subject to all other provisions of this chapter.

2. The director may temporarily defer the emissions inspection requirement for motor vehicles registered in but temporarily located outside the program area at the time of such requirement based on information including, but not limited to, the location of the vehicle, the reason for and length of its temporary location, and demonstration that it is not practical or reasonable to return the vehicle to the program area for inspection. All such information shall be provided by the owner and is subject to verification by the department.

3. Clean screen vehicles may be determined by the director to be in compliance with the enhanced emissions inspection required by this chapter.

D. Motor vehicles being titled for the first time shall be considered to have an enhanced emissions inspection valid for two years. Such vehicles are not exempt from the emissions inspection program and are subject to all other provisions of this chapter.

E. Pursuant to § 46.2-1180 B of the Motor Vehicle Emissions Control Law, motor vehicles of the current model year and the four immediately preceding model years, held for resale in a licensed motor vehicle dealer's inventory, may

be registered for one year upon sale without obtaining an emissions inspection in accordance with conditions enumerated below.

1. The vehicle must be registered in the program area.

2. The vehicle has not failed nor received a waiver during its most recent emissions inspection.

3. The vehicle has not previously been registered under the provisions of this subsection.

4. The motor vehicle dealer guarantees in writing to the customer and to the department that the emissions equipment on the motor vehicle is operating in compliance with the warranty of the manufacturer or distributor, or both if applicable, at the time of sale.

a. The document supplied must describe the method by which this compliance was determined and provide a copy of any emissions readings obtained from the vehicle for the purpose of making this showing.

b. The document must state in prominent or bold print that the certification in no way warrants or guarantees that the vehicle complied with the emission standards used in the Virginia enhanced emissions inspection program, or similar language approved by the department and that the customer has a right to request an emissions inspection, which may be at the expense of the customer, in lieu of the one year emissions validation period authorized by this subsection.

5. A written request, including the documentation cited above, must be presented to the department not more than 30 days prior to the date of sale so that the department can record such temporary emissions validation period and furnish it to the Department of Motor Vehicles.

6. Such temporary validation period shall not be granted more than once for any motor vehicle.

7. For the purposes of this subsection, any used motor vehicle will be considered to be one model year old on the first day of October of the next calendar year after the model year described on the vehicle title or registration, and shall increase in age by one year on the first day of each October thereafter.

F. Owners or operators of fleets, including fleets of government vehicles and sensitive mission vehicles, shall provide a report to the department annually containing information regarding vehicles operated in the program area sufficient to determine compliance with this chapter. The report shall contain information deemed necessary by the department to determine compliance. Such information shall include, but not be limited to, (i) number of vehicles, (ii) compliance method, and (iii) results of any inspections. Reports shall be in a format and according to a schedule acceptable to the department.

G. Manufacturers and distributors of emissions testing equipment are prohibited from directly or indirectly owning or operating any emissions testing facility or having any direct or indirect financial interest in any such facility other than the leasing of or providing financing for equipment related to emissions testing.

H. The provisions of this chapter, unless specified otherwise, apply only to those pollutants for which emission standards are set forth in Part III (9VAC5-91-160 et seq.) and Part XIV (9VAC5-91-790 et seq.).

I. Applicants for inspection station permits and emissions repair facility certificates shall have a Virginia business license and the application shall only be for a facility in Virginia.

J. By the adoption of this chapter, the board confers upon the department the administrative, enforcement and decision making authority enumerated herein.

9VAC5-91-180. ~~Exhaust~~ On-road high emitter emissions standards for on-road testing through remote sensing.

A. No affected motor vehicle shall exceed the on-road high emitter emissions ~~standard~~ standards for carbon monoxide (CO), ~~the emission standard for~~ hydrocarbons (HC), or nitric oxide (NO)~~, set forth in Table III-B~~ when measured with a remote sensing device and in accordance with the inspection procedures prescribed in Part XII (9VAC5-91-740 et seq.).

B. The on-road high emitter emissions standards for a vehicle shall be determined by multiplying the value in the Table III-B of 9VAC5-91-180 by the ASM 25-25 standard in 9VAC5-91-810 or two speed idle standard in Table III-A of 9VAC5-91-160 as is applicable for the vehicle.

~~B.~~ C. Any affected motor vehicle determined to have exceeded any on-road high emitter emissions standards ~~in Table III-B~~ when measured by a remote sensing device in accordance with the procedures of Part XII (9VAC5-91-740 et seq.) may be subject to an emissions inspection at an emissions inspection station in accordance with Part XII (9VAC5-91-740 et seq.) or a civil charge in accordance with § 46.2-1178.1 B of the Code of Virginia, or both.

~~C. Beginning January 1, 2005, motor vehicles~~ D. Any affected motor vehicle that ~~exceed~~ exceeds the on-road high emitter emissions standards ~~in Table III-B~~ two days in any 120-day period shall be considered to have violated the emissions standards. In addition, the department may use the ~~high emitter~~ vehicle emissions index as a screening requirement.

~~D. Beginning July 1, 2005, or later date based on analysis of remote sensing failure rates and confirmation test results, the department may determine that an~~ E. Any affected motor vehicle ~~is a high emitter if the vehicle~~ that exceeds the on-road high emitter emissions standards ~~in Table III-B~~ once and is also determined to have a ~~high emitter~~ vehicle emissions index of greater than 75 shall be considered to have violated the on-road high emitter emissions standards.

~~E.~~ F. All remote sensing measurements used to determine if a vehicle exceeds the on-road high emitter emissions standards ~~prescribed in Table III-B~~ shall be taken at valid

sites under conditions at which the vehicle specific power (VSP) indicator is between 3 and 22. Standards for NO shall be corrected for VSP using the following formula:

NO standard = Low Range ~~Standard~~ Value + (VSP-3)/

19 x (High Range ~~Standard~~ Value - Low Range ~~Standard)~~ Value).

Where:

Low Range ~~Standard~~ Value = the smaller values in Table III-B in the NO (ppm) Range column;

VSP = vehicle specific power indicator; and

High Range ~~Standard~~ Value = the larger values in Table III-B in the NO (ppm) Range column.

~~F.~~ G. The ~~department~~ director may adjust the ~~standards~~ values in Table III-B if it is determined that ~~a~~ an on-road high emitter emissions standard is causing a confirmation test pass rate in excess of 20% or less than 5.0%. Such adjustments may be for specific models within each model year group based on manufacturer's emissions control technology.

~~TABLE III-B.~~

~~EXHAUST EMISSION STANDARDS FOR REMOTE SENSING~~

~~Standards Beginning January 1, 2005~~

~~Period/Model Year/Vehicle Type~~	~~CO (%)~~	~~HC (ppm)~~	~~NO (ppm) Range‡ Low to High~~
~~Pre 1981 – LDGT (1 or 2)~~	~~7.0%~~	~~1000~~	
~~Pre 1981 – LDGV~~	~~7.0%~~	~~1000~~	
~~Pre 1981 – HDGV~~	~~7.0%~~	~~1000~~	
~~1981 to 1985 – LDGT (1 or 2)~~	~~6.0%~~	~~800~~	~~1500–2000~~
~~1981 to 1985 – LDGV~~	~~6.0%~~	~~750~~	~~1200–1800~~
~~1981 to 1985 – HDGV~~	~~7.0%~~	~~750~~	
~~1986 to 1990 – LDGT (1 or 2)~~	~~5.5%~~	~~700~~	~~1200–1800~~
~~1986 to 1990 – LDGV~~	~~5.5%~~	~~650~~	~~1000–1600~~
~~1986 to 1990 – HDGV~~	~~6.5%~~	~~750~~	
~~1991 to 1995 – LDGT (1 or 2)~~	~~5.0%~~	~~650~~	~~1200–1800~~
~~1991 to 1995 – LDGV~~	~~5.0%~~	~~600~~	~~1000–1600~~
~~1991 to 1995 – HDGV~~	~~6.0%~~	~~700~~	
~~1996 and newer LDGT (1 or 2)~~	~~4.0%~~	~~450~~	~~600–900~~
~~1996 and newer LDGV~~	~~4.0%~~	~~450~~	~~600–900~~
~~1996 and newer HDGV~~	~~5.0%~~	~~600~~	
~~Standards Beginning July 1, 2005, and later – Two or More On-Road Measurements~~			
~~Period/Model Year/Vehicle Type~~	~~CO (%)~~	~~HC (ppm)~~	~~NO (ppm) Range Low to High~~
~~Pre 1981 – LDGT (1 or 2)~~	~~7.0%~~	~~1000~~	
~~Pre 1981 – LDGV~~	~~7.0%~~	~~1000~~	
~~Pre 1981 – HDGV~~	~~7.0%~~	~~1000~~	
~~1981 to 1985 – LDGT (1 or 2)~~	~~6.0%~~	~~800~~	~~1500–2000~~
~~1981 to 1985 – LDGV~~	~~6.0%~~	~~750~~	~~1200–1800~~
~~1981 to 1985 – HDGV~~	~~7.0%~~	~~750~~	
~~1986 to 1990 – LDGT (1 or 2)~~	~~5.5%~~	~~700~~	~~1200–1800~~
~~1986 to 1990 – LDGV~~	~~5.5%~~	~~650~~	~~1000–1600~~

~~1986 to 1990 – HDGV~~	~~6.5%~~	~~750~~	
~~1991 to 1995 – LDGT (1 or 2)~~	~~4.0%~~	~~550~~	~~1000–1500~~
~~1991 to 1995 – LDGV~~	~~4.0%~~	~~500~~	~~900–1400~~
~~1991 to 1995 – HDGV~~	~~6.0%~~	~~700~~	
~~1996 and newer LDGT (1 or 2)~~	~~3.0%~~	~~350~~	~~500–800~~
~~1996 and newer LDGV~~	~~3.0%~~	~~350~~	~~500–800~~
~~1996 and newer HDGV~~	~~5.0%~~	~~600~~	
~~July 1, 2005 and later – Single On-Road Measurement Vehicle must have High Emitter Index of 75% or Higher~~			
~~Period/Model Year/Vehicle Type~~	~~CO (%)~~	~~HC (ppm)~~	~~NO (ppm) Range Low to High~~
~~Pre 1981 – LDGT (1 or 2)~~	~~7.0%~~	~~1000~~	
~~Pre 1981 – LDGV~~	~~7.0%~~	~~1000~~	
~~Pre 1981 – HDGV~~	~~7.0%~~	~~1000~~	
~~1981 to 1985 – LDGT (1 or 2)~~	~~6.0%~~	~~800~~	~~1500–2000~~
~~1981 to 1985 – LDGV~~	~~6.0%~~	~~750~~	~~1200–1800~~
~~1981 to 1985 – HDGV~~	~~7.0%~~	~~750~~	
~~1986 to 1990 – LDGT (1 or 2)~~	~~5.5%~~	~~700~~	~~1200–1800~~
~~1986 to 1990 – LDGV~~	~~5.5%~~	~~650~~	~~1000–1600~~
~~1986 to 1990 – HDGV~~	~~6.5%~~	~~750~~	
~~1991 to 1995 – LDGT (1 or 2)~~	~~4.0%~~	~~550~~	~~1000–1500~~
~~1991 to 1995 – LDGV~~	~~4.0%~~	~~500~~	~~900–1400~~
~~1991 to 1995 – HDGV~~	~~6.0%~~	~~700~~	
~~1996 + LDGT (1 or 2)~~	~~3.0%~~	~~350~~	~~500–800~~
~~1996 + LDGV~~	~~3.0%~~	~~350~~	~~500–800~~
~~1996 + HDGV~~	~~5.0%~~	~~600~~	

~~[1]NO standard = Low Range standard + (Actual VSP–3)/19 x (High Range standard – Low Range Standard)~~

TABLE III-B.

HIGH EMITTER VALUES FOR REMOTE SENSING

One or More On-Road Measurements
ASM Based
Vehicle Must Have a Vehicle Emissions Index of 75% or Higher

Period/Model Year/Vehicle Type	CO	HC	NO Range(1)	
			Low	High
1981 through 1990 - LDGT (1 or 2)	4.0	5.0	2.5	3.3
1981 through 1990 - LDGV	12.0	4.5	1.5	2.0
1991 through 1995 - LDGT (1 or 2)	4.0	5.0	2.5	3.3

1991 through 1995 - LDGV	8.0	6.0	1.5	2.0
1996 and newer - LDGT (1 or 2)	7.0	4.5	2.5	3.3
1996 and newer - LDGV	9.0	6.0	2.2	2.9
Two or More On-Road Measurements ASM Based				
Period/Model Year/Vehicle Type	CO	HC	NO Range[(1)]	
			Low	High
1981 through 1990 – LDGT (1 or 2)	3.0	3.8	2.1	2.8
1981 through 1990 – LDGV	9.0	3.4	1.3	1.7
1991 through 1995 – LDGT (1 or 2)	3.0	3.8	2.1	2.8
1991 through 1995 – LDGV	6.0	4.5	1.3	3.3
1996 and newer LDGT (1 or 2)	5.3	3.4	2.1	2.8
1996 and newer LDGV	6.8	4.5	1.9	2.5
One or More On-Road Measurements TSI Based Vehicle Must Have a Vehicle Emissions Index of 75% or Higher				
Period/Model Year/Vehicle Type	CO	HC	NO Range[(1)]	
			Low	High
1968 through 1980– LDGT (1 or 2)	2.0	1.5		
1968 through 1980 – LDGV	2.0	1.5		
1968 through 1980 – HDGV	2.0	1.5		
1981 through 1990 – LDGT (1 or 2)	3.0	3.5		
1981 through 1990 – LDGV	3.0	3.5		
1981 through 1990 – HDGV	3.0	3.5		
1991 through 1995 – LDGT (1 or 2)	3.0	4.0		
1991 through 1995 – LDGV	3.0	4.0		
1991 through 1995 – HDGV	3.0	4.0		
1996 and newer – LDGT (1 or 2)	4.0	4.0		
1996 and newer – LDGV	4.0	4.0		
1996 and newer – HDGV	4.0	4.0		
1996 and newer HDGV	4.0	4.0		
Two or More On-Road Measurements TSI Based				
Period/Model Year/Vehicle Type	CO	HC	NO Range[(1)]	
			Low	High

1968 through 1980– LDGT (1 or 2)	1.5	1.1		
1968 through 1980 – LDGV	1.5	1.1		
1968 through 1980 – HDGV	1.5	1.1		
1981 through 1990 – LDGT (1 or 2)	2.3	2.6		
1981 through 1990 – LDGV	2.3	2.6		
1981 through 1990 – HDGV	2.3	2.6		
1991 through 1995 – LDGT (1 or 2)	2.3	3.0		
1991 through 1995 – LDGV	2.3	3.0		
1991 through 1995 – HDGV	2.3	3.0		
1996 and newer – LDGT (1 or 2)	3.0	3.0		
1996 and newer – LDGV	3.0	3.0		
1996 and newer – HDGV	3.0	3.0		

[1]NO Value = Low Range Value + (Actual VSP-3)/19 x (High Range Value – Low Range Value)

~~G. Beginning July 1, 2005, clean screen vehicles will be identified using on-road testing equipment measurements based on all of the following criteria:~~

~~1. Up to 5.0% of the number of vehicles measured during any 30-day period may be identified as clean screen vehicles. This percentage may be evaluated annually by the department and adjusted based on the amount of emissions reduction lost due to clean screening.~~

~~2. Vehicles that have the cleanest measurements based on an average of at least three measurements (taken on three different days in a 120-day time period) may be identified as clean screen vehicles.~~

~~3. Vehicles must have no measurements exceeding the standards in Table III B (taken on three different days in a 120-day time period as required in subdivision 2 of this subsection) to be identified as clean screen vehicles.~~

~~4. Vehicles must not be equipped with an OBD system unless DEQ makes a determination to include certain OBD model years based on evidence that there would not be a significant loss in emissions reduction benefits.~~

~~H. At the discretion of the director, vehicles identified as clean screen vehicles in accordance with subsection G of this section may be recorded as having passed the next emissions inspection required by § 46.2-1183 of the Code of Virginia and the result shall be entered into the emissions inspection record for that vehicle.~~

9VAC5-91-185. Clean screen vehicle emissions standards for on-road testing.

A. Clean screen vehicles shall be identified by an on-road emissions inspector using on-road testing based on all of the following criteria until the provisions of subsection B of this section become effective according to the schedule in subsection D of 9VAC5-91-740:

1. Up to 5.0% of the number of vehicles measured during any 30-day period may be identified as clean screen vehicles. This percentage may be evaluated annually by the department and adjusted based on the amount of emissions reduction lost due to clean screening.

2. Vehicles that have the cleanest measurements based on an average of at least three measurements (taken on three different days in a 120-day time period) may be identified as clean screen vehicles.

3. Vehicles must have no measurements exceeding the on-road high emitter emissions standard within the 120-day time period as required in subdivision 2 of this subsection to be identified as clean screen vehicles.

4. Vehicles must not be equipped with an OBD system unless DEQ makes a determination to include certain OBD model years based on evidence that there would not be a significant loss in emissions reduction benefits.

B. Vehicles shall be identified as clean screen vehicles by an on-road emissions inspector using on-road testing based on the following criteria:

1. The vehicle is due for an emissions inspection test within 120 days;

2. The result of the most recent initial emissions test on record with the department is not a "fail";

3. No on-road emissions measurement since the most recent initial emissions test exceeds the on-road high emitter emissions standards as determined according to 9VAC5-91-180 B;

4. The two most recent on-road emissions measurements taken within 12 months of the registration expiration date shall not exceed the clean screen standards as determined in subsection D of this section and the vehicle must have a vehicle emissions index no greater than 80; or

5. The most recent on-road emissions measurement taken within 12 months of the registration expiration date shall not exceed the clean screen standards as determined in subsection D of this section and the vehicle shall have a vehicle emissions index no greater than 75.

C. On an annual basis, at least 2.0% of the vehicles meeting the clean screen criteria in subsection B of this section shall not be notified of the clean screen and may receive an emissions test at an emission inspection station. The department shall analyze these test results to determine the effect of on-road testing on total emissions reductions. The director may decrease the maximum vehicle emissions index specified in subdivision B 4 and 5 of this section as necessary to ensure compliance with federal requirements in accordance with 9VAC5-91-740 F.

D. The clean screen vehicle standards are determined as a percentage of the values in Table III-C. The director may adjust the percentage between 50% to 80% to ensure compliance with federal requirements in accordance with 9VAC5-91-740 F.

E. The director may exempt certain vehicle models with known emissions related deficiencies.

F. Clean screen vehicles in accordance with subsections A and B of this section may be recorded as having passed the next emissions inspection required by § 46.2-1178 of the Code of Virginia and the result shall be entered into the emissions inspection record for that vehicle.

TABLE III-C

On Road Clean Screen Maximum Standards

Emissions Test Weight (ETW)	LDGV			LDGT 1 & 2		
	HC(ppm)	CO(%)	NO (ppm)	HC(ppm)	CO(%)	NO (ppm)
1750	136	0.77	1095	136	0.77	1095
1875	129	0.73	1031	129	0.73	1031
2000	123	0.69	973	123	0.69	973
2125	116	0.66	920	116	0.66	920
2250	111	0.62	871	111	0.62	871
2375	106	0.59	827	106	0.59	827
2500	101	0.57	786	101	0.57	786
2625	97	0.54	749	97	0.54	749
2750	93	0.52	715	93	0.52	715
2875	89	0.50	684	89	0.50	684
3000	86	0.48	656	86	0.48	656
3125	83	0.46	630	83	0.46	630
3250	80	0.45	607	80	0.45	607
3375	78	0.43	585	78	0.43	585
3500	76	0.42	566	76	0.42	566
3625	74	0.41	547	75	0.41	547
3750	72	0.40	531	72	0.40	531
3875	70	0.39	515	91	0.50	644
4000	68	0.38	501	88	0.49	626
4125	67	0.37	487	87	0.48	609
4250	65	0.36	475	84	0.47	594
4375	64	0.35	463	83	0.46	579

4500	63	0.35	451	81	0.45	564
4625	61	0.34	440	79	0.44	551
4750	60	0.33	430	78	0.43	538
4875	59	0.33	420	76	0.43	525
5000	58	0.32	410	75	0.42	513
5125	57	0.31	400	74	0.41	500
5250	56	0.31	391	72	0.40	489
5375	55	0.30	382	71	0.39	478
5500	54	0.30	373	70	0.39	466
5625	53	0.30	364	68	0.38	455
5750	52	0.29	356	67	0.37	445
5875	51	0.28	348	66	0.36	435
6000	50	0.28	340	65	0.36	425
6125	49	0.27	333	64	0.35	416
6250	48	0.27	326	62	0.35	408
6375	48	0.26	320	62	0.34	400
6500	47	0.26	315	61	0.34	394
6625	46	0.26	311	60	0.34	389
6750	46	0.26	307	60	0.34	384
6875	46	0.25	305	60	0.33	382
7000	46	0.25	305	59	0.33	381
7125	46	0.25	305	59	0.33	381
7250	46	0.25	305	59	0.33	381
7375	46	0.25	305	59	0.33	381
7500	46	0.25	305	59	0.33	381

9VAC5-91-290. Emissions inspection station operations.

A. Emissions inspection station operations shall be conducted in accordance with applicable statutes and this chapter.

B. Emissions inspection stations shall cooperate with the department during the conduct of audits, investigations and complaint resolutions.

C. Emissions inspection stations, except fleet emissions inspection stations permitted under 9VAC5-91-370, shall conduct emissions inspections during normal business hours and shall inspect every vehicle presented for inspection within a reasonable time period.

D. Emissions inspection stations that have performed a chargeable initial inspection that resulted in a test failure or failed invalid result shall provide one free reinspection on the same vehicle upon request within 14 calendar days of the initial inspection test failure or failed invalid result.

E. Emissions inspection stations finding it necessary to suspend inspections due to analyzer system malfunction or any other reason shall refund any inspection fee collected when a station cannot accommodate a customer's request for a free reinspection in accordance with subsection D of this section and 9VAC5-91-420 M.

F. Emissions inspection stations shall notify the department when they are unable to perform emission inspections for any reason and shall notify the department when they are able to resume inspections.

G. Emissions inspection stations shall:

1. Employ at least one emissions inspector.

2. Have an emissions inspector on duty during posted emissions inspection hours, except for fleet emissions inspection stations permitted under 9VAC5-91-370.

3. Only allow licensed emissions inspectors to conduct inspections.

H. Emissions inspection stations shall provide to emissions inspection customers any information which has been provided to the emissions inspection station by the department and which is intended to be provided to the customer.

I. Emissions inspection stations shall allow emissions inspection customers to have viewing access to the inspection process.

J. Emissions inspections and vehicle safety inspections may be performed in the same service bay provided that the facility is both an emissions inspection station and an official safety inspection station in accordance with §§ 46.2-1163 and 46.2-1166 of the Code of Virginia.

K. Emissions inspections may be performed in the inspection area of the emissions inspection station or, if by wireless means, in any other area on the premises of the emissions inspection station provided that all applicable test components can be performed at that location.

9VAC5-91-320. Equipment and facility requirements.

A. Emissions inspection stations shall have adequate facilities and equipment, including all current reference and application guides, as specified in subsection D of this section to perform all elements of the emissions inspection.

B. Emissions inspection stations shall be equipped in accordance with this chapter and applicable statutes.

C. Emissions inspection stations which no longer meet the requirements of this part shall cease inspection operations and may be subject to enforcement actions in accordance with Part IX (9VAC5-91-590 et seq.).

D. Emissions inspection stations shall be equipped with the following equipment, tools and reference materials at all times. Fleet and mobile fleet emissions inspection stations shall be so equipped during inspection periods reported to the department.

1. A certified analyzer system in accordance with Part X (9VAC5-91-640 et seq.) capable of conducting OBD testing as specified in 9VAC5-91-420 G 3.

2. Span gases approved by the department and equipment for performing gas span checks.

3. Hand tools and equipment for the proper performance of all inspections as approved by the department.

4. A current emissions control systems application guide which contains a quick reference for emissions control systems and their uses on specific make, model, and model year vehicles. This may be in an electronic form.

5. Analyzer manufacturer's maintenance and calibration manual.

6. Certified thermometer.

7. Suitable nonreactive exhaust hoses or a ventilation system that conforms to The BOCA National Mechanical Code/1993 (see 9VAC5-91-50) for automotive service stations and for facilities in which vehicle engines are operated in excess of 10 continuous seconds and which conforms to the applicable local building or safety code, zoning ordinance, or Occupational Safety and Health Administration requirement.

a. The ventilation system shall discharge the vehicle exhaust outside the building.

b. The flow of the exhaust collection system shall not cause dilution of the exhaust at the sample point in the probe.

8. A cooling fan, used to ventilate the engine compartment, which is capable of generating at least 3,000 standard cubic feet per minute of air flow directed at the vehicle's cooling system at a distance of 12 inches.

9. This regulation (9VAC5-91).

10. Telephone.

11. Dedicated phone line or web-based internet connection for use by the analyzer system in emissions inspection stations except fleet emissions inspection stations which have been authorized by the director to use a nondedicated phone line pursuant to an agreement between the director and the fleet emissions inspection station, based on vehicle maintenance or registration cycles.

12. Department approved paper for use in the analyzer system printer.

13. Reference material suitable for making a determination, as applicable, of the proper exhaust emissions test type to be administered. This may be in electronic form.

E. Emissions inspection stations shall maintain equipment, tools, and reference materials in proper working order and available at the emissions inspection station at all times.

F. It is the responsibility of the permit holder to maintain a safe and healthy working environment for the conduct of emissions inspections.

9VAC5-91-740. General requirements.

A. The on-road testing program shall conform, at a minimum, to the requirements of 40 CFR 51.371 and § 46.2-1178.1 of the Code of Virginia applicable to the program area in which it is employed.

B. The emissions standards for the on-road remote sensing program are ~~those contained in Table III-B in 9VAC5-91-180~~ the on-road high emitter emissions standards, the clean screen vehicle standards, or both.

C. The on-road testing program and clean screen program including the emissions standards applicable thereto shall apply to any affected motor vehicles registered ~~in the program~~

~~area and any affected motor vehicles~~ or operated primarily in the program area.

D. An on-road clean screen program shall be implemented according to the following schedule:

1. On and after July 1, 2012, and before July 1, 2013, an on-road clean screen program shall be limited to no more than 10% of the motor vehicles described in subsection C of this section that are eligible for emissions inspection during the applicable 12-month period;

2. On and after July 1, 2013, and before July 1, 2014, an on-road clean screen program shall be limited to no more than 20% of the motor vehicles described in subsection C of this section that are eligible for emissions inspection during the applicable 12-month period; and

3. On and after July 1, 2014, an on-road clean screen program shall be limited to no more than 30% of the motor vehicles described in subsection C of this section that are eligible for emissions inspection during the applicable 12-month period.

E. The on-road emissions inspector shall issue a clean screen vehicle notification to owners of affected motor vehicles that have met the clean screen emissions standards. The notification shall be issued in a timeframe compatible with the Virginia Division of Motor Vehicles vehicle registration renewal notification.

F. A motor vehicle owner who has received a clean screen vehicle notification may choose to meet the vehicle registration requirements of § 46.2-1183 of the Code of Virginia by participating in the clean screen program according to § 46.2-1178.1 E of the Code of Virginia.

G. The on-road emissions inspector performing on-road testing under this subsection may charge each motor vehicle owner who elects to participate in the on-road clean screen program an inspection fee in an amount as designated in § 46.2-1182 of the Code of Virginia.

H. The director may reduce the percentage of vehicles eligible to participate in the on-road clean screen program as is necessary to meet applicable air quality requirements under the federal Clean Air Act in accordance with § 46.2-1178 C of the Code of Virginia.

I. At the discretion of the director, the implementation or operation of the clean screen program may be suspended or revoked for failure to operate in accordance with the provisions of Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia and the regulations adopted thereunder.

9VAC5-91-750. Operating procedures; violation of on-road high emitter standards.

A. Remote sensing equipment shall be operated in accordance with the remote sensing equipment manufacturers operating instructions and any contract or agreement between the department and the equipment operator.

B. Motor vehicles determined by remote sensing equipment to have exceeded ~~the applicable emissions standard in Table III B in 9VAC5-91-180~~ on-road high emitter standards shall be considered to have violated such emissions standards.

1. Owners of such motor vehicles will be issued a notice of violation and shall be subject to the civil charges in 9VAC5-91-760 unless waived pursuant to this section.

2. Upon a determination by the department that a violation has occurred, motorists will be informed by the department or its representative of the failure to comply with emissions standards and of the dates, times, and places such remote sensing measurement occurred.

C. Civil charges assessed pursuant to this part will be waived if, within 30 days of the date of the notice of the violation, the motor vehicle owner provides proof to the department that:

1. Since the date of the violation, the vehicle has passed, or received a waiver as the result of, a confirmation test, or

2. Within the 12 months prior to the violation, the vehicle had received an emissions inspection waiver.

D. The requirement for an emissions inspection or payment of civil charges, based on a remote sensing failure, may be waived by the department if the affected motor vehicle in question ~~(i)~~ is, by virtue of its registration date, required to have an emissions inspection within three months of the date of the remote sensing measurement that indicates the vehicle has (i) exceeded the ~~applicable standards in Table III B in 9VAC5-91-180~~ on-road high emitter emission standards; or (ii) has received a waiver within the 12 months prior to the violation.

E. For 1996 and newer model vehicles with OBD, the director may require that the vehicle pass an exhaust test (ASM or two-speed idle) in addition to the OBD system test.

F. Notice of violations and civil charges may be issued to any motorist no more than two times in any 365-day period for any one motor vehicle.

VA.R. Doc. No. R13-3406; Filed December 12, 2012, 10:44 a.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-25).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

Effective Date: January 30, 2013.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Summary:

This regulatory amendment updates the citations and incorporation of Title 40 of the CFR to the CFR as published on July 1, 2012.

9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced ~~or adopted herein~~ and incorporated ~~by reference,~~ herein that regulation shall be as it exists and has been published ~~as a final regulation in the Federal Register prior to July 1, 2011, with the effective date as published in the Federal Register notice or February 15, 2012, whichever is later~~ in the July 1, 2012, update.

VA.R. Doc. No. R13-3459; Filed December 11, 2012, 9:32 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-250. Procedural Rule No. 4 - Proxy Voting by Board Members (repealing 9VAC25-250-10, 9VAC25-250-20).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Effective Date: January 30, 2013.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, TTY (804) 698-4021, or email william.norris@deq.virginia.gov.

Summary:

The State Water Control Board is repealing Procedural Rule No. 4 - Proxy Voting by Board Members (9VAC25-250), which establishes conditions and procedures for a member of the State Water Control Board to vote by proxy. This rule is being repealed because the board lacks authority to vote by proxy.

VA.R. Doc. No. R13-3438; Filed December 11, 2012, 9:31 a.m.

Additional Public Hearing and Extension of Comment Period

Title of Regulation: **9VAC25-600. Eastern Virginia Ground Water Management Area (amending 9VAC25-600-10, 9VAC25-600-20).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

The State Water Control Board noticed a public comment period on the amendment of the Eastern Virginia Ground Water Management Area regulations (9VAC25-600) in the October 22, 2012, issue of the Virginia Register of Regulations (29:4 VA.R. 888-891 October 22, 2012). The proposed amendments expand the Eastern Virginia Groundwater Management Area to include the remaining portion of Virginia's coastal plain; specifically, the counties of Essex, Gloucester, King George, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland, and those areas of Arlington, Caroline, Fairfax, Prince William, Spotsylvania, and Stafford counties that lie east of Interstate 95.

The board has scheduled an additional public hearing and has extended the public comment period to seek public comment through the Department of Environmental Quality (DEQ) on (i) the proposal, (ii) the costs and benefits of the proposal, (iii) the effects of the proposal on farm and forest land preservation, and (iv) the impacts on small businesses.

The public hearing will be held at the Rappahannock Community College, Room W172, 52 Campus Drive, Warsaw, VA 22572, on January 14, 2013, at 6:30 p.m. Participants may visit the welcome desk to obtain directions to the meeting room.

The public comment period has been extended to January 30, 2013. DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name and address of the person commenting and be received by DEQ no later than the last day of the comment period. Both oral and written comments are accepted at the public hearings. More detailed information is available at the Town Hall website at http://www.townhall.virginia.gov. More information on the proposals can also be obtained by contacting the DEQ representative named below.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, TDD (804) 698-4021, or email melissa.porterfield@deq.virginia.gov.

VA.R. Doc. No. R09-1782; Filed December 17, 2012, 8:43 a.m.

Additional Public Hearing and Extension of Comment Period

Title of Regulation: **9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-10 through 9VAC25-610-170, 9VAC25-610-190, 9VAC25-610-220, 9VAC25-610-240 through 9VAC25-610-350, 9VAC25-610-370, 9VAC25-610-380, 9VAC25-610-390; adding 9VAC25-610-85, 9VAC25-610-92, 9VAC25-610-94, 9VAC25-610-96, 9VAC25-610-98, 9VAC25-610-102, 9VAC25-610-104, 9VAC25-610-106, 9VAC25-610-108; repealing 9VAC25-610-400).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

The State Water Control Board noticed a public comment period on the amendment of the Ground Water Withdrawal Regulations (9VAC25-610) in the October 22, 2012, issue of the Virginia Register of Regulations (29:4 VA.R. 891-923 October 22, 2012). The proposed amendments amend the Ground Water Withdrawal Regulations to manage groundwater resources more comprehensively.

The board has scheduled an additional public hearing and has extended the public comment period to seek public comment through the Department of Environmental Quality (DEQ) on (i) the proposal, (ii) the costs and benefits of the proposal, (iii) the effects of the proposal on farm and forest land preservation, and (iv) the impacts on small businesses.

The public hearing will be held at the Rappahannock Community College, Room W172, 52 Campus Drive, Warsaw, VA 22572, on January 14, 2013, at 6:30 p.m. Participants may visit the welcome desk to obtain directions to the meeting room.

The public comment period has been extended to January 30, 2013. DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name and address of the person commenting and be received by DEQ no later than the last day of the comment period. Both oral and written comments are accepted at the public hearings. More detailed information is available at the Town Hall website at http://www.townhall.virginia.gov. More information on the proposals can also be obtained by contacting the DEQ representative named below.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, TDD (804) 698-4021, or email melissa.porterfield@deq.virginia.gov.

VA.R. Doc. No. R09-1781; Filed December 17, 2012, 8:43 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-860. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Potable Water Treatment Plants (amending 9VAC25-860-10, 9VAC25-860-40, 9VAC25-860-50, 9VAC25-860-60, 9VAC25-860-70; adding 9VAC25-860-15).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act.

Public Hearing Information:

February 14, 2013 - 10 a.m. - Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA

Public Comment Deadline: March 1, 2013.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, or email elleanore.daub@deq.virginia.gov.

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes, or other waste into or adjacent to state waters, and § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes, and other wastes. Further, § 62.1-44.16 specifies the board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters. Section 402 of the Clean Water Act (33 USC § 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the Environmental Protection Agency. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose: The proposed regulatory action is needed in order to establish permitting requirements for discharges from potable

water treatment plants to protect the quality of state waters. The existing permit expires on December 23, 2013, and the regulatory action is necessary in order to reissue the permit for another term. The goal of the regulatory action is to continue the existence of the general permit that establishes limitations and monitoring requirements for point source discharges from potable water treatment plants that ensures protection of the environment.

Substance: Substantive proposed changes:

1. Add definitions for department, membrane treatment, microfiltration, municipal separate storm sewer system, nanofiltration, reverse osmosis, total maximum daily load and ultrafiltration; and modify the definition of potable water treatment plant;

2. Change the expiration date of this permit from December 23, 2018, to June 30, 2018, to avoid the holiday season and put it on a calendar quarter;

3. Add two reasons authorization to discharge cannot be granted (if the antidegradation policy is not met or if the discharge is not consistent with a total maximum daily load (TMDL)), move the details of the whole effluent toxicity testing into the permit itself, and add a statement in the authorization section that owners who demonstrate reasonable potential for toxicity are not allowed coverage under the general permit;

4. Add language to allow for "administrative continuances" of coverage;

5. Adjust the submittal dates for registration statements;

6. Expand several registration statement questions to include chemical usage changes, treatment technology changes, discharges to a municipal separate storm sewer system (MS4) notification, and notification of downstream water supply owners for new plants;

7. Reduce monitoring requirements on the effluent limits pages for plants that are not reverse osmosis or nanofiltration plants from monthly to quarterly;

8. Change the "5 Grab/8 Hour Composite" on the effluent limits pages for total suspended solids (TSS) and total dissolved solids (TDS) samples to "composite" and explain how that differs for continuous vs. batch discharges;

9. In the special conditions, change the inspection frequency "daily" to "daily when discharging." This was done at the request of the industry technical advisory committee (TAC) members. This seemed reasonable as other states had a similar frequency or no inspections at all;

10. In the special conditions, add that discharges to total maximum daily load (TMDL) waters must implement measures and controls consistent with the TMDL;

11. In the special conditions, add that groundwater monitoring plans may be reevaluated and changed when appropriate, and that the owner may submit that evaluation to the board for consideration;

12. In the special conditions, change that Operations and Maintenance (O&M) manuals are no longer submitted to the department for approval but they must be made available to department personnel upon request;

13. In the special conditions, move the details of the whole effluent toxicity (WET) testing requirement out of the section on "authorization to discharge" (9VAC25-860-50). The 2008 regulation required this WET testing before coverage could be granted. This was a hardship on new permittees who had to apply and pay for an individual permit before they could qualify for the general permit. With this draft, the proposal is to require the WET testing during the term of the general permit, and only for permittees with flows greater than or equal to a daily maximum of 50,000 GPD. Also, the owners are given an opportunity to find and eliminate the source of any toxicity before they are subject to a WET limit at the next reissuance. This should attract new permittees and existing permittees with daily maximum flows less than 50,000 GPD to move away from their individual permits to the general permit. The regulation also allows for representative toxicity data from the past to be used to qualify for general permit coverage, and the owner does not have to retest unless there are significant changes at the plant. Finally, the WET testing requirement within the general permit is a onetime requirement. Once the permittee shows no reasonable potential for toxicity, then tests do not need to be repeated unless changes are made at the plant. This should also attract more individual permit holders that already have this WET testing information to turn to the general permit; and

14. In the special conditions, add that discharges should be controlled to meet water quality standards, add procedures for termination of coverage, and add that coverage under the permit did not relieve an owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.

The changes described are to make this general permit similar to other general permits issued recently and in response to staff and technical advisory committee members' requests to clarify and update permit limits and conditions.

Issues: The advantages to the public and the agency are that a VPDES general permit will continue to be available to potable water treatment plants to enable them to discharge safely to surface waters. The regulatory action poses no disadvantages to the public or the Commonwealth.

One pertinent matter of interest to the regulated community and government officials is that potable water treatment plants have residual sludge that must be disposed of. Some potable water treatment plants land apply this sludge. These land application provisions are not included in this proposal; however, the agency is considering adding the land application requirements for disposal of potable water treatment plant residual sludge as a special condition to this

permit. This special condition would only apply to those plants that land apply their residual sludge. If incorporated into this general permit regulation, the requirements would go to the technical advisory committee for review before final adoption by the State Water Control Board.

Summary:

This rulemaking reissues the existing VPDES general permit that expires on December 23, 2013. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from potable water treatment plants to surface waters. This general permit regulation is reissued to continue making it available for these plants to continue to discharge.

9VAC25-860-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9VAC25-31, the VPDES Permit Regulation, unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Membrane treatment" means a pressure driven process using synthetic materials to separate constituents from water. Membranes are used for dissolved solids or suspended solids removal. Membrane treatment for dissolved solids removal includes reverse osmosis and nanofiltration. Membrane treatment for suspended solids removal includes ultrafiltration and microfiltration.

"Microfiltration" means a method of membrane treatment designed to remove particles up to 0.1 µm in size. The treatment removes cysts, bacteria, and most (but not all) particulates.

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act (CWA) that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a publicly owned treatment works (POTW).

"Nanofiltration" or "low-pressure reverse osmosis" or "membrane softening" means a method of membrane treatment designed to remove multivalent ions (softening) and removes contaminants up to 1 nm (nanometer = 0.001 µm) in size.

"Potable water treatment ~~plants~~ plant" means ~~establishments primarily~~ an establishment engaged in ~~distributing water for sale~~ producing water for domestic, commercial, ~~and~~ or industrial use as designated by Standard Industrial Classified (SIC) Code 4941 – Water Supply (Office of Management and Budget (OMB) SIC Manual, 1987), or others as approved by the board.

"Reverse osmosis" means a method of ~~water~~ membrane treatment ~~that involves the application of pressure to a concentrated solution that causes the passage of a liquid from the concentrated solution to a weaker solution across a semi-permeable membrane. The membrane allows the passage of the solvent (water) but not the dissolved solids (solutes)~~ designed to remove salts and low-molecular weight solutes and remove all contaminants up to 0.0001 µm (microns) in size. Reverse osmosis methods apply pressure in excess of osmotic pressure to force water through a semi-permeable membrane from a region of high salt concentration to a region of lower salt concentration.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Ultrafiltration" means a method of membrane treatment designed to remove particles up to 0.01 µm in size. The treatment removes cysts, bacteria, and viruses as well as suspended solids.

9VAC25-860-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated herein, that regulation shall be as it exists and has been published as of July 1, 2012.

9VAC25-860-40. Effective date of the permit.

This general VPDES permit will become effective on ~~December 24, 2008~~ December 24, 2013, and will expire on June 30, 2018. ~~This general permit will expire five years after the effective date.~~ This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-860-50 ~~and the receipt of this general permit~~.

9VAC25-860-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia ~~provided that the owner files and receives acceptance by the board of the registration statement of 9VAC25-860-60, files the required permit fee, complies~~

~~with the effluent limitations and other requirements of 9VAC25-860-70, and~~ provided that:

1. The owner submits a registration statement in accordance with 9VAC25-860-60 and that registration statement is accepted by the board;

2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-860-70; and

4. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner ~~has not been~~ is required to obtain an individual permit ~~according to~~ in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The ~~proposed~~ owner is proposing to discharge ~~is not~~ to state waters specifically named in other board regulations ~~or policies~~ that prohibit such discharges; ~~and~~

~~3. The owner demonstrates that there is not a reasonable potential for toxicity by performing a toxicity screening, the results of which are to be submitted with the registration statement. The toxicity screening shall consist of a minimum of four sets (set = vertebrate and invertebrate) of acute or chronic tests that reflect the characteristics of the current effluent using the following tests and organisms.~~

~~For an intermittent or batch discharger~~	~~48 hour static acute toxicity tests~~
~~Freshwater organisms~~	~~Pimephales promelas or Oncorhynchus mykiss (for cold water) (vertebrates)~~ ~~Ceriodaphnia dubia (invertebrate)~~
~~Saltwater organisms~~	~~Cyprinodon variegates (vertebrate)~~ ~~Americamysis bahia (invertebrate)~~
~~For a continuous discharger~~	
~~Freshwater~~	~~7-Day Chronic Static Renewal Larval Survival and Growth Test with Pimephales promelas (vertebrate)~~ ~~3-Brood Chronic Static Renewal Survival and Reproduction Test with Ceriodaphnia dubia (invertebrate)~~
~~Saltwater~~	~~7-Day Chronic Static Renewal Larval Survival and Growth Test with Cyprinodon variegatus (vertebrate)~~ ~~7-Day Chronic Static Renewal Survival, Growth and Fecundity Test with Americamysis bahia (invertebrate)~~

~~Freshwater organisms are used where the salinity of the receiving water is less than 1.0%. Where the salinity of the receiving water is greater than 1.0% but less than 5.0% either freshwater or saltwater organisms may be used. Saltwater organisms are used where the salinity is greater than 5.0%.~~

~~There shall be a minimum of 30 days between sets of tests, and test procedures shall follow 40 CFR Part 136, which references the EPA guidance manuals for whole effluent toxicity testing. The data will be evaluated statistically to see if there is reasonable potential for toxicity; if such a potential exists, the facility must either continue operation under its existing individual VPDES permit, or apply for an individual VPDES permit.~~

~~Facilities that are subject to the requirements of 9VAC25-820-70 Part I G 1 (General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia – Requirement to Register), are excluded from coverage under this general permit.~~

3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30;

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL;

5. The facility is subject to the requirements of 9VAC25-820-70 Part I G 1 (General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia - Requirement to Register); and

6. An owner applying for coverage under this general permit submits the results of representative whole effluent toxicity testing of the discharge, and the results demonstrate that there is a reasonable potential for toxicity.

~~B. Receipt of~~ C. Compliance with this general permit constitutes compliance with the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the potable water treatment plant general permit issued in 2008 and that submits a complete registration statement on or before December 24, 2013, is authorized to continue to discharge under the terms of the 2008 general permit until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the 2008 general permit;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by administratively continued coverage under the terms of the 2008 general permit or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-860-60. Registration statement.

~~The owner/operator shall file a complete VPDES general permit registration statement for potable water treatment plants. Any owner/operator proposing a new discharge shall file the registration statement at least 60 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing potable water treatment plants covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing potable water treatment plant not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement. The required registration statement shall contain the following information:~~

A. Deadlines for submitting registration statement. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for potable water treatment plants.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 60 days prior to the date planned for commencement of the new discharge.

2. Existing facilities.

a. Any owner covered by an individual VPDES permit who is proposing to be covered by this general permit shall submit a complete registration statement at least 270 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the general VPDES permit that became effective on December 24, 2008, and who intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before October 24, 2013.

c. Any owner of a potable water treatment plant not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement.

B. Late registration statements. Registration statements for existing owners covered under subdivision A 2 b of this section will be accepted after December 24, 2013, but authorization to discharge will not be retroactive. Owners described in subdivision A 2 b of this section that submit registration statements after October 24, 2013, are authorized to discharge under the provisions of 9VAC25-860-50 D if a complete registration statement is submitted on or before December 24, 2013.

C. The required registration statement shall contain the following information:

1. Facility name and ~~location~~ street address ~~(street no., route no., or other identifier)~~, owner name, mailing address, telephone number, and ~~the~~ email address (if available);

~~2. Facility owner's name mailing address, telephone number and the email address;~~

~~3. Facility operator~~ 2. Operator or other contact name ~~and~~, mailing address ~~and~~, telephone number, and email address (if available);

~~4.~~ 3. The nature of the business;

~~5.~~ 4. A USGS 7.5 minute topographic map or equivalent computer generated map showing the facility location extending to at least one mile beyond the property boundary and the location of the discharge point(s);

~~6.~~ 5. The receiving waters of the discharge;

~~7.~~ 6. The outfall number, the daily maximum actual or projected wastewater flow rate ~~(typical~~ (millions of gallons per day or gallons per day), typical volume, duration of discharges, and ~~number of discharges per day/week) and the number of outfalls~~ frequency of discharge;

~~8. If the type of water treatment plant is conventional, reverse osmosis, or a combination of both~~ 7. The type of water treatment (e.g. conventional, microfiltration,

ultrafiltration, nanofiltration, reverse osmosis, or a combination of these) and, if applicable, a description of any treatment type changes since the previous registration statement was submitted;

~~9. If this facility currently has an~~ 8. The number of any existing VPDES permit~~, and if so, the permit number~~ that authorizes discharges from the potable water treatment plant;

~~10.~~ 9. If the existing VPDES permit contains a ~~ground water~~ groundwater monitoring plan requirement ~~and, if so, submit,~~ a copy of the ~~DEQ approved groundwater monitoring~~ board-approved plan should be submitted;

~~11. Indicate if the~~ 10. Information regarding the lining of any settling basins~~,~~ or lagoons, ~~or both~~ whether such units are earthen lined, and if so, whether the ~~units~~ linings have a permeability of no greater than 10^{-6} cm/sec;

~~12.~~ 11. The results of ~~the~~ any whole effluent toxicity evaluation required by the 2008 potable water treatment plant general permit regulation, 9VAC25-860-50 A 3, or the current individual permit, if not previously submitted to the department;

~~13.~~ 12. A schematic drawing showing the source(s) of water used on the property and the conceptual design of the methods of treatment and disposal of wastewater;

~~14.~~ 13. Information on chemicals used in the treatment, to include (i) a description of ~~chemical~~ chemicals, ~~and~~ (ii) a proposed or actual schedule and quantity of chemical usage and, if applicable, (iii) a description of any chemical or chemical usage changes since the previous registration statement was submitted;

~~15.~~ 14. A description of how solids and residue from ~~the~~ any settling basins or lagoons are disposed;

15. Whether the facility will discharge to a MS4. If so, the name of the MS4 owner must be provided. If the owner of the potable water treatment plant is not the owner of the MS4, the facility owner shall notify the MS4 owner of the existence of the discharge and include a copy of the notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the owner's VPDES general permit number;

16. If a new potable water treatment plant owner proposes to discharge within five miles upstream of another public water supply system's intake, the new potable water treatment plant owner shall notify the public water supply system's owner and include a copy of the notification with the registration statement; and

~~16.~~ 17. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The registration statement shall be signed in accordance with 9VAC25-31-110.

9VAC25-860-70. General permit.

Any owner whose registration statement is accepted by the board will receive coverage under the following permit and shall comply with the requirements therein and be subject to all requirements of 9VAC25-31.

General Permit No.: VAG64
Effective Date: ~~December 24, 2008~~ December 24, 2013
Expiration Date: ~~December 23, 2013~~ June 30, 2018
GENERAL PERMIT FOR POTABLE WATER TREATMENT PLANTS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, ~~owners/operators~~ owners of potable water treatment plants are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations ~~or policies~~ that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, and Part II - Conditions Applicable To All VPDES Permits, as set forth herein.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. Facilities other than reverse osmosis or nanofiltration plants.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater ~~originating from a potable water treatment plant~~ from outfall(s): _____

Such discharges shall be limited and monitored ~~by the permittee~~ as specified below:

EFFLUENT CHARACTERISTICS	EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Minimum	Maximum	Frequency	Sample Type
Flow (MGD)	NL	NA	NL	1/3 ~~Month~~ Months[4]	Estimate
pH (SU)	NA	6.0[1]	~~9~~ 9.0[1]	1/3 ~~Month~~ Months[4]	Grab
Total Suspended Solids (mg/l)	30	NA	60	1/3 ~~Month~~ Months[4]	~~5G/8HC~~ Composite[2]
Total Residual Chlorine[3] (mg/l)	0.011	NA	0.011	1/3 ~~Month~~ Months[4]	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

[1]Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the ~~maximum and~~ minimum and maximum effluent limitations.

[2]~~5G/8HC - Eight hour composite - Consisting of~~ Composite - For continuous discharges, five grab samples collected at hourly intervals. For batch discharges, five grab samples taken at evenly placed intervals until the discharge ceases, or until a minimum of five grab samples have been collected. ~~Samples shall be comprised of wastewater discharged during all phases of wastewater generation, including back wash, etc.~~ For continuous or batch discharges, the first grab shall occur within 15 minutes of commencement of the discharge.

[3]Total residual chlorine limit shall only be applicable to facilities ~~discharging to surface waters~~ that use chlorine in the treatment process.

[4]~~Monitoring frequency shall be reduced to 1/quarter upon written notification from the DEQ regional office.~~ Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January. ~~Reference special condition no. 4.~~

~~There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

2. Reverse osmosis and nanofiltration plants.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating ~~from a reverse osmosis potable water treatment plant~~ from outfall(s): _____

Such discharges shall be limited and monitored ~~by the permittee~~ as specified below:

EFFLUENT CHARACTERISTICS	EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Minimum	Maximum	Frequency	Sample Type
Flow (MGD)	NL	NA	NL	1/ Month[3]	Estimate
pH (SU)	NA	6.0[1]	9.0[1]	1/ Month[3]	Grab

Total Dissolved Solids (mg/l)	NA	NA	NL	1/ Month[3]	~~5G/8HC~~ Composite[2]
Dissolved Oxygen (mg/l)	NA	4.0[1]	NA	1/ Month[3]	Grab

NL - No limitation, monitoring requirement only

NA - Not applicable

[1]Where the Water Quality Standards (9 VAC 25-260) establish alternate standards for pH ~~and dissolved oxygen~~ in waters receiving the discharge, those standards shall be the ~~maximum and~~ minimum and maximum effluent limitations.

[2]~~5G/8HC - Eight hour composite - Consisting of~~ Composite - For continuous discharges, five grab samples collected at hourly intervals. For batch discharges, five grab samples taken at evenly placed intervals until the discharge ceases or until a minimum of five grab samples have been collected. ~~Samples shall be comprised of wastewater discharged during all phases of wastewater generation, including back wash, etc.~~ For continuous or batch discharges, the first grab shall occur within 15 minutes of commencement of the discharge.

[3]Monitoring frequencies shall be reduced to 1/quarter upon written notification from the DEQ regional office. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January. ~~Reference special condition no. 4.~~

~~There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

B. Special conditions.

1. Inspection of the effluent, and maintenance of the wastewater treatment facility, shall be performed daily when discharging. Documentation of the inspection and maintenance shall be recorded in an operational log. This operational log shall be made available for review by the department personnel upon request.

2. No domestic sewage discharges ~~to surface waters~~ are permitted under this general permit.

3. ~~Adding chemicals to the water or waste that may be discharged,~~ No chemicals, other than those listed on the owner's accepted registration statement, ~~is prohibited~~ are allowed. Prior approval shall be obtained from ~~Department of Environmental Quality~~ the board before any changes are made to the chemical(s), in order to assure protection of water quality and beneficial uses of the waters receiving the discharge.

4. ~~Monitoring frequency shall be 1/month unless a written request is sent to the appropriate regional office to reduce monitoring to 1/quarter. Upon written notification from DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be subject of an active enforcement action, monitoring frequency shall revert to 1/month upon issuance of the letter of notice of initiation of the enforcement action, and remain in effect until the permit's expiration date.~~ There shall be no discharge of floating solids or visible foam in other than trace amounts.

~~5. The permittee shall comply with the following solids management plan that includes:~~

~~a. A prohibition on the discharge of floating solids or visible foam in other than trace amounts.~~

~~b. A requirement to clean settling basins frequently in order to achieve effective treatment.~~

~~c. A requirement that all solids shall be handled, stored and disposed of so as to prevent a discharge to state waters.~~

~~6. If the discharge is into a municipal separate storm sewer, the permittee is required to notify the owner of the municipal separate storm sewer system of the existence of the discharge within 30 days of coverage under the general permit, and provide the following information: the name of the facility, a contact person and phone number, and the location of the discharge.~~

5. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved total maximum daily load (TMDL) has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

~~7.~~ 6. The permittee shall notify the department as soon as he knows or has reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter;

(2) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the ~~permit application~~ general permit registration statement; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter;

(2) One milligram per liter for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the ~~permit application~~ general permit registration statement; or

(4) The level established by the board.

~~8.~~ 7. If a ~~DEQ-approved ground water~~ board-approved groundwater monitoring plan was submitted with the ~~registrations~~ registration statement, the permittee shall continue ~~sampling and reporting~~ to sample and report in accordance with the plan. The approved plan shall be an enforceable part of this permit. The board or the owner, with board approval, may evaluate the groundwater monitoring data and demonstrate that revisions to or the cessation of the groundwater monitoring are appropriate.

~~9.~~ 8. Compliance reporting under Part I A.

a. The quantification levels (QL) shall be as follows:

Effluent Characteristic	Quantification Level
Chlorine	0.10 mg/l
TSS	1.0 mg/l

b. Reporting.

(1) Monthly average. Compliance with the monthly average limitations ~~and/or~~ and reporting requirements for the parameters listed in subdivision ~~9~~ 8 a shall be determined as follows: all concentration data below the QL listed above shall be treated as zero. All concentration data equal to or above the QL listed in subdivision ~~9~~ 8 a shall be treated as it is reported. An arithmetic average shall be calculated using all reported data for the month, including the defined zeros. This arithmetic average shall be reported on the Discharge Monitoring Report (DMR) as calculated. If all data are below the QL, then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL, then report "<QL" for the quantity. Otherwise use the calculated concentration.

(2) Daily maximum. Compliance with the daily maximum limitations and/or reporting requirements for the parameters listed in subdivision ~~9~~ 8 a above shall be determined as follows: all concentration data below the QL listed in subdivision ~~9~~ 8 a above shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, collected within each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the Daily Maximum. If all data are below the QL, then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL, then report "<QL" for the quantity. Otherwise use the calculated concentration.

c. Any single datum required shall be reported as "<QL" if it is less than the QL in subdivision ~~9~~ 8 a. Otherwise, the numerical value shall be reported.

d. The permittee shall report at least the same number of significant digits as the permit limit for a given parameter. Regardless of the rounding convention used (i.e., 5 always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

~~10.~~ 9. Operation and Maintenance Manual Requirement.

a. ~~The~~ Within 90 days after the date of coverage under this general permit, the permittee shall develop an Operation and Maintenance (O & M) Manual for the treatment works. The O & M manual shall be reviewed within 90 days of changes to the treatment system. The O & M manual shall be certified in accordance with Part II K of this permit. The O & M manual shall be made available for review by department personnel upon request.

b. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. ~~The manual shall be submitted to the DEQ regional office for approval within 90 days of the date of coverage under the general permit or completion of construction.~~ Within 30 days of a request by the department, the current O & M Manual shall be submitted to the board for review and approval. The permittee shall operate the treatment works in accordance with the ~~approved~~ O & M Manual. Noncompliance with the O & M Manual shall be deemed a violation of the permit.

c. This manual shall include, but not necessarily be limited to, the following items, as appropriate:

(1) Techniques to be employed in the collection, preservation, and analysis of effluent samples;

(2) Discussion of best management practices, if applicable;

(3) Treatment system design, treatment system operation, routine preventive maintenance of units within the treatment system, critical spare parts inventory and record keeping;

(4) A plan for the management and/or disposal of waste solids and residues, which includes a requirement to clean settling basins and lagoons (if present at the facility) in order to achieve effective treatment and a

requirement that all solids shall be handled, stored, and disposed of so as to prevent a discharge to state waters; and

(5) Procedures for measuring and recording the duration and volume of treated wastewater discharged.

~~Any changes in the practices and procedures followed by the permittee shall be documented and submitted for staff approval within 90 days of the effective date of the changes. Upon approval of the submitted manual changes, the revised manual becomes an enforceable part of the permit. Noncompliance with the O & M Manual shall be deemed a violation of the permit.~~

~~b. If an approved O & M Manual is already on file with DEQ, the permittee shall review the existing Operations and Maintenance (O & M) Manual and notify the DEQ regional office in writing within 90 days of the date of coverage under the general permit whether it is still accurate and complete. If the O & M Manual is no longer accurate and complete, a revised O & M Manual shall be submitted for approval to the DEQ regional office within 90 days of the date of coverage under the general permit or with the above required notification. The permittee will maintain an accurate, approved operation and maintenance manual for the treatment works. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of the permit. The permittee shall operate the treatment works accordance with the approved O&M Manual. This manual shall include, but not necessarily be limited to, the following items, as appropriate:~~

~~(1) Techniques to be employed in the collection, preservation, and analysis of effluent samples;~~

~~(2) Discussion of best management practices, if applicable;~~

~~(3) Treatment works design, treatment works operation, routine preventative maintenance of units within the treatment system, critical spare parts inventory and record keeping;~~

~~(4) A plan for the management and/or disposal of waste solids and residues; and~~

~~(5) Procedures for measuring and recording the duration and volume of treated wastewater discharged.~~

~~Any changes in the practices and procedures followed by the permittee shall be documented and submitted for staff approval within 90 days of the effective date of the changes. Upon approval of the submitted manual changes, the revised manual becomes an enforceable part of the permit. Noncompliance with the O & M Manual shall be deemed a violation of the permit.~~

10. Owners with a daily maximum flow rate greater than or equal to 50,000 gallons per day that have not conducted whole effluent toxicity (WET) testing to demonstrate there is no reasonable potential for toxicity from their discharge shall conduct WET testing as described in subdivisions a through e of this subsection. Owners with changes in treatment technology or chemical usage that change the characteristics of the discharge and with a daily maximum flow rate greater than or equal to 50,000 gallons per day shall conduct WET testing as described in subdivisions a through e of this subsection.

a. The WET testing shall consist of a minimum of four sets (set = vertebrate and invertebrate) of acute or chronic tests that reflect the current characteristics of the treatment plant effluent using the following tests and organisms:

For an intermittent or batch discharger	48 hour static acute toxicity tests
Freshwater organisms	Pimephales promelas or Oncorhynchus mykiss (for cold water) (vertebrates) Ceriodaphnia dubia (invertebrate)
Saltwater organisms	Cyprinodon variegates (vertebrate) Americamysis bahia (invertebrate)
For continuous discharger	
Freshwater	7-Day Chronic Static Renewal Larval Survival and Growth Test with Pimephales promelas (vertebrate) 3-Brood Chronic Static Renewal Survival and Reproduction Test with Ceriodaphnia dubia (invertebrate)
Saltwater	7-Day Chronic Static Renewal Larval Survival and Growth Test with Cyprinodon variegatus (vertebrate) 7-Day Chronic Static Renewal Survival, Growth and Fecundity Test with Americamysis bahia (invertebrate)

Freshwater organisms are used where the salinity of the receiving water is less than 1.0% (parts per thousand). Where the salinity of the receiving water is greater than 1.0% but less than 5.0% either freshwater or saltwater

organisms may be used. Saltwater organisms are used where the salinity is greater than 5.0%. There shall be a minimum of 30 days between sets of tests, and test procedures shall follow Title 40 of the Code of Federal Regulations, Part 136 (40 CFR Part 136), which references the EPA guidance manuals for WET testing.

b. This testing shall be completed, at a minimum, during the first year of coverage under the general permit or within one year of commencing discharge.

c. The department will evaluate all representative data statistically to see if there is reasonable potential for toxicity in the facility discharge. If such reasonable potential exists and cannot be eliminated, the owner will be notified that he must apply for an individual VPDES permit at next reissuance and a WET limit will be included in that individual permit. If the potential cause of the toxicity is eliminated during the five year term of this general permit, the owner may conduct additional WET testing to demonstrate that there is no longer reasonable potential for toxicity and an individual permit will not be required at the next reissuance.

d. If the department determines that no reasonable potential for toxicity exists in the facility discharge, no further WET testing is required unless changes in treatment technology or chemical usage are made at the plant that change the characteristics of the discharge. If there have been changes to the effluent characteristics, then four sets of WET testing, either acute or chronic tests as applicable, must be performed to recharacterize the discharge.

e. Any WET testing data will be submitted with the next required discharge monitoring report.

11. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

12. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater from the potable water treatment plant;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or a VPDES general permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification: "I certify under penalty of law that all wastewater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or a VPDES general permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge wastewater in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be submitted to the department and signed in accordance with Part II K.

13. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.

PART II

CONDITIONS APPLICABLE TO ALL VPDES PERMITS.

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical

instrumentation at intervals that will insure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office. Reports may be made by telephone ~~or by fax~~, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, ~~leave~~ a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate

officer ~~mean~~ means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit ~~application~~ registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~90~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U), and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement preceding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

~~1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.~~

~~2. As an alternative to transfers under Part II Y 1, this~~ Coverage under this permit may be automatically transferred to a new permittee if:

~~a.~~ 1. The current permittee notifies the department ~~at least~~ within 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property;

~~b.~~ 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~c.~~ 3. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 ~~b~~.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R12-3134; Filed December 11, 2012, 2:16 p.m.

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TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Final Regulation

Title of Regulation: **13VAC5-100. Virginia Energy Assistance Program Weatherization Component (repealing 13VAC5-100-10, 13VAC5-100-20).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Weatherization Assistance Program enables low-income families to reduce their energy bills by making their homes more energy efficient. The Weatherization Program is regulated entirely by the federal government through the U.S. Department of Energy; therefore, there is no need for state regulations that restate federal requirements and this regulation is repealed.

VA.R. Doc. No. R13-3505; Filed December 4, 2012, 11:16 a.m.

Final Regulation

Title of Regulation: **13VAC5-120. Local Housing Rehabilitation Program: Program Guidelines (repealing 13VAC5-120-10 through 13VAC5-120-110).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Local Housing Rehabilitation Program: Program Guidelines regulation was adopted to provide guidelines for the operation of the Housing Rehabilitation Program that was funded through the Virginia Housing Partnership Revolving Fund pursuant to § 36-141 of the Code of Virginia. The use of the Virginia Housing Partnership Revolving Fund for providing housing assistance has substantially changed since 1990, and this program is no

longer funded by the Partnership Fund and is no longer an active state program. Therefore, there is no need for this regulation, and it is repealed.

VA.R. Doc. No. R13-3506; Filed December 4, 2012, 11:17 a.m.

Final Regulation

Title of Regulation: **13VAC5-130. Multifamily Loan Program (repealing 13VAC5-130-10 through 13VAC5-130-240).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Multifamily Loan Program regulation was adopted to provide guidelines for the operation of the Multifamily Loan Program that was funded through the Virginia Housing Partnership Revolving Fund pursuant to § 36-141 of the Code of Virginia. The use of the Virginia Housing Partnership Revolving Fund for providing housing assistance has substantially changed since 1990, and this program is no longer funded by the Partnership Fund and is no longer an active state program. Therefore, there is no need for this regulation and it is repealed.

VA.R. Doc. No. R13-3507; Filed December 4, 2012, 11:17 a.m.

Final Regulation

Title of Regulation: **13VAC5-140. Congregate Housing Program Guidelines (repealing 13VAC5-140-10 through 13VAC5-140-90).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Congregate Housing Program Guidelines regulation was adopted to provide guidelines for the operation of the Congregate Housing Program that was funded through the Virginia Housing Partnership Revolving Fund pursuant to § 36-141 of the Code of Virginia. The use of the Virginia Housing Partnership Revolving Fund for providing housing assistance has substantially changed since 1990, and this program is no longer funded by the Partnership Fund and is no longer an active state program. Therefore, there is no need for this regulation and it is repealed.

VA.R. Doc. No. R13-3508; Filed December 4, 2012, 11:18 a.m.

Final Regulation

Title of Regulation: **13VAC5-150. Share-Expansion Grant/Loan Program (repealing 13VAC5-150-10 through 13VAC5-150-70).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Share-Expansion Grant/Loan Program regulation was adopted to provide guidelines for the operation of the Share-Expansion Grant/Loan Program that was funded through the Virginia Housing Partnership Revolving Fund pursuant to § 36-141 of the Code of Virginia. The use of the Virginia Housing Partnership Revolving Fund for providing housing assistance has substantially changed since 1990, and this program is no longer funded by the Partnership Fund and is no longer an active state program. Therefore, there is no need for this regulation and it is repealed.

VA.R. Doc. No. R13-3510; Filed December 4, 2012, 11:18 a.m.

Final Regulation

Title of Regulation: **13VAC5-160. Homeownership Assistance Program (repealing 13VAC5-160-10 through 13VAC5-160-170).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Homeownership Assistance Program regulation was adopted to provide guidelines for the operation of the Homeownership Assistance Program that was funded through the Virginia Housing Partnership Revolving Fund pursuant to § 36-141 of the Code of Virginia. The use of the Virginia Housing Partnership Revolving Fund for providing housing assistance has substantially changed since 1990, and this program is no longer funded by the Partnership Fund and is no longer an active state program. Therefore, this regulation is no longer needed and is repealed.

VA.R. Doc. No. R13-3511; Filed December 4, 2012, 11:18 a.m.

Final Regulation

Title of Regulation: **13VAC5-170. Procedures for Allocation of Low-Income Housing Tax Credits (repealing 13VAC5-170-10 through 13VAC5-170-120).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Procedures for the Allocation of Low-Income Housing Tax Credits regulation was adopted in 1992 for the allocation of federal tax credits to encourage development of affordable rental housing by providing property owners with federal income tax credit. The federal law for this program has changed, and the program is now administered by the Virginia Housing Development Authority (VHDA). VHDA has adopted new state regulations for the allocation of federal low-income housing tax credits (Rules and Regulations for Allocation of Low Income Housing Tax Credits, 13VAC10-180). Therefore, this regulation (13VAC5-170) is repealed.

VA.R. Doc. No. R13-3512; Filed December 4, 2012, 11:19 a.m.

Final Regulation

Title of Regulation: **13VAC5-180. Migrant Housing Programs (repealing 13VAC5-180-10 through 13VAC5-180-80).**

Statutory Authority: § 36-137 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Migrant Housing Programs regulation was adopted in 1989 for the allocation of housing assistance to migrant workers in Virginia through the Virginia Housing Partnership Fund. The use of the Virginia Housing Partnership Revolving Fund for providing housing assistance has substantially changed since 1989, and this program is no longer funded by the Partnership Fund and is no longer an active state program. Therefore, there is no need for this regulation, and it is repealed.

VA.R. Doc. No. R13-3513; Filed December 4, 2012, 11:19 a.m.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 4 of the Code of Virginia; however, under the provisions of § 2.2-4031 of the Code of Virginia, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-50, 13VAC10-180-60, 13VAC10-180-120).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: Paul M. Brennan, General Counsel, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5798 or email paul.brennan@vhda.com.

Summary:

The amendments (i) require the use of certified management companies for all tax credit developments, (ii) remove points for unit size, (iii) remove the amenity point categories for geothermal heat pumps and solar electric systems, (iv) increase the impact of the "per unit credit amount" and "per unit cost" point categories, (v) remove the adjustment in calculating points for developments in qualified census tracts, (vi) decrease the points needed for the minimum threshold score, (vii) remove the section of the regulations governing TCAP and Section 1602 funds, and (viii) make other miscellaneous administrative clarification changes.

13VAC10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide

the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least $10,000 per unit for developments financed with tax-exempt bonds and $15,000 per unit for all other developments.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the

proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

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

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

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

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

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the

qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

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

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

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

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

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

1. Readiness.

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

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

2. Housing needs characteristics.

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

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

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

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

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

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

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

e. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, ~~Commonwealth of Virginia Department of Behavioral Health and Developmental Services funds from Item 315 Z of the 2008 2010 Appropriation Act,~~ or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. The executive director may make exceptions in the following circumstances:

(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;

(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or

(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

l. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics.

~~a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)~~

~~b.~~ a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)

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

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

(d) If all the windows and glass doors meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a SEER rating of 15.0 or more and a HSPF rating of 8.5 or more or (ii) air conditioning equipment with a SEER rating of 15.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

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

(g) If each bathroom contains only WaterSense labeled faucets and showerheads. (2 points)

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

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

~~(j) If every unit in the development is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. (5 points)~~

~~(k) If the development has a solar electric system that will remain unshaded year-round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude. (1 point for each 2.0% of~~

~~the development's electrical load that can be met by the solar electric system, up to 5 points)~~

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

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

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

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

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 70 points.

~~c.~~ b. Any nonelderly development or elderly rehabilitation development in which (i) the greater of 5 units or 10% of the units will be subject to federal project-based rent subsidies or equivalent assistance (approved by the executive director) in order to ensure occupancy by extremely low-income persons; and (ii) the greater of 5 units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in (ii) above must include roll-in showers and roll-under sinks and ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

~~d.~~ c. Any nonelderly development or elderly rehabilitation development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)

~~e.~~ d. Any nonelderly development or elderly rehabilitation development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

~~f.~~ e. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

~~g.~~ f. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development, or a new construction development that is 15% more energy efficient than the 2004 International Energy Conservation Code (IECC) as measured by EarthCraft or a rehabilitation development that is 30% more energy efficient post-rehabilitation as measured by EarthCraft; 30 points for a LEED Gold development, or a new construction development that is 20% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 40% more energy efficient post-rehabilitation as measured by EarthCraft; 45 points for a LEED Platinum development, or a new construction development that is 25% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 50% more energy efficient post-rehabilitation as measured by EarthCraft.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible

and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving 30 or 45 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis for 30 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis.

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

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

~~j.~~ h. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority ~~reported~~ inspected such development ~~to the IRS for an uncorrected~~ and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the time frame established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the authority)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. ~~(180~~ (200 points multiplied by the percentage by which the total amount of the per unit credit amount of the

proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. ~~(~~75 (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director~~.~~; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the propsed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development~~, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC~~.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes

below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of ~~500~~ 450 points ~~(475~~ (450 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate,

consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation, if in the reasonable discretion of the executive director, it serves the best interest of the plan, or (iv) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has

exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the

transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with

respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for either (i) at least 50% of the units in the development or (ii) if HUD Section 811 funds are providing the rent subsidies, as close to, but not more than 25% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

13VAC10-180-120. ~~Application for Tax Credit Assistance Funds and Credit Exchange Funds.~~ (Repealed.)

~~The American Recovery and Reinvestment Act of 2009 (Recovery Act), PL 111-5 (i) includes funds to be allocated to housing credit agencies from HUD under a program called the tax credit assistance program (TCAP) to facilitate the production of developments awarded low-income housing tax credits in fiscal years 2007, 2008, and 2009, and (ii) permits the authority to monetize credits by exchanging eligible credits for cash grants, which can be used by the authority to finance the construction or acquisition and rehabilitation of qualified low-income buildings.~~

~~Application for TCAP funds and credit exchange funds shall be filed with the authority on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the Recovery Act, the IRC, and this chapter and to make an award of TCAP funds or credit exchange funds in accordance with this chapter. The executive director may establish criteria and assumptions to be used by the applicant in the calculation of the amounts of tax credits, TCAP funds, and credit exchange funds in the application; and any such criteria and assumptions may be indicated on the application form or instructions made available by the authority to applicants. Each applicant for TCAP funds and credit exchange funds shall commit in the application to comply with all federal requirements applicable to such funds.~~

~~The executive director may divide the amount of TCAP funds into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate to best meet the housing needs of the Commonwealth. Proposed developments to be financed by certain tax-exempt bonds and eligible to receive credits pursuant to 13VAC10-180-100 that apply for TCAP funds will be scored and ranked pursuant to the requirements of 13VAC10-180-60 with all other applications applying for TCAP funds and credits. Such developments may be placed in pools with other applicants for TCAP funds or may be put in their own separate pool as the executive director deems appropriate.~~

~~For each application that may receive an award of tax credits and either TCAP funds or credit exchange funds or both, the executive director shall determine the amount, as of the date of the deadline for submission of applications for such funds, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. The executive director may substitute TCAP funds for some or all of the credit exchange funds in the application or credit exchange funds for some or all of the TCAP funds requested in the application in such amounts as determined by the executive director to maximize the number of developments or units that are expected to benefit from the equity provided by tax credit investors. Any TCAP funds and credit exchange funds awarded to a proposed development shall be in the form of a grant or, if requested by the borrower, a loan. Such grant or loan shall (i) be subordinate to all other unrelated third party financing for the construction or acquisition and rehabilitation of the development; (ii) be secured by a deed of trust for the full amount of the grant or loan during the compliance period; and (iii) provided no conditions exist that would result in default under the deed of trust, be forgiven by the authority in part each year on a pro rata basis based upon the length of the extended use period.~~

~~Any tax credit developments that have received a reservation of tax credits pursuant to 13VAC10-180-60 in calendar years 2007 and 2008 may request the authority to exchange their tax credit allocation for credit exchange funds in an amount not to exceed the lesser of (i) $.85 per $1.00 of credit exchanged or (ii) the tax credit equity amount shown in their allocation application.~~

~~The executive director may place conditions and limitations on the availability and use of the grant or loan deemed~~

~~necessary to comply with the provisions of the Recovery Act and the IRC. The executive director may also prescribe such deadlines for accomplishing certain milestones established by the executive director in the acquisition, construction or rehabilitation of the developments deemed necessary or desirable to ensure full use of TCAP funds and credit exchange funds within the timeframes established by the Recovery Act.~~

VA.R. Doc. No. R13-3375; Filed December 7, 2012, 8:30 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

BOARD OF TOWING AND RECOVERY OPERATORS

Final Regulation

REGISTRAR'S NOTICE: Pursuant to enactment 108 of Chapters 803 and 835 of the 2012 Acts of Assembly, the Registrar of Regulations is taking the following action to effect the repeal of the Board of Towing and Recovery Operators regulations in the Virginia Administrative Code.

Titles of Regulations: **24VAC27-11. Public Participation Guidelines (repealing 24VAC27-11-10 through 24VAC27-11-110).**

24VAC27-30. General Regulations for Towing and Recovery Operators (repealing 24VAC27-30-10 through 24VAC27-30-180).

Statutory Authority: § 46.2-2805 of the Code of Virginia (repealed effective January 1, 2013).

Effective Date: January 1, 2013.

Summary:

The Governor's 2012 government reorganization legislation abolished the Board of Towing and Recovery Operators and repealed the board's regulations that were in effect before January 1, 2013. As provided in enactment 108 of Chapters 803 and 835 of the 2012 Acts of Assembly, the Registrar of Regulations is taking action to effect the repeal of the regulations in the Virginia Administrative Code.

VA.R. Doc. No. R13-3501; Filed November 27, 2012, 11:51 a.m.

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan Proposed Revision - Regulation Revisions Concerning Ozone Classification and Implementation

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

Regulations affected: The regulations of the board affected by this action are as follows: 9VAC5-20-204 (Nonattainment areas) of Part I of 9VAC5-20 and 9VAC5-30-55 (Ozone) of 9VAC5-30.

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

Public comment period: December 31, 2012, to January 30, 2013.

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

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to conform to an order of the court or are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to existing regulation provisions concerning ozone classification and implementation in accordance with EPA regulations published on May 21, 2012 (77 FR 30088 and 77 FR 30160). The major provisions of the proposal are as follows: (i) the listing for the Northern Virginia 8-hour ozone nonattainment area in 9VAC5-20-204 has been revised in order to indicate the new classification of "marginal" for the 2008 standard and (ii) a new subsection has been added to 9VAC5-30-55 to indicate that the 1997 8-hour ozone standard will no longer apply to an area for transportation conformity purposes one year after the effective date of the designation of the area.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All comments, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070, and

2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TDD (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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 State Board of Behavioral Health and Developmental Services is currently reviewing each of the regulations listed below to determine whether it should be terminated, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to

determine 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.

12VAC35-46, Regulations for Children's Residential Facilities

12VAC35-105, Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services

12VAC35-180, Regulations to Assure the Protection of Participants in Human Research

The comment period begins December 31, 2012, and ends January 22, 2013.

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 Linda Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218, telephone (804) 786-4044, FAX (804) 371-0092, or email linda.grasewicz@dbhds.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 ENVIRONMENTAL QUALITY

Public Meetings for Draft Water Quality Restoration Study (TMDL) for the Chickahominy River - Headwaters to Rt. 33 in Hanover and Henrico Counties

Public meeting: Twin Hickory Branch Library, 5001 Twin Hickory Road, Glen Allen, VA 23059. Wednesday, January 30, 2013, at 2 p.m. and 6 p.m. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and consultant, MapTech Inc., are presenting the summary of a total maximum daily load (TMDL) study to restore water quality at two public meetings (same content), providing an opportunity for the public to share their knowledge of the watershed and to ask questions, and providing a public comment period following the meetings from January 31, 2013, to March 1, 2013.

Meeting description: Public meetings on a study to restore water quality along the Chickahominy River's headwaters in Hanover and Henrico Counties. The watershed includes the communities of Wyndham, a portion of Short Pump (North of Broad Street), Meredith Woods, Twin Hickory, and Broad Meadows. Meeting will feature a summary of information gathered on the watershed including land use, water quality monitoring, determination of pollutant (sediment), suspected and known sources of pollutant, and reductions of pollutant needed to restore water quality of the Chickahominy River and tributaries. Those attending are encouraged to ask questions and to contribute their knowledge of the watershed. A draft of the study will be made approximately one week prior to the meeting for review at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

Virginia agencies have been working to identify causes of the aquatic life use impairment in the waters of the Chickahominy River and in the following waterway:

Stream	County/City	Length (mi.)	Impairment	Pollutant
Chickahominy River	Hanover & Henrico	7.06	Aquatic Life Use	Sediment

Biologists assess the presence, absence and prevalence of aquatic species, and evaluate stream habitat and water quality to determine a score of overall stream health. The headwaters of the Chickahominy River are impaired for the Aquatic Life use based on assessments of the aquatic community which scored poorly. The study will report on the most probable stressor(s) of the aquatic community and recommend total maximum daily loads, or TMDLs, for the impaired waters based on the determination of most probable stressor(s). A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards (AKA "pollution diet"). In order to meet standards, pollutants should be reduced to the TMDL amount. DEQ must develop TMDLs for all impaired waterways per the Clean Water Act.

How a decision is made: The development of a TMDL includes two sets of public meetings and comment periods; one to initiate the study and another to present the final draft TMDL report. This meeting is the second for the Chickahominy River headwaters project for aquatic life use. After the final public meeting and all public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency and the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Comments should include the name, address, and telephone number and be received by DEQ during the comment period, which will begin on Thursday, January 31, 2013, and will end on Friday, March 1, 2013.

Contact for additional information or submit comments to Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A

Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

LIBRARY OF VIRGINIA

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 Library Board of the Library of Virginia is conducting a periodic review of 17VAC15-20, Standards for Microfilming of Public Records for Archival Retention, and 17VAC15-50, Standards for Computer Output Microfilm for Archival Retention.

The review of each 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 each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 December 31, 2012, and ends January 31, 2013.

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 Glenn Smith, Records and Information Management Analyst, Library of Virginia, 800 East Broad Street, Richmond, VA 23219-8000, telephone (804) 692-3604, FAX (804) 692-3603, or email glenn.smith@lva.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Library Board of the Library of Virginia is conducting a periodic review of the following regulations:

17VAC15-90, Requirements Which Must Be Met by Libraries Serving a Population Less Than 5,000 in Order to Receive Grants-in-Aid

17VAC15-100, Certification of Librarians

17VAC15-110, Requirements Which Must Be Met by Libraries in Order to Receive State Grants-in-Aid

The review of each 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 each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 December 31, 2012, and ends January 31, 2013.

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 Carol Adams, Assistant Director of Library Development, Library of Virginia, 800 East Broad Street, Richmond, VA 23219-8000, telephone (804) 692-3774, FAX (804) 692-3771, or email carol.adams@lva.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.

COMMISSION ON LOCAL GOVERNMENT

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 Commission on Local Government is conducting a periodic review of 1VAC50-20, Organization and Regulations of Procedure.

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 December 31, 2012, and ends January 24, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.
Comments may also be sent to Susan B. Williams, Local Government Policy Manager, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, or email susan.williams@dhcd.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 MEDICAL ASSISTANCE SERVICES

Supplemental Payments for Services Provided by Type One Physicians -- Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (USC § 1396a(a)(13)))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80). 12VAC30-80-30 is being amended to increase supplemental payments for physician practices affiliated with Type 1 hospitals. DMAS intends to revise the percent of Medicare, which represents the average commercial rate (ACR). The current ACR percent of Medicare is 181%. DMAS estimates that the percentage has increased to 189%. The final percentage will be based on documentation furnished by the Type 1 hospitals and the methodology described in the State Plan. An ACR percent of Medicare of 189% will result in an annual increase in supplemental payments of approximately $915,000 total funds.

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: 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, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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/.

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.