VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **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).

February 2013 through April 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
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30:10	December 23, 2013 **(Monday)**	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Initial Agency Notice

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

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

Name of Petitioner: Tonnyann T. Hurley.

Nature of Petitioner's Request: To allow a minimum of 2,000 documented hours of practice experience after graduation from an approved program to be substituted for passage of a specialty examination if there is no national examination in an area of practice.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to amend the requirements for registration of clinical nurse specialists was posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov. It has also been filed with the Register of Regulations for publication on February 25, 2013. Comment on the petition from interested parties is requested until March 24, 2013. Following receipt of all comments on the petition, the request will be considered by the Board of Nursing at its meeting on May 21, 2013, to decide whether to make any changes to the regulatory language.

Public Comment Deadline: March 24, 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, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R13-15; Filed January 31, 2013, 3:10 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Waste Management Facility Operators intends to consider amending **18VAC155-20, Waste Management Facility Operators Regulations.** The purpose of the proposed action is to amend the regulation to (i) eliminate burdensome entry, renewal, and reinstatement standards; (ii) simplify the explanations of requirements; and (iii) produce regulations that more effectively protect the health, safety, and welfare of the public and that will be more easily read and understood by the public. This review is in response to the Governor's Regulatory Reform Initiative.

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

Statutory Authority: § 54.1-2211 of the Code of Virginia.

Public Comment Deadline: March 27, 2013.

Agency Contact: Eric L. Olson, Executive Director, Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8511, FAX (866) 430-1033, or email wastemgt@dpor.virginia.gov.

VA.R. Doc. No. R13-3557; Filed January 31, 2013, 8:40 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Title of Regulation: **2VAC5-321. Regulation of the Harvest and Purchase of Wild Ginseng (adding 2VAC5-321-10 through 2VAC5-321-50).**

Statutory Authority: § 3.2-1002 of the Code of Virginia.

Public Hearing Information:

March 28, 2013 - 10 a.m. - Board of Agriculture and Consumer Services, 102 Governor Street, 2nd Floor Board Room, Richmond, VA

Public Comment Deadline: April 26, 2013.

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

Basis: Section 3.2-1002 of the Code of Virginia authorizes the board to adopt regulations including the listing of threatened or endangered plant and insect species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, or protecting. This authority is discretionary.

Section 3.2-1007 of the Code of Virginia declares that Panax quinquefolious L., commonly referred to as ginseng, is a threatened plant species when it occurs in the wild.

Purpose: In September 2010, the U.S. Fish and Wildlife Service notified the Virginia Department of Agriculture and Consumer Services that current practices governing the harvest and sale of ginseng in Virginia were inadequate to ensure the continued survival of the species. The U.S. Fish and Wildlife Service encouraged the Virginia Department of Agriculture and Consumer Services to pursue regulatory changes that would assist in ensuring the survival of the species in the wild. If the U.S. Fish and Wildlife Service is unable to determine that the harvest of wild ginseng root in Virginia is not detrimental to the survival of the species, the U.S. Fish and Wildlife Service may not continue to allow the export of ginseng from Virginia. Ginseng revenue is often supplemental income for those individuals who harvest wild ginseng.

The Virginia Department of Agriculture and Consumer Services believes that the science-based requirements in the proposed regulation will assist in ensuring the long-term survival of wild ginseng in the Commonwealth, while at the same time facilitating the continued commercial trade of this valuable plant export. As these regulations will facilitate the continued commercial trade of wild ginseng, they will, thereby, assist in protecting the welfare of those citizens who rely on ginseng revenue for supplemental income.

Substance: This regulation (i) allows only the harvest of wild ginseng that is five years of age or older; (ii) establishes an annual harvest season from September 1 through December 31 of each year for wild ginseng; (iii) requires harvesters to plant ginseng fruit at the harvest site; and (iv) establishes a purchase season for licensed dealers of September 1 through January 14 for uncertified green wild ginseng root and September 15 through March 31 for uncertified dry wild ginseng root.

Issues: The primary advantage of the proposed regulation to both the public and the Commonwealth is the long-term survival of wild ginseng. Additionally, those involved in the harvest and export of wild ginseng will benefit from the continued finding by the U.S. Fish and Wildlife Service that the export of wild ginseng from the Commonwealth is not detrimental to the survival of the species. The U.S. Fish and Wildlife Service has expressed concern that without this regulation, it may not be able to continue to issue a nondetriment finding for the export of ginseng from Virginia, which would result in a prohibition on the export of ginseng from Virginia and effectively stop the harvest of this plant for commercial purposes. A conservative estimate of the annual value of ginseng exported from Virginia is approximately $1.5 million.

One of the U.S. Fish and Wildlife Service's concerns is that year-round harvest is permissible on private property in Virginia. The Endangered Plant and Insect Species Act does not give the board authority to regulate the activities of a property owner related to endangered plant and insect species on the property owner's land. In an effort to address the U.S. Fish and Wildlife Service concerns, the proposed regulation establishes conditions governing a licensed dealers purchase of uncertified wild ginseng. The restriction on the purchase of uncertified wild ginseng will encourage private landowners to delay harvesting ginseng from their land until September, when the ginseng fruit has ripened. This, in turn, will assist in ensuring the survival of the species on private property.

Virginia Department of Agriculture and Consumer Services ginseng harvest data from 2000 to 2009 indicates that only approximately 1.0% of ginseng was sold by property owners prior to the start of the current harvest season (August 15). The change in the harvest season and the implementation of a

buying season for licensed dealers will have little effect on landowners or other individuals involved in commercial trade of ginseng.

This regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Virginia Board of Agriculture and Consumer Services (Board) proposes to promulgate new regulations to regulate the harvest and purchase of wild ginseng.

Result of Analysis. Benefits likely outweigh costs for these proposed regulations.

Estimated Economic Impact. Prior to 2008, the General Assembly set dates for the harvest of wild ginseng and allowed such harvest between August 15th and December 31st of each year. In 2008, the General Assembly passed § 3.2-1007 which declares wild ginseng a threatened species and allows the Board to set dates for the harvest of wild ginseng. As allowed by that legislation, the Board now proposes to set this harvest season to begin on September 1st and end on December 31st each year. The Board proposes a slightly smaller harvest window than was allowed by the legislature on the advice of the federal Fish and Wildlife Service which believes that the modified dates will allow wild ginseng to fully fruit and therefore allow the propagation of the plants that are being harvested. The Board also proposes to require that people may not harvest wild ginseng that 1) is younger than five years of age or 2) has fewer than four stem scars on its rhizome or 3) has fewer than three prongs. Harvesters will also have to plant the seeds of the harvested plants at the harvest site and at the time the plant is harvested. These proposed requirements will provide a benefit to both harvesters and buyers of wild ginseng as they will require behavior that will better ensure the survival of this species on public land where no individual has either the incentive to limit his own harvest to certain times of year, because anything not harvested by him might be lost to another harvester, or to replant the seeds of the wild ginseng, because he might not be able to recoup the value of his time and effort if someone else gets to harvest the fruits of that replanting. Harvesters will incur whatever costs would be associated with a harvest season that is two weeks shorter than they currently enjoy.

These rules will not apply to individuals who are harvesting wild ginseng on their own property or to individuals who, pursuant to § 3.2-1004 of the Code of Virginia, have a permit from the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) for the buying or selling of wild ginseng for scientific, biological, or educational purposes or for propagation to ensure their survival.

The Board also proposes to limit dealers to purchasing wild ginseng not certified by the Board. Under these proposed regulations, dealers may only buy green uncertified wild ginseng from September 1st to January 14th of each year and may only purchase dry uncertified wild ginseng root from September 15th of each year to March 31st of the following year. These proposals will help ensure that dealers licensed by the Board will likely not be buying wild ginseng that was illegally harvested and will also encourage private land owners not to harvest wild ginseng until it has a chance to fruit and reseed. Licensed dealers will incur whatever costs would be associated with a buying season for wild ginseng that has not been certified by VDACS that is shorter than what they currently enjoy.

Businesses and Entities Affected. VDACS reports that these regulations will affect all 50 licensed wild ginseng dealers in the Commonwealth as well as all harvesters of wild ginseng.

Localities Particularly Affected. No locality is likely to be particularly affected by these proposed regulations.

Projected Impact on Employment. There is currently insufficient information to project the impact that these proposed regulations may have on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulations are unlikely to affect the use or value of private property.

Small Businesses: Costs and Other Effects. Licensed dealers, who are all small businesses, will incur whatever costs would be associated with a buying season for wild ginseng that has not been certified by VDACS that is shorter than what they currently enjoy.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is likely no alternate method for meeting VDACS goals that would further minimize costs.

Real Estate Development Costs. These proposed regulations are unlikely to affect real estate development.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The proposed regulation (i) allows the harvest of wild ginseng that is five years of age or older; (ii) establishes an annual harvest season from September 1 to December 31; (iii) requires harvesters to plant wild ginseng fruit at the harvest site; and (iv) establishes a purchase season for licensed dealers of September 1 to January 14 for uncertified green wild ginseng root and September 15 to March 31 for uncertified dry wild ginseng root.

CHAPTER 321
REGULATION OF THE HARVEST AND PURCHASE OF WILD GINSENG

2VAC5-321-10. Definitions.

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Artificially propagated" means cultivated, woodsgrown, or any other method of producing ginseng under controlled conditions that include, but are not limited to, tillage, fertilization, and pesticide application.

"Certified wild ginseng" means wild ginseng for which the department has issued a Ginseng Inspection Certificate.

"Cultivated" means purposefully planted in beds under artificial shade using standard horticultural practices such as mechanical tillage, fertilization, weed control, irrigation, and pesticides.

"Dealer" means a person licensed by the department pursuant to § 3.2-1007 of the Code of Virginia to buy or otherwise accept wild ginseng or parts thereof for resale.

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

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Prong" means a leaf with five leaflets.

"Rhizome" means a horizontal plant stem with shoots above and roots below.

"Uncertified dry wild ginseng root" means wild ginseng root that contains no moisture or that lacks sufficient moisture to remain viable and for which the department has not issued a Ginseng Inspection Certificate.

"Uncertified green wild ginseng root" means wild ginseng root that contains sufficient moisture to be viable and for which the department has not issued a Ginseng Inspection Certificate.

"Wild ginseng" means American ginseng, Panax quinquefolius L., that is grown with minimal human interference and is not artificially propagated.

"Woodsgrown" means purposefully planted in beds prepared in the woods in a manner that uses trees to provide necessary shade and may be grown with the use of chemical or mechanical weed, disease, or pest control agents.

2VAC5-321-20. Regulated articles.

The plant and plant parts of wild ginseng in any life stage are regulated under the provisions of this chapter.

2VAC5-321-30. Conditions governing the harvest of wild ginseng.

A. The harvest season for wild ginseng begins on September 1 and ends on December 31 of each year.

B. A person may not harvest wild ginseng from January 1 through August 31 of each year.

C. A person may not harvest wild ginseng that:

1. Is younger than five years of age;

2. Has fewer than four stem scars present on its rhizome; or

3. Has fewer than three prongs.

D. A person who harvests wild ginseng must plant the seeds of the harvested plant at the harvest site at the time of harvest.

2VAC5-321-40. Conditions governing the purchase of wild ginseng.

A. A dealer may purchase certified wild ginseng at any time throughout the year.

B. A dealer may only purchase uncertified green wild ginseng root from September 1 of each year through January 14 of the following year.

C. A dealer may only purchase uncertified dry wild ginseng root from September 15 of each year through March 31 of the following year.

2VAC5-321-50. Exceptions.

A. Pursuant to §§ 3.2-1003 and 3.2-1007 of the Code of Virginia, the provisions of this chapter do not apply to any person harvesting wild ginseng from his own land.

B. The provisions of this chapter do not apply to any person harvesting wild ginseng in accordance with a permit issued pursuant to § 3.2-1004 of the Code of Virginia.

VA.R. Doc. No. R12-2813; Filed January 29, 2013, 9:52 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Final Regulation

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

Title of Regulation: **4VAC25-130. Coal Surface Mining Reclamation Regulations (amending 4VAC25-130-700.5, 4VAC25-130-761.11, 4VAC25-130-772.12, 4VAC25-130-773.15, 4VAC25-130-773.20, 4VAC25-130-773.21, 4VAC25-130-774.17, 4VAC25-130-778.13, 4VAC25-130-778.14, 4VAC25-130-800.52, 4VAC25-130-840.14; adding 4VAC25-130-761.13, 4VAC25-130-761.16, 4VAC25-130-774.12; repealing 4VAC25-130-846.2).**

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Effective Date: March 27, 2013.

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

Summary:

The amendments revise the Virginia Coal Surface Mining Reclamation Regulations pertaining to ownership and control, valid existing rights, self-bonding, and availability of records to maintain consistency with the corresponding federal regulations.

4VAC25-130-700.5. Definitions.

As used throughout this chapter, the following terms have the specified meanings except where otherwise indicated.

"Abatement plan" means an individual technique or combination of techniques, the implementation of which is designed to result in reduction of the baseline pollution load. Abatement techniques include but are not limited to: addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation, and daylighting.

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mining and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acid that may create acid drainage or leachate.

"Act" means the Virginia Coal Surface Mining Control and Reclamation Act of 1979 as amended (Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia).

"Actual improvement" means the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan: except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

"Adjacent area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

"Administratively complete application" means an application for permit approval, or approval for coal exploration where required, which the division determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road is a public road.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but

are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Anthracite" means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, "Standard Specification for Classification of Coals by Rank," ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference.

"Applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the division to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant violator system" or "AVS" means an automated information system of applicant, permittee, operator, violation, and related data the federal Office of Surface Mining Reclamation and Enforcement (OSM) maintains and the division utilizes in the permit review process.

"Application" means the documents and other information filed with the division under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the division has determined that they comply with 4VAC25-130-816.49, 4VAC25-130-816.56, and 4VAC25-130-816.133 or 4VAC25-130-817.49, 4VAC25-130-817.56, and 4VAC25-130-817.133.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling or cutting holes into an exposed coal seam from the highwall and transporting the coal along the auger bit to the surface.

"Authorized officer" means any person authorized to take official action on behalf of a federal agency that has administrative jurisdiction over federal lands.

"Baseline pollution load" means the characterization of the pollution material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The division will establish in each authorization the specific parameters it deems relevant for the baseline pollution load.

"Best professional judgment" means the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the division under §§ 301 and 402 of the federal Water Pollution Control Act (33 USC §§ 1311 and 1342).

"Best technology" means measures and practices which are designed to abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contribution of suspended solids in excess of requirements set by the applicable state or federal laws;

(b) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, terms, methods, or techniques which are currently available anywhere as determined by the division even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Parts 816 and 817 of this chapter. Within the constraints of the permanent program, the division shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

"Cemetery" means any area of land where human bodies are interred.

"Certification" when used in regards to construction certifications by qualified registered professional engineers, is not considered to be a warranty or guarantee.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite."

"Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining

and reclamation operations under the requirements of this chapter.

"Coal lease" means a federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the federal Acquired Lands Leasing Act of 1947 (30 USC § 351 et seq.).

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means, for the purposes of Part 705 of this chapter—Financial Interests of State Employees—the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

"Coal preparation" or "coal processing" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Cognovit note" means an extraordinary note which authorizes an attorney to confess judgement against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgement against him if the obligation set forth in the note is not paid when due. Such judgement may be taken by any person holding the note, which cuts off every defense which makers of the note may otherwise have and it likewise cuts off all rights of appeal from any judgement taken on it. The note shall, at a minimum:

(a) Contain the date of execution.

(b) Be payable to the "Treasurer of Virginia."

(c) Be due and payable in the event of bond forfeiture of the permit.

(d) Be payable in a sum certain of money.

(e) Be signed by the makers.

"Collateral bond" means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:

(a) The deposit of cash in one or more federally insured accounts, payable only to the division upon demand;

(b) Negotiable bonds of the United States, the Commonwealth of Virginia, or a political subdivision thereof, endorsed to the order of, and placed in the possession of the division; the bond will only be acceptable if the issue is rated "A" or better by Moody's Investor Service, Inc., or Standard and Poor's, Inc.;

(c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral; or

(d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the department at sight prepared in accordance with the Uniform Customs and Practices for Documentary Credits (1993 revision) International Chamber of Commerce (Publication No. 500).

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required which the division determines to contain all information required under the Act and this chapter.

"Contamination" means, in reference to ground water or surface water supplies receiving ground water, any impairment of water quality which makes the water unsuitable for a specific use.

"Control" or "controller" when used in 4VAC25-130-773, 4VAC25-130-774, or 4VAC25-130-778 means:

(a) A permittee of a surface coal mining operation;

(b) An operator of a surface coal mining operation; or

(c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

"Cooperative agreement" means a cooperative agreement entered into in accordance with § 523(c) of the federal Act and 30 CFR Part 745.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems.

Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the division; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

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

"Diminution" means, in reference to ground or surface water supplies receiving ground water, any impairment of water quantity which makes the water unsuitable for a specific use.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

"Director" means the Director of the Department of Mines, Minerals, and Energy or his representative.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subchapter VJ is released.

"Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

"Division" means the Division of Mined Land Reclamation of the Department of Mines, Minerals, and Energy.

"Downslope" means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included, except to the extent the water supply is for direct human consumption or human sanitation or domestic use.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means (a) any person employed by the department or other state or local government agency who performs any function or duty under the Act, and (b) consultants who perform any function or duty under the Act, if they perform decision-making functions for the department under the authority of the Act or regulations promulgated under the Act.

"Ephemeral stream" means a stream ~~which~~ that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and ~~which~~ that has a channel bottom that is always above the local water table.

"Escrow account" means an account in a federally insured financial institution.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 4VAC25-130-816.102(d) and 4VAC25-130-817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the state program or a federal land program, whichever occurs first.

"Extraction of coal as an incidental part" means, for the purposes of Part 707 of this chapter, the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of Part 707, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

"Federal Act" means the federal Surface Mining Control and Reclamation Act of 1977, as amended (Pub. L. 95-87).

"Federal land management agency" means a federal agency having administrative jurisdiction over the surface of federal lands that are subject to this chapter.

"Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Federal lands program" means a program established by the secretary pursuant to § 523 of the federal Act to regulate surface coal mining and reclamation operations on federal lands.

"Federal lease bond" means the bond or equivalent security required by 43 CFR Part 3400 to assure compliance with the terms and conditions of a federal coal lease.

"Federal lessee protection bond" means a bond payable to the United States or the state, whichever is applicable, for use

and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on federal lands, pursuant to § 715 of the federal Act.

"Federal program" means a program established by the secretary pursuant to § 504 of the federal Act to regulate coal exploration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within the state in accordance with the federal Act and 30 CFR Chapter VII.

"First water producing zone" means the first water zone encountered which can be monitored in a manner which indicates the effects of a surface mining operation on usable ground water.

"Fragile lands" means areas containing natural, ecologic, scientific or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features and areas of recreational value due to high environmental quality.

"Fugitive dust" means that particulate matter which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed. Fugitive dust does not include particulate matter emitted from a duct or stack.

"Fund," as used in Subchapter VR, means the Abandoned Mine Reclamation Fund established pursuant to § 45.1-261 of the Act.

"General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area and adjacent areas to include one or more watersheds containing perennial streams or ground water zones which possess useable and/or managed zones or flows, to allow an assessment of the probable cumulative impacts on the hydrologic regime.

"Government-financed construction" means construction funded 50% or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50% may qualify if the construction is undertaken as an approved reclamation project under Title IV of the federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

"Government financing agency" means any federal, state, regional, county, city or town unit of government, or a department, bureau, agency or office of a governmental unit or any combination of two or more governmental units or agencies, which, directly or through another unit of government, finances construction.

"Gravity discharge" means, with respect to underground coal mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of ground.

"Ground water" means subterranean water which exists within a totally saturated zone, stratum or group of strata.

"Growing season" means the period of year when climatic conditions are favorable for plant growth, common to a place or area. The period between April 15 and October 15 is the normal growing season.

"Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-hollow fill" means a fill structure consisting of any material, except organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill, draining into the fill area.

"Higher or better uses" means postmining land uses that have a higher value or benefit, either economic or noneconomic, to the landowner or the community than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Historically used for cropland" means (1) lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (2) lands that the division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-10

criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any five out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on the State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transportation.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundments" mean all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

"Indemnity agreement" means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

"In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Intermittent stream" means:

(a) A stream or section of a stream that drains a watershed of at least one square mile, or

(b) A stream or section of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment, in violation of the Act, or this chapter, that cannot be corrected by the permittee.

"Knowing" or "knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or failure to abate or correct a violation.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal use occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the division.

(a) "Cropland." Land used for production of crops which can be grown for harvest alone or in a rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(b) "Pastureland" or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) "Grazingland." Lands used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(d) "Forestry." Land used or managed for long-term production of wood, wood fiber, or wood derived products.

(e) "Residential." Land used for single and/or multiple family housing, mobile home parks, or other residential lodgings.

(f) "Industrial/Commercial." Land used for:

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) "Recreation." Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, amusement areas, as well as undeveloped areas for recreation such as hiking and canoeing.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) "Developed water resources." Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under § 404 or under § 402(g)(4) of the federal Act.

"Leachate" means water percolating from a surface coal mining operation which contains dissolved and suspended matter.

"Leased federal coal" means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.

"Lease terms, conditions and stipulations" means all of the standard provisions of a federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

"Material damage" in the context of 4VAC25-130-784.20 and 4VAC25-130-817.121 means:

(a) Any functional impairment of surface lands, features, structures, or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

"Mineral Leasing Act" or "MLA" means the Mineral Leasing Act of 1920, as amended, 30 USC § 181 et seq.

"Mining plan" means the plan, for mining leased federal coal, required by the Mineral Leasing Act.

"Mining supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or District Mining Supervisor or other subordinate acting under their direction.

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105°C.

"MSHA" means the United States Mine Safety and Health Administration.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, and provide micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, and areas of unstable geology.

"Net worth" means total assets less total liabilities. Total liabilities include, but are not limited to, funds pledged or otherwise obligated to the Commonwealth of Virginia, or to any other person at any time during the permit term. Total liabilities also include, but are not limited to, contingent liabilities that might materially affect the Commonwealth's ability to collect the amount of bond required in the event of bond forfeiture.

"Noncommercial building" means any building other than an occupied residential dwelling that at the time subsidence occurs is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in this section. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious plants" means living plants which are declared to be noxious weeds or noxious plants pursuant to the Virginia Noxious Weed Law, Chapter 17.2 (§ 3.1-296.11 et seq.) of Title 3.1 of the Code of Virginia.

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Occupied residential dwelling and structures related thereto" means, for purposes of 4VAC25-130-784.20 and 4VAC25-130-817.121, any building or other structures that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation. This term also includes any building, structure, or facility installed on, above or below, or a combination thereof, the land surface if that building structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agriculture, industrial, retail or other commercial purposes is excluded.

"Office" or "OSM" means the Office of Surface Mining Reclamation and Enforcement established under Title II of the federal Act.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other treatment facilities" means any facilities for chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized:

(a) To prevent additional contribution of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with all applicable state and federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

~~"Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:~~

~~(a) (i) Being a permittee of a surface coal mining operation; (ii) based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity; or (iii) having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.~~

~~(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:~~

~~(1) Being an officer or director of an entity;~~

~~(2) Being the operator of a surface coal mining operation;~~

~~(3) Having the ability to commit the financial or real property assets or working resources of an entity;~~

~~(4) Being a general partner in a partnership;~~

~~(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50% of the entity; or~~

~~(6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.~~

"Own," "owner," or "ownership" as used in 4VAC25-130-773, 4VAC25-140-774, or 4VAC25-140-778 (except when used in the context of ownership of real property) means being a sole proprietor or owning of record in excess of 50% of the voting securities or other instruments of ownership of an entity.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

"Performance bond" means a surety bond, collateral bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means decision or action, which if performed or not performed by an employee, affects the programs under the Act.

"Permanent diversion" means a diversion which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permanent impoundment" means an impoundment which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division pursuant to the Act and this chapter or by the secretary pursuant to a federal program. For the purposes of the federal lands program, permit means a permit issued by the division under a cooperative agreement or by the OSM where there is no cooperative agreement.

"Permit application package" means a proposal to conduct surface coal mining and reclamation operations on federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the federal Act, 30 CFR Subchapter D, the Act and this chapter, any applicable cooperative agreement and all other applicable

laws and regulations including, with respect to leased federal coal, the Mineral Leasing Act and its implementing regulations.

"Permit area" means the area of land indicated on the approved map submitted by the permittee with his application, required to be covered by the permittee's performance bond under Subchapter VJ and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit. The permit area shall include all disturbed areas except that areas adequately bonded under another permit issued pursuant to this chapter may be excluded from the permit area.

"Permittee" means a person holding or required by the Act or this chapter to hold a permit to conduct coal exploration (more than 250 tons) or surface coal mining and reclamation operations issued (a) by the division, (b) by the director of the OSM pursuant to a federal lands program, or (c) by the OSM and the division, where a cooperative agreement pursuant to § 45.1-230 B of the Act has been executed.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agent, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

"Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resources of economic, recreational, aesthetic, or environmental value that is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division; or

(b) Whose property is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division.

The term "adversely affected" is further defined as meaning perceptibly harmed. "Aesthetics" means the consideration of that which is widely regarded to be a visibly beautiful element of a community or area.

"Piezometer" means a vertical pipe that is established in material, which is closed at the bottom, perforated from the upper limits of the material to the lower limits of the material, and which permits static water level measurements and water sampling.

"Pollution abatement area" means the part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

"Pool Bond fund" means the Coal Surface Mining Reclamation Fund established pursuant to § 45.1-270.1 of the Act.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water coming from snow cover as snow melt in a limited period of time.

"Previously mined area" means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this chapter.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR Part 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland.

"Principal shareholder" means any person who is the record or beneficial owner of 10% or more of any class of voting stock in a corporation.

"Professional geologist" means a person who is certified pursuant to Chapter 14 (§ 54.1-1400 et seq.) of Title 54.1 of the Code of Virginia.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface property and mineral property within the permit area and the area covered by underground workings.

"Public building" means any structure that is owned or leased, and principally used, by a governmental agency for public business or meetings.

"Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public road" means a road ~~(a) which~~ (i) that has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; ~~(b) which~~ (ii) that is maintained with public funds, and is constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and ~~(c)~~ (iii) for which there is substantial (more than incidental) public use.

"Publicly owned park" means a public park that is owned by a federal, state or local governmental entity.

"Qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic

consequences or statement of results of test borings or core samplings or other services as specified at 4VAC25-130-795.9 under the Small Operator Assistance Program (4VAC25-130-795.1 et seq.) and which meets the standards of 4VAC25-130-795.10.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the division.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regulatory program" means the Virginia Coal Surface Mining Control and Reclamation program (Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia) and rules and regulations approved by the secretary.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Interior or the secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids or other pollutants from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self-bond," as provided by Part 801 of this chapter, means:

(a) For an underground mining operation, a cognovit note in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to $1 million. Such certification shall be by an independent certified public accountant in the form of an unqualified opinion.

(b) For a surface mining operation or associated facility, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial

practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant.

"Significant forest cover" means an existing plant community consisting predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air, or water resources" means:

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plants and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(1) Is causing such harm; or

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under § 45.1-245 B of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Significant recreational, timber, economic, or other values incompatible with surface coal mining operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archaeologic, aesthetic, fish, wildlife, plants or cultural interests.

"Siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

"Slope" means average inclination of a surface, measured from its horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percentage or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 4VAC25-130-785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the division after consideration of soil, climate, and other characteristics of a region or the state.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments, prior to January 4, 1977, have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

"Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.1-243 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to § 45.1-233 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on August 3, 1977.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface operations and impacts incident to an underground coal mine" means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in § 45.1-229 L of the Act.

"Surety bond" means an indemnity agreement in a sum certain payable to the Commonwealth of Virginia, Director—Division of Mined Land Reclamation, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Virginia.

"Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the division to remain after reclamation as part of the approved postmining land use.

"Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the division to remain as part of the approved postmining land use.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials, or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair plant and animal life commonly present in the area that might be exposed to it.

"Transfer, assignment, or sale of permit rights" means a change ~~in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the division~~ of a permittee.

"Unanticipated event or condition," as used in 4VAC25-130-773.15, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining that was not contemplated by the applicable permit.

"Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

"Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of wastes, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operations, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or failure to abate any violation of such permit, the Act, or this chapter due to indifference, lack of diligence, or lack of reasonable care.

"Usable ground water" or "ground water in use" means all ground water ~~which~~ that is reasonably able to be used.

"Valid existing rights" means a set of circumstances under which a person may, subject to division approval, conduct surface coal mining operations on lands where § 45.1-252 D of the Act and 4VAC25-130-761.11 would otherwise prohibit such operations. The possession of valid existing rights only confers an exception from the prohibitions of § 45.1-252 D and 4VAC25-130-761.11. A person seeking to exercise valid existing rights must comply with all pertinent requirements of the Act and the regulations promulgated thereunder and would need to demonstrate:

(a) Except ~~for haulroads, that a person possesses a valid existing right for an area protected under § 45.1 252 D of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to compensation under the Fifth and Fourteenth Amendments to the United States Constitution~~ as provided in subdivision (c) of this definition, the legally binding conveyance, lease, deed, contract, or other document that vests the person or predecessor in interest with the right to conduct the type of surface coal mining operations intended. The right must exist at the time the land came under the protection of 4VAC25-130-761.11;

(b) Compliance with one of the following:

(1) That all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt to obtain all necessary permits and authorizations had been made before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11.

(2) That the land needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt made to obtain such permits and authorizations occurred before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11. The person must demonstrate that prohibiting the expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of § 45.1-252 D or 4VAC25-130-761.11 when the division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the division may consider:

(i) The extent to which coal supply contracts or other legal and business commitments that occurred before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 depend upon the use of the land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 relied upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation made before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 relied upon the use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map under 4VAC25-130-779.24 (c) that was submitted before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11;

~~(b)~~ (c) For haulroads, a person who claims valid existing rights to use or construct a road across the surface of lands protected by § 45.1-252 D or 4VAC25-130-761.11 must demonstrate that one or more of the following circumstances exist. The road:

(1) ~~A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977; or~~ Existed when the land upon which it is located came under the protection of § 45.1-252 D or 4VAC25-130-761.11 and the person has the legal right to use the road for surface coal mining operations;

(2) ~~Any other road in existence as of August 3, 1977;~~ Was under a properly recorded right of way or easement for a road in that location at the time the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 and under the document creating the right of way or

easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations; or

(3) Was used or contained in a valid permit that existed when the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11; and

~~(c) A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;~~

~~(d) Where an area comes under the protection of § 45.1-252 D of the Act after August 3, 1977, valid existing rights shall be found if:~~

~~(1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or~~

~~(2) The prohibition caused by § 45.1-252 D of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.~~

~~(e) Interpretation~~ (d) That an interpretation of the terms of the document relied upon to establish the valid existing rights ~~to which the standard of paragraphs (a) and (d) of this definition applies~~ shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Violation," when used in the context of the permit application information or permit eligibility requirements of §§ 45.1-235 and 45.1-238 C of the Act and related regulations, means:

(a) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection as evidenced by a written notification from a governmental entity to the responsible person; or

(b) A noncompliance for which the division has provided one or more of the following types of notice or OSM or a state regulatory authority has provided equivalent notice under corresponding provisions of a federal or state regulatory program:

(1) A notice of violation under 4VAC25-130-843.12;

(2) A cessation order under 4VAC25-130-843.11;

(3) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under 4VAC25-130-845 or 4VAC25-130-846;

(4) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR Part 870; or

(5) A notice of bond forfeiture under 4VAC25-130-800.50 when:

(i) One or more violations upon which the forfeiture was based have not been abated or corrected; or

(ii) The amount forfeited and collected is insufficient for full reclamation under 4VAC25-130-800.50 or 4VAC-25-130-801.19, the division orders reimbursement for additional reclamation costs and the person has not complied with the reimbursement order.

"Violation, failure, or refusal," for purposes of 4VAC25-130-846, means:

(a) A failure to comply with a condition of an issued permit or the regulations implementing those sections; or

(b) A failure or refusal to comply with any order issued under 4VAC25-130-843 or any order incorporated in a final decision issued by the director, except an order incorporated in a decision issued under § 45.1-246 of the Act.

"Violation notice" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful ~~violation" means an act or omission which violates the Act, this chapter, or any permit condition required by the Act, or this chapter, committed by a person who intends the result which actually occurs.~~ or willfully" means that a person who authorized, ordered, or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(a) Intentionally, voluntarily, or consciously; and

(b) With intentional disregard or plain indifference to legal requirements.

4VAC25-130-761.11. Areas where mining is prohibited or limited.

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers Systems including, for study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 USC § 1276(a)), a corridor extending at least one-quarter mile from each bank for the length of the segment being studied, and National Recreation Areas designated by Act of Congress;

(b) On any Federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and surface operations and impacts are incident to an underground coal mine.

(c) On any lands where mining will adversely affect any publicly owned park or any place included in the National Register of Historic Places, unless approved jointly by the division and the Federal, State, or local agency with jurisdiction over the park or place;

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except--

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the division or the appropriate public road authority, pursuant to being designated as the responsible agency by the Director, allows the public road to be relocated, closed, or the area affected to be within 100 feet of such road, after--

(i) Public notice and opportunity for a public hearing in accordance with 4VAC25-130-761.12(d); and

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(e) Within 300 feet, measured horizontally, of any occupied dwelling, except when--

(1) The owner of the dwelling has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(g) Within 100 feet measured horizontally of a cemetery~~;~~.

~~(h) There will be no surface coal mining, permitting, licensing or exploration of Federal Lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.~~

4VAC25-130-761.13. Exception for existing operations.

The prohibitions and limitations of 4VAC25-130-761.11 do not apply to surface coal mining operations for which a valid permit issued under Subchapter VG of this chapter exists when the land comes under the protection of 4VAC25-130-761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of 4VAC25-130-761.11.

4VAC25-130-761.16. Submission and processing of requests for valid existing rights determinations.

A. Basic framework for valid existing rights determinations. 30 CFR 761.16(a) identifies the agency responsible for making a valid existing rights determination and the definition that it must use based upon which subsection of 30 CFR 761.11 or 4VAC25-130-761.11 applies and whether the request includes federal lands.

B. A request for a valid existing rights determination must be submitted to the division if a person intends to conduct surface coal mining operations on the basis of valid existing rights under 4VAC25-130-761.11 or wishes to confirm the right to do so. The request may be submitted before the person prepares and submits an application for a permit or boundary revision for the land.

1. The person must provide a property rights demonstration under the definition of valid existing rights if the request relies upon the good faith/all permits or the needed for and adjacent standard set forth in 4VAC25-130.700.5. For the land subject to the request, the demonstration must include:

a. A legal description of the land;

b. Complete documentation of the character and extent of the person's current interests in the surface and mineral estates of the land;

c. A complete chain of title for the surface and mineral estates of the land;

d. A description of the nature and effect of each titles instrument that forms the basis of the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

e. A description of the type and extent of surface coal mining operations that the person claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Virginia property law;

f. Complete documentation of the nature and ownership, as of the date that the land came under the protection of § 45.1-252 or 4VAC25-130-761.11, of all property rights for the surface and mineral estates;

g. Names and addresses of the current owners of the surface and mineral estates of the land;

h. If the coal interests have been severed from other property interests, documentation that the person has notified and provided reasonable opportunity for the owners of other property interests in the land to comment on the validity of the person's property rights claims; and

i. Any comments that the person receives in response to the notification provider under subdivision 1 h of this subsection.

2. If the request relies upon the good faith/all permits standard in subdivision (b)(1) of the valid existing rights definition in 4VAC25-130-700.5, the person must also submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land subject to the request that the person or predecessor in interest obtained, submitted, or made:

a. Approval and issuance dates and identification numbers for any permits, licenses, and authorizations obtained before the land came under the protection of § 45.1-252 or 4VAC25-130-761.11.

b. Application dates and identification numbers for any permits, licenses, and authorizations submitted before the land came under the protection of § 45.1-252 or 4VAC25-130-761.11.

c. An explanation of any other good faith effort made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of § 45.1-252 or 4VAC25-130-761.11

3. If the request relies upon the needed for and adjacent standard in subdivision (b)(2) of the valid existing rights definition in 4VAC25-130-700.5, the person must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of § 45.1-252 or 4VAC25-130-761.11

4. If the request relies upon one of the standards for roads in subdivision (c) of the valid existing rights definition in 4VAC25-130-700.5, the person must submit satisfactory documentation that:

a. The road existed when the land upon which it is located came under the protection of § 45.1-252 or 4VAC25-130-761.11 and the person has a legal right to use the road for surface coal mining operations;

b. A properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 45.1-252 or 4VAC25-130-761.11 and under the document creating the right of way or easement and under any subsequent conveyances, the person has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

c. A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 45.1-252 or 4VAC25-130-761.11.

C. Initial review of request.

1. The division must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection B of this section. The review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of subsection B of this section, the division must notify the person and establish a reasonable time for submission of the missing information. Should the person not provide the information requested by the division under this subdivision within the time specified or as subsequently extended, the division must issue a determination under subdivision E 4 of this section that the person has not demonstrated valid existing rights.

3. When the request includes all applicable components of the submission requirements of subsection B of this section, the division must implement the notice and comment requirements of subsection D of this section.

D 1. When the division determines that the request satisfies the completeness requirements of subsection C of this section, it shall publish a notice in a newspaper of general circulation in the county in which the land is located inviting public comment on the merits of the request. OSM will publish a similar notice in the Federal Register if the request involves federal lands within an area listed in 4VAC25-130-761.11 (a) or (b). The public notice must include:

a. The location of the land to which the request pertains.

b. A description of the type of surface coal mining operations planned.

c. A reference to and brief description of the applicable standard or standards under the definition of valid existing rights in 4VAC25-130-700.5.

(1) If the request relies upon the good faith/all permits or the needed for and adjacent standard set forth in the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the property rights that the person claims and the basis for the claim.

(2) If the request relies upon the road standard set forth in subdivision (c) (1) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that the road existed when the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11. In addition, the notice must include a description of the basis for the claim that the person has a legal right to use that road for surface coal mining operations.

(3) If the request relies upon the standard in subdivision (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 45.1-252 or 4VAC25-130-761.11. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

d. If the request relies upon one or more of the standards in subdivisions (b) and (c) (1) and (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, a statement that the division will not make a decision on the merits of the request if, by the close of the comment period under the notice or the notice required by subdivision 3 of this subsection, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the valid existing rights claim.

e. A description of the procedures the division will follow in processing the request.

f. The closing date of the public comment period, which shall be a minimum of 30 days after the notice's publication date.

g. A statement that interested persons may request, in writing, from the division a 30-day extension of the public comment period. The extension request shall set forth with reasonable specificity the reasons the commenter needs the additional time to submit comments.

h. Include the division office's address where a copy of the valid existing rights request is available for public inspection and where comments and requests for extension of the comment period should be sent.

2. The division must promptly provide a copy of the notice required under subdivision 1 of this subsection to:

a. All reasonably locatable owners of surface and mineral estates in the land included in the valid existing rights request.

b. The owner of the feature causing the land to come under the protection of 4VAC25-130-761.11, and when applicable, the agencies with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 4VAC25-130-761.11.

3. The notice required under subdivision 2 of this subsection must provide a 30-day comment period and specify that an additional 30 days may be granted for good cause shown at the discretion of the division or agency responsible for the valid existing rights determination.

E.1. The division or agency responsible for making the valid existing rights determination must review the materials submitted under subsection B of this section, comments received under subsection D of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the division must notify the person in writing explaining the inadequacy of the record and requesting submittal within a specified reasonable time of any additional information that the division deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the division must make a determination as to whether valid existing rights have been demonstrated. The division's decision must explain how the person has or has not satisfied all applicable elements of the valid existing rights definition under 4VAC25-130-700.5, contain findings of fact and conclusions, and specify the reasons for the conclusions.

3. When the request relies upon one or more of the standards in subdivisions (b) and (c) (1) and (2) of the valid existing rights definition in 4VAC25-130-700.5, the division:

a. Must issue a determination that the person has not demonstrated valid existing rights if the property rights claim is the subject of pending litigation in a court or administrative body with the jurisdiction over the property rights in question. The division will make the determination without prejudice, meaning that the person may refile the request once the property rights dispute is finally adjudicated. This applies only to situations in which legal action has been initiated as of the closing date of the comment period under subdivisions D 1 and 3 of this section.

b. If the record indicates disagreement of the accuracy of the person's property rights claim, but the disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, must evaluate the merits of the information in the record and determine whether the person has demonstrated that the requisite property rights exist under subdivision (a), (c) (1) or (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, as appropriate. The division must then proceed with the decision process under subdivision 2 of this subsection.

4. The division must issue a determination that the person has not demonstrated valid existing rights if the person does not submit information that the division requests under subdivision C 2 of this section or subdivision 1 of this subsection within the time specified or as subsequently extended. The division will make the determination without prejudice, meaning the person may refile a revised request at any time.

5. After making a valid existing rights determination, the division shall:

a. Provide a copy of the determination with an explanation of appeal rights and procedures to the person seeking the determination, owner or owners of the land to which the determination applies, owner of the feature causing the land to come under the protection of 4VAC25-130-761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25-130-761.11.

b. Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. The federal Office of Surface Mining Reclamation and Enforcement (OSMRE) will publish the determination, together with an explanation of appeal rights and procedures in the Federal Register if the request includes federal lands within an area listed in 4VAC25-130-761.11 (a) or (b).

F. The division's valid existing rights determination shall be subject to administrative and judicial review under 4VAC25-130-775.11 and 4VAC25-130-775.13.

G. The division must make a copy of the valid existing rights determination request available to the public as provided by 4VAC25-130-773.13 (d) and the records associated with that request, and any subsequent determination under subsection E of this section, available to the public in accordance with 4VAC25-130-840.14.

4VAC25-130-772.12. Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.

(a) Exploration permit. Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter VF shall, before conducting the exploration, submit an application and obtain written approval from the division in an exploration permit. Such exploration shall be subject to the requirements prescribed under 4VAC25-130-772.13 and 4VAC25-130-772.14.

(b) Application Information. Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant.

(2) The name, address, and telephone number of the applicant's representative who will be present at, and responsible for conducting the exploration activities.

(3) A narrative describing the proposed exploration area.

(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.

(8) A description of-:

(i) Cultural or historic resources listed in the National Register of Historic Places;

(ii) Cultural or historic resources known to be eligible for listing on the National Register for Historic Places; and

(iii) Known archeological resources located within the proposed exploration area.

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC § 1531 et seq.) identified within the proposed exploration area.

(10) A description of the measures to be used to comply with the applicable requirements of Part 815.

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(12) A map or maps at a scale of 1:24,000 or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC § 1531 et seq.)

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(14) For any lands listed in 4VAC25-130-761.11, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 4VAC25-130-761.11 and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25-130-761.11.

(c) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) Upon submission of an administratively complete application to the division, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed exploration area. A copy of the newspaper advertisement and proof of publication shall be filed with the division no later than four weeks after the date of publication.

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, that the application will be available for public inspection in the division's office in Big Stone Gap, the address of the division where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within 30 days after the date of publication of the newspaper notice.

(d) Decisions on applications for exploration.

(1) The division shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

(2) The division shall approve a complete and accurate application for a coal exploration permit filed in accordance with this Part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will:

(i) Be conducted in accordance with this Part, Part 815 of this chapter, and the applicable provisions of the program;

(ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973 (16 USC § 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(iii) Not adversely affect any cultural or historic resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended (16 USC § 470 et seq., 1976, Supp. V), unless the proposed exploration has been approved by both the division and the agency with jurisdiction over such matters.

(iv) With respect to exploration activities on any lands protected under 4VAC25-130-761.11, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the division must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 4VAC25-130-761.11 and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25-130-761.11, to comment on whether the finding is appropriate.

(3) Terms of approval issued by the division shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this Part, Part 815, and the Act.

(e) Notice and hearing.

(1) The division shall notify the applicant, the appropriate local governmental officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the division at the Court House in the county of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the division pursuant to Paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in Part 775.

4VAC25-130-773.15. Review of permit applications.

(a) General.

(1) The division shall review the application for a permit, revision, or renewal; written comments and objections submitted; information from the AVS; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time, either granting, requiring modification of, or denying the application. If an informal conference is held under 4VAC25-130-773.13(c), the decision shall be made within 60 days of the close of the conference~~, unless a later time is necessary to provide an opportunity for a hearing under subdivision (b)(2) of this section~~.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

(3) The division shall review the information submitted under 4VAC25-130-778.13 and 4VAC25-130-778.14 regarding the applicant's or operator's permit histories, business structure, and ownership and control relationships.

(4) If the applicant or operator does not have any previous mining experience, the division may conduct additional reviews to determine if someone else with surface coal mining experience controls or will control the mining operation.

(b) Review of violations.

(1) Based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to § 518 of the federal Act and § 45.1-246 of the Code of Virginia, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the division shall not issue the permit if any surface coal mining and reclamation operation directly owned or controlled by either the applicant or ~~by any person who owns or controls the applicant~~ operator is currently in violation of the federal Act, this chapter, or any other law, rule or regulation referred to in this subdivision; or if a surface coal mining and reclamation operation indirectly owned or controlled by the applicant or operator has an unabated or uncorrected violation and the applicant's or operator's control was established or the violation was cited after November 2, 1988. In the absence of a failure-to-abate cessation order, the division may presume that a notice of violation issued pursuant to 4VAC25-130-843.12 or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or the AVS, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the division shall require the applicant or ~~person who owns or controls the applicant~~ operator, before the issuance of the permit, to either

(i) Submit to the division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the division that the applicant, or ~~any person owned or controlled by either the applicant or any person who owns or controls the applicant~~ operator, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under 4VAC25-130-775.13 affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under subdivision (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of proof submitted under subdivision (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subdivision (b)(1)(ii) of this section, shall be conditionally issued.

(3) If the division makes a finding that the applicant~~,~~ ~~anyone who owns or controls the applicant,~~ or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 4VAC25-130-775.11.

(4) (i) Subsequent to October 24, 1992, the prohibitions of subsection (b) of this section regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit~~: 1. Issued before September 30, 2004, or any renewals thereof; and 2. Held~~ held by the person making application for the new permit.

(ii) For permits issued under 4VAC25-130-785.25 an event or condition shall be presumed to be unanticipated for the purposes of this subdivision if it:

(A) Arose after permit issuance;

(B) Was related to prior mining; and

(C) Was not identified in the permit.

(c) Written findings for permit application approval. No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and this chapter.

(2) The applicant has demonstrated that reclamation as required by the Act and this chapter can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is:

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to Part 764 of this chapter and 30 CFR Part 769, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for mining pursuant to Parts 762 and 764 of this chapter, or subject to the prohibitions or limitations of 4VAC25-130-761.11 and 4VAC25-130-761.12.

(4) For mining operations where the private mineral property to be mined has been severed from the private surface property, the applicant has submitted to the division the documentation required under 4VAC25-130-778.15(b).

(5) The division has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with 4VAC25-130-701.11(d) and 4VAC25-130-773.16, and the applicable performance standards of the initial regulatory program or Subchapter VK.

(7) The applicant has paid all reclamation fees, civil penalty assessments, Pool Bond Fund fees, and anniversary fees, from previous and existing operations as required by this chapter.

(8) The applicant has satisfied the applicable requirements of Part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of 4VAC25-130-816.111(d) or 4VAC25-130-817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 USC § 1531 et seq.).

(11) The division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the division has determined that no additional protection measures are necessary.

(12) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 4VAC25-130-816.106 or 4VAC25-130-817.106, the site of the operation is a previously mined area as defined in 4VAC25-130-700.5.

(13) The applicant or the permittee specified in the application, has not owned or controlled a surface mining and reclamation operation for which the permit has been revoked and/or the bond forfeited pursuant to the Code of Virginia or any federal law, rule or regulation, or any law, rule or regulation enacted pursuant to federal or state law pertaining to air or water environmental protection and surface coal mining activities in any other state unless reinstated. Applicable Virginia reinstatement requirements may be found in 4VAC25-130-800.52.

(14) For permits to be issued under 4VAC25-130-785.25 the permit application must contain:

(i) Lands eligible for remining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of this chapter can be accomplished.

(d) Performance bond submittal. If the division decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter VJ.

(e) Final compliance review. After an application is approved, but before the permit is issued, the division shall reconsider its decision to approve the application, based on the compliance review required by subdivision (b)(1) of this section in light of any new information submitted under 4VAC25-130-778.13 (j) or 4VAC25-130-778.14 (d).

4VAC25-130-773.20. Improvidently issued permits; general procedures.

(a) Permit review. If the division has reason to believe that it improvidently issued a surface coal mining and reclamation permit, it shall review the circumstances under which the permit was issued, using the criteria in ~~Paragraph~~ subdivision (b) of this section. Where the division finds that the permit was improvidently issued, it shall comply with ~~Paragraph~~ subdivision (c) of this section.

(b) Review criteria. The division shall find that a surface coal mining and reclamation permit was improvidently issued if:

(1) Under the violations review criteria of this chapter at the time the permit was issued:

(i) The division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(ii) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(2) The violation, penalty or fee:

(i) Remains unabated or delinquent; and

(ii) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(3) Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of this chapter at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

(c) Remedial measures. If the division, under ~~Paragraph~~ subdivision (b) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, it shall use one or more of the following remedial measures:

(1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(3) ~~Suspend the permit until~~ Serve the permittee with a preliminary finding that shall be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued. The finding shall inform the permittee that the permit may be suspended or rescinded under 4VAC25-130-773.21 if the violation is not abated or the penalty or fee is not paid~~; or~~.

~~(4) Rescind the permit under 4VAC25-130-773.21.~~

4VAC25-130-773.21. Improvidently issued permits; rescission procedures.

If the division, under 4VAC25-130-773.20 (c) ~~(4)~~ (3), elects to suspend or rescind an improvidently issued permit, it shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the division under 4VAC25-130-773.20 (b) and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the division finds, that:

(1) The finding of the division under 4VAC25-130-773.20 (b) was erroneous;

(2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee:

(b) Cessation of operations. After service of the notice of permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit as set forth in the notice, except for violation abatement and for reclamation and other environmental protection measures as required by the division; ~~and~~

(c) A person may challenge an ownership or control listing or finding by submitting to the division a written explanation of the basis for the challenge, along with any evidence or explanatory materials that substantiates that the person did not or does not own or control the entire surface coal mining operation or relevant portion or aspect thereof. The person may request that any information submitted to the division under this section be held as confidential if it is not required to be made public under the Act. The division shall review the information and render a written decision regarding the person's ownership or control listing or link within 60 days from receipt of the challenge; and

~~(c)~~ (d) Right to appeal. The permittee or person aggrieved by the division's notice or decision may file an appeal for administrative review of the notice or decision under subdivision (c) of 4VAC25-130-775.11 or under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

4VAC25-130-774.12. Post-permit issuance requirements.

A. For purposes of future permit eligibility determinations and enforcement actions, the division will utilize the AVS to retrieve and enter appropriate data regarding ownership, control, and violation information. The division shall enter into the AVS:

Information	Within 30 days after
(1) Permit records	the permit is issued or subsequent changes made
(2) Unabated or uncorrected violations	the abatement or correction period for a violation expires
(3) Unpaid final civil penalties, charges, taxes, or fees	the required due payment date
(4) Changes in violation status	abatement, correction or termination of a violation or a final decision from an administrative or judicial review proceeding

B. In the event the permittee is issued enforcement action under 4VAC25-130-843.11 and fails to timely comply with the order's remedial measures, the division shall instruct the permittee to provide or update all the information required by 4VAC25-130-778.13. However, the permittee would not be required to submit this information if a court of competent jurisdiction has granted a stay of the cessation order and the stay remains in effect.

C. The permittee shall notify the division within 60 days of any addition, departure, or change in position of any person identified under 4VAC25-130-778.13. The permittee shall provide the date of such addition, departure, or change of such person.

D. Should the division discover that the permittee or a person listed in an ownership or control relationship with the permittee owns or controls an operation with an unabated or uncorrected violation, it will determine whether enforcement action is appropriate under 4VAC25-130-843 and 4VAC25-130-846 or other applicable provisions. The division may issue a preliminary finding of permit ineligibility under § 45.1-238 (c) of the Act if it finds that the person had control relationships and violations that would have made the person ineligible for a permit under 4VAC25-130-773.15. The finding shall be in accordance with 4VAC25-130-773.20 (c) (3).

E. If a determination of permit ineligibility is rendered by the division, the person would have 30 days from service of the written finding to submit any information that would tend to demonstrate the person's lack of ownership or control of the surface coal mining operation. The division would issue a final determination regarding the permit eligibility within 30 days of receiving any information from the person or from the expiration date that the person could submit the information under this subsection. A person aggrieved by the division's eligibility finding would have the right to request review under 4VAC25-130-775.

4VAC25-130-774.17. Transfer, assignment, or sale of permit rights.

(a) General. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the division. At its discretion, the division may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under subdivision (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the division that sufficient bond coverage will remain in place.

(b) Application requirements. An applicant for approval of the transfer, assignment, or sale of permit rights shall--

(1) Provide the division with an application for approval of the proposed transfer, assignment, or sale including--

(i) The name and address of the existing permittee and permit number;

(ii) A brief description of the proposed transaction requiring approval; and

(iii) The legal, financial, compliance, and related information required by Part 778 for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under Subchapter VJ.

(c) Public participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the division within 30 days.

(d) Criteria for approval. The division may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor--

(1) Is eligible to receive a permit in accordance with 4VAC25-130-773.15(b) and (c);

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by Subchapter VJ; and

(3) Meets any other requirements specified by the division.

(e) Notification.

(1) The division shall notify the permittee, the successor, commenters, and the OSM of its findings.

(2) Proof of the consumation shall be submitted to the division upon its approval of the transfer, assignment, or sale of permit rights, and prior to the issuance of the new permit.

(f) Continued operation under existing permit. The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this Subchapter.

4VAC25-130-778.13. Identification of interests.

An application shall contain the following information~~, except that the submission of a social security number is voluntary~~:

(a) A statement as to whether the applicant or the operator, if different from the applicant, is a corporation, partnership, single proprietorship, association, or other business entity.

(b) The name, address, telephone number and, as applicable, ~~social security number and~~ employer identification number of the:

(1) Applicant;

(2) Applicant's resident agent; and

(3) ~~Person who will pay the abandoned mine land reclamation fee~~ Operator, if different from the applicant; and

(4) Each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For every such business entity, provide the required information for every president, chief executive officer, partner, member, and/or director or persons in similar positions, and every person who owns of record 10% or more of the entity.

(c) For ~~each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 4VAC25-130-700.5, as applicable~~ the applicant and operator, if different from the applicant, information required by subsection (d) of this section for every:

(1) ~~The person's name, address, social security number and employer identification number~~ Officer;

(2) ~~The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure~~ Partner;

(3) ~~The title of the person's position, date position was assumed, and when submitted under 4VAC25-130-773.17(h), date of departure from the position~~ Member;

(4) ~~Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application~~ Director; ~~and~~

(5) ~~The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.~~ Person performing a function similar to a director; and

(6) Person who owns, of record, 10% or more of the entity.

(d) For each person listed from subdivision (c) of this section:

(1) The person's name, address, and telephone number;

(2) The person's position title and relationship to the applicant or operator, including percentage of ownership and location in the organizational structure; and

(3) The date the person began functioning in that position.

~~(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 4VAC25-130-700.5, the operation's~~ (e) A list of all the names under which the applicant, operator, partners, or principal shareholders, and the operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within a five-year period preceding the date of submission of the application, including the name, ~~(1) Name,~~ address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority~~; and~~.

~~(2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.~~

(f) For the applicant and operator, if different from the applicant, a list of any pending permit applications for surface coal mining operators filed in the United States, identifying each application by its application number, jurisdiction, or by other identifying information when necessary.

(g) For any surface coal mining operation the applicant or operator owned or controlled within a five-year period preceding the submission of the permit application, and for any surface coal mining operation the applicant or operator controlled on that date, the:

(1) Permittee's and operator's name, address, and tax identification numbers;

(2) Name of the regulatory authority with jurisdiction over the permit with the corresponding federal or state permit number and MSHA number; and

(3) The permittee's and operator's relationship to the operation, including the percentage of ownership and location in the organizational structure.

~~(e)~~ (h) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

~~(f)~~ (i) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

~~(g)~~ (j) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

~~(h)~~ (k) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this ~~Paragraph which~~ subdivision that is not on public file pursuant to ~~State~~ state law shall be held in confidence by the division, as provided under 4VAC25-130-773.13(d)(3)(ii).

~~(i)~~ (l) Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by~~—~~:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

~~(j)~~ (m) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under ~~Paragraphs~~ subdivisions (a) through (d) of this section.

~~(k)~~ (n) The applicant shall submit the information required by this section and by 4VAC25-130-778.14 in any prescribed OSM format that is issued.

4VAC25-130-778.14. Violation information.

Each application shall contain the following information:

(a) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has ~~—~~:

(1) Had a ~~Federal~~ federal or ~~State~~ state coal mining permit suspended or revoked in the ~~5~~ five years preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond at any time.

(b) A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to in ~~Paragraphs~~ subdivisions (a)(1) and (2) of this section has occurred, including~~—~~:

(1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) The current status of the proceedings.

(c) For any violation of a provision of the ~~Federal~~ federal Act or this chapter, or of any law, rule or regulation of the United States, or of any ~~State~~ state law, rule or regulation enacted pursuant to ~~Federal~~ federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by ~~any person who owns or controls the applicant~~ the operator. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(1) Any identifying numbers for the operation, including the ~~Federal~~ federal or ~~State~~ state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency.

(2) A brief description of the violation alleged in the notice;

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in ~~Paragraph~~ subdivision (c) of this section to obtain administrative or judicial review of the violation;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by any person identified in ~~Paragraph~~ subdivision (c) of this section to abate the violation.

(d) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

4VAC25-130-800.52. Bond forfeiture reinstatement procedures.

(a) Any person who owns or controls or has owned or controlled any operation on which the bond has been forfeited or the permit revoked pursuant to this chapter or pursuant to Chapters 15 [repealed], 17 (§ 45.1-198 et seq.) or 23 [repealed] of Title 45.1 of the Code of Virginia and who has not previously been reinstated by the ~~Board of Conservation and Economic Development or the~~ ~~Director~~ director may

petition the ~~Director~~ director for reinstatement. Reinstatement, if granted, shall be under such terms and conditions as set forth by the ~~Director~~ director or his designee. The ~~Director~~ director or his designee in determining the terms and conditions shall consider the particular facts and circumstances existing in each individual case. Reinstatement shall not be available to applicants for reinstatement where the division finds that the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, in accordance with 4VAC25-130-773.15(b)(3). As a minimum, the applicant for reinstatement shall satisfy the following requirements:

(1) Abatement of any outstanding violations existing on each site on which the bond has been forfeited or the permit revoked;

(2) Payment of any outstanding civil penalties (both ~~State~~ state and ~~Federal~~ federal), Reclamation fund taxes, and any outstanding fees, including Federal Abandoned Mine Land Reclamation taxes;

(3) Reclaim each site on which the bond was forfeited according to the applicable law, regulations and standards governing the site at the time of bond forfeiture;

(4) Payment to the ~~Director~~ director of any money expended by the Commonwealth in excess of the forfeited bond amount to accomplish the reclamation of the sites; and

(5) Pay to the ~~Director~~ director a ~~civil penalty~~ reinstatement fee of $5,000 assessed by the ~~Director~~ director on each site forfeited. These ~~civil penalties~~ fees shall be used by the ~~Director~~ director to accomplish reclamation on other forfeited or abandoned surface coal mining operations.

(b) Reinstatement by the ~~Director~~ director shall be a prerequisite to the filing by the person (applicant for reinstatement) of any new permit application or renewal under this chapter or Chapters 15 [repealed], 17 (§ 45.1-198 et seq.), or 23 [repealed] of Title 45.1 of the Code of Virginia, but shall not affect the person's need to comply with all other requirements of said statutes, regulations or both promulgated thereunder.

4VAC25-130-840.14. Availability of records.

(a) The division shall make available to the OSM, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operation permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the division shall be made immediately and conveniently available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond, except-

(1) As otherwise provided by ~~State~~ state law; and

(2) For information not required to be made available under 4VAC25-130-772.15 and 4VAC25-130-773.13(d) or ~~Paragraph~~ subdivison (d) of this section.

(c) The division shall ensure compliance with ~~Paragraph~~ subdivison (b) of this section by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a ~~Federal~~ federal, ~~State~~ state, or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the division's option in accordance with the Virginia Freedom of Information Act (Chapter 21 (§ 2.1-340 et seq.) of Title 2.1 of the Code of Virginia), providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided, that the division shall maintain for public inspection, at a ~~Federal~~ federal, ~~State~~ state, or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information. A list of government offices where information may be inspected can be obtained on request by contacting the division's Big Stone Gap office.

(d) In order to protect preparation for hearings and enforcement proceedings, the OSM and the division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

~~Part 846~~
~~Individual Civil Penalties~~

4VAC25-130-846.2. ~~Definitions.~~ (Repealed.)

~~For purposes of this Part:~~

~~"Knowingly" means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.~~

~~"Violation, failure or refusal" means:~~

~~(1) A violation of a condition of the permit issued pursuant to the Act and the regulations promulgated thereunder; or,~~

~~(2) A failure or refusal to comply with any order issued under § 45.1-245 of the Act, or any order incorporated in a decision issued by the Director under the Act, except an order incorporated in a decision issued under § 45.1-246(B) of the Act.~~

~~"Willfully" means that an individual acted (1) either intentionally, voluntarily or consciously, and (2) with intentional disregard or plain indifference to legal~~

~~requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.~~

VA.R. Doc. No. R13-3503; Filed January 9, 2013, 1:49 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to subdivision A 17 of § 2.2-4002 of the Code of Virginia in promulgating technical rules regulating actual live horse racing at race meetings licensed by the commission.

Title of Regulation: **11VAC10-20. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (amending 11VAC10-20-190, 11VAC10-20-260, 11VAC10-20-330).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: March 1, 2013.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

Summary:

The amendments eliminate certain technical rules regulating actual live horse racing at race meetings licensed by the Virginia Racing Commission that are no longer in use. The amendments are made in accordance with the Governor's Regulatory Reform Initiative.

11VAC10-20-190. Criteria for unlimited horse racing facilities.

A. Generally. Every license to conduct a horse race meeting with pari-mutuel wagering privileges, of 15 days or more in any calendar year is granted by the commission upon the condition that the licensee will conduct horse racing at its facility or meeting for the promotion, sustenance, and growth of a native industry in a manner consistent with the health, safety, and welfare of the people. The adequacy and sufficiency with which the licensee meets the criteria for the procedures, facilities, and equipment for conducting a horse race meeting of such duration shall rest with the commission.

1. Each licensee shall accept, observe, and enforce all federal and state laws, regulations of the commission, and local ordinances.

2. Each licensee shall at all time maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of the public, employees, other persons whose business requires their attendance, and for the health and safety of the horses there stabled.

3. Each licensee shall honor commission exclusions from the enclosure and eject immediately any person found within the enclosure who has been excluded by the commission and report the ejection to the commission. Whenever any licensee ejects a person from the enclosure, it shall furnish a written notice to the person ejected and shall report the ejection to the commission.

4. No later than 15 days before the first day of any race meeting, each licensee shall submit to the commission the most recent inspection reports issued by governmental authorities regarding the condition of facilities, sanitation, and fire prevention, detection, and suppression.

5. Each licensee shall provide the commission daily attendance reports showing a turnstile count of all persons admitted to the enclosure and the reports shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

6. Each licensee shall furnish to the commission within three months of the closing of its fiscal year, three copies of its balance sheet and of its operating statement for the previous fiscal year with comparison to the prior fiscal year, the same duly sworn to by the treasurer of the association, and certified by an independent certified public accountant. The financial report shall be in the form as may be prescribed from time to time by the commission.

7. Each licensee shall maintain a separate bank account to be known as the "horsemen's account," with the amount of purse money statutorily mandated to be deposited in the account within 48 hours of the running of the race. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded:

a. All portions of purse money shall be made available when the stewards have authorized payment to the earners; and

b. No portion of purse money other than jockey fees shall be deducted by the licensee for itself or for another, unless so requested in writing by the person to whom such purse moneys are payable, or his duly authorized representative. Irrespective of whether requested, at the close of each race meeting the horsemen's bookkeeper shall mail to each owner a duplicate of each owner's account showing every deposit, withdrawal, or transfer of funds affecting such owner's account.

8. Each licensee shall remit to the commission within five days of the day on which the revenue for pari-mutuel taxes, admission taxes, and breeders' funds were collected. The remittance shall be accomplished by a direct deposit in a financial institution designated by the commission. On those days when the fifth day is a holiday or a weekend

day, the payment must be made by the succeeding business day. At the close of each month in which racing is conducted, the licensee must report to the commission all deposits of taxes and breeders' funds for that month.

9. On each day that deposits are made by the licensee, a report must be filed with the commission containing the following recapitulation: total retainage, pari-mutuel tax; state and local admissions taxes; purse moneys; total breakage; and breeders' fund taxes.

10. Each licensee shall provide areas within the enclosure where publications, other informational materials, and tip sheets, may be sold to the public. All persons holding a tip sheet concession at the facility must possess a permit from the commission as vendors. Such vendor shall post in a conspicuous place the previous day's tip sheet and the outcome of the races. Such vendor shall deliver one copy of the tip sheet to a commission representative at least one hour before post time.

11. Each licensee shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who are licensed and have access to the stabling area. No licensee by virtue of this regulation shall attempt to control or monopolize proper selling to owners, trainers, or stable employees; nor shall a licensee grant a sole concession to any vendor of feed, racing supplies, or racing services.

12. Each licensee shall provide to the commission copies of all subordinate contracts, in the amount of $15,000 annual gross and above, entered into by the owner, owner-operator, or operator, and such contracts shall be subject to approval of the commission.

13. Each licensee shall submit to the commission each calendar year a request for live racing days for the next calendar year as provided in 11VAC10-20-200. The holder of an unlimited license shall schedule not less than 150 days live racing days in the Commonwealth each calendar year; however, the commission may alter the number of live racing days based on what it deems to be in the best interest of the Virginia horse industry.

14. Each licensee shall post in a conspicuous place in every place where pari-mutuel wagering is conducted a sign that bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers.

B. Facilities. Each unlimited licensee shall provide all of the facilities for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, or dishonest practices and to maintain in horse racing complete honesty and integrity.

1. Each licensee shall provide for flat racing a main racing surface of at least one mile in circumference; for flat or jump racing on the turf a racing surface of at least seven-eighths of a mile in circumference; for harness racing a main racing surface of at least five-eighths of a mile in circumference; and for other types of racing a racing surface of generally accepted standards.

a. Prior to the first race meeting at a facility owned or operated by the holder of an unlimited license, the licensee shall provide to the commission a certified report of a qualified surveyor, certifying the grade and measurement of the distances to be run.

b. Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

c. The surveyor's report must be approved by the commission's executive secretary prior to the first race day of the meeting.

2. Turf course requirements include the following:

a. The licensee shall maintain an adequate stockpile of growing medium, and shall provide an irrigation system or other means of adequately watering the entire turf course evenly.

b. All turf course paths from inside rails to turf courses shall resemble the rest of the terrain, with no rails leading from the main course to the turf courses.

c. A portable rail shall be secure to absorb the impact of a horse.

3. Main track requirements include the following:

a. Each licensee shall provide a safety rail on the inside of each racing surface and such other fencing that is appropriate to safely enclose the racing surface for horses and riders.

b. The rail height shall be from 38 inches to 42 inches from the top of the cushion to the top of the rail. All top rails shall be bolted to poles and shall be smooth with no jagged edges. Rail posts shall be of a gooseneck type design and shall have no less than a 24-inch overhang with a continuous smooth elevated cover over posts.

c. All rails shall be constructed of materials designed to withstand the impact of a horse running at racing speed.

d. All rail posts shall be set in concrete at least six inches below the surface and 24 inches deep. A portable turf rail shall be secure to absorb the impact of a horse. No rail or post shall be used that will not take the impact of a horse or will break away, such as fiberglass, PVC, wood or hedges.

e. The design and construction of rails shall be approved by the commission prior to the first race meeting at the racetrack.

4. Each licensee shall provide distance poles marking off the racing surface and the poles shall be painted in the following colors: quarter poles, red and white; eighth poles, green and white; and sixteenth poles, black and white. All distance poles, including photofinish mirror imaging equipment and any other equipment, shall be set back a minimum of 10 feet from the back of the inside rail.

5. Each licensee shall provide racing surfaces whose construction, elevation, and surfaces have received scientific approval as safe and humane, adequate and proper equipment to maintain the racing surface, and sufficient trained personnel to properly operate the equipment. Daily records of maintenance shall be open for inspection.

6. Each licensee shall provide stabling in a sufficient amount to conduct a successful horse race meeting. The horses shall be quartered in individual stalls with separate feeding and watering facilities. Each barn, including the receiving barn, shall have a hot and cold water supply available, be well-ventilated, have proper drainage to prevent standing water and be constructed to be comfortable in all seasons during which racing is conducted.

7. Each licensee shall provide a stabling area that is maintained in approved sanitary condition with satisfactory drainage, manure, and other refuse kept in separate boxes or containers distant from living quarters, and the boxes or containers promptly and properly removed.

8. Each licensee shall provide a systematic and effective insect control program and programs to eliminate hazards to public health and comfort in the stabling area and throughout the enclosure.

9. Each licensee shall provide satisfactory living quarters for persons employed in the stabling area as well as satisfactory commissary, recreation, and lavatory facilities, and maintain the facilities in a clean and sanitary manner. No employee shall be permitted to sleep in any stall or barn loft.

10. Each licensee shall provide on every racing day satisfactory sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business within the enclosure.

11. Each licensee shall provide a paddock where the horses are assembled prior to the post parade. Each licensee shall provide a public viewing area where patrons may watch the activities in the paddock. Each licensee shall also provide a sufficient number of roofed stalls so that horses may be housed during inclement weather.

12. Each licensee shall provide satisfactory facilities for jockeys or drivers who are participating in the day's program. The facilities shall include accommodations for rest and recreation, showers, toilets, wash basins, reducing facilities (sauna or steam room), arrangements for safe keeping of apparel and personal effects, and snack bar during horse race meetings.

13. Each licensee shall maintain an information desk where the public may make complaints regarding the facilities, operations of the licensee, or rulings of the commission. The licensee shall respond promptly to complaints, and inform the commission regarding any alleged violation of its regulations.

14. Each licensee shall maintain a test barn for use by commission employees in securing from horses that have run a race, samples of urine, saliva, blood, or other bodily substances for chemical analysis. The test barn shall include a wash rack, commission veterinarian office, a walking ring, and a sufficient number of stalls each equipped with a window sufficiently large to allow the taking of samples to be witnessed from outside the stall. The test barn shall be located convenient to the racing surface and shall be enclosed by a fence so that unauthorized persons shall be excluded. Space shall be provided for signing in and signing out of permittees whose attendance is required in the test barn.

15. Each licensee shall maintain a receiving barn conveniently located for use by horses arriving for races that are not quartered in the stabling area. The licensee shall have a sufficient number of stalls to accommodate the anticipated number of horses, hot and cold running water, and stall bedding. The licensee shall maintain the receiving barn in a clean and sanitary manner.

16. Each licensee shall provide and maintain lights so as to ensure adequate illumination in the stabling area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

17. Each licensee shall provide and maintain stands commanding an uninterrupted view of the entire racing surface for the stewards with the location to be approved by the commission. The licensee shall provide patrol judge stands so that the floor shall be at least six feet higher than the track rail. For harness racing, each licensee shall provide space for a patrol judge in the mobile starting gate that will accompany the horses during the race.

18. Each licensee shall furnish office space, approved by the commission, for the commission's use within the enclosure and an appropriate number of parking spaces so that its members and staff may carry out their duties.

19. Each licensee shall submit to the commission, at least 30 days prior to the opening day of a meeting, a complete list of its racing officials, as set forth elsewhere in these regulations, and department heads. No person shall hold any appointment for a horse race meeting unless approved by the commission after determination that the appointee is qualified for his duties, not prohibited by any law of the Commonwealth of Virginia or regulation of the commission, and eligible to hold a permit issued by the commission.

20. Each licensee shall provide a condition book, or for harness racing, a condition sheet, listing the proposed races for the upcoming racing days and prepared by the racing secretary, to the commission at least one week prior to opening day. Additional condition books or condition

sheets shall be provided to the commission as soon as published.

21. No licensee shall allow any person to ride in a race or exercise any horse within the enclosure unless that person is wearing a protective helmet with the chin strap buckled. For flat racing, the term "exercising" is defined to include breezing, galloping, or ponying horses.

22. Each licensee shall employ at least three outriders for flat and steeplechase racing ~~and at least one outrider for harness racing,~~ to escort starters to the post and to assist in the returning of all horses to the unsaddling area for flat races. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse that might cause injury to a jockey or driver or others. During racing hours, outriders will wear traditional attire. For flat race meetings, outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times when the track is open for exercising.

23. Each licensee shall employ for flat meets a sufficient number of valets to attend each jockey on a day's program. Valets will be under the immediate supervision and control of the clerk of scales. Each licensee shall provide uniform attire for valets who shall wear the uniform attire at all times while performing their duties within public view.

24. No licensee shall allow any person to ride in a race or to exercise any horse within the enclosure unless that person is wearing a protective safety vest. The vest shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five as defined by the British Equestrian Trade Association (BETA).

C. Equipment. Each unlimited licensee shall provide all of the equipment for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled practices, and to maintain in horse racing complete honesty and integrity.

1. Each licensee shall maintain at least two operable starting gates for flat meetings and two operable mobile starting gates for harness racing. The licensee shall have in attendance one or more persons qualified to keep the starting gates in good working order and provide for periodic inspection. For flat meetings, the licensee shall also make at least one starting gate along with adequate personnel available for schooling for two hours each day during training hours, exclusive of nonrace days. For flat race meetings, the licensee shall have an adequate number of assistant starters to ensure the integrity of the start and to provide safe conditions for horse and rider. If a flat race is started at a place other than in a chute, the licensee shall maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure. For harness racing meetings, a mobile starting gate shall be made available for qualifying races and schooling.

2. Each licensee shall maintain photo-finish equipment to assist the stewards and placing judges, where employed for flat race meetings, in determining the order of finish of each race. The licensee shall provide two electronic photofinish devices with mirror images to photograph the finish of each race. The location and operation of the photofinish devices must be approved by the commission before its first use in a race. The licensee shall ensure that the photofinish devices are calibrated before the first day of each race meeting and at other times as required by the commission. The standards and operations of the photo-finish camera as well as the methodology of the personnel shall be subject to the approval of the stewards:

a. The photo-finish photographer shall promptly furnish the stewards and placing judges prints as they are requested, and the photographer will promptly inform the stewards and placing judges of any malfunction of his equipment;

b. A print of a photo finish where the placing of horse is a half of length or less shall be displayed either by posting copies of the print or video means to the public promptly after the race has been declared "official"; and

c. Each licensee shall be responsible for maintaining a file of photo finishes of all races for one year after the closing of the horse race meeting.

3. Each licensee shall provide color video tape recordings of the running of each race clearly showing the position and actions of the horse and jockeys or drivers at close range. Each licensee shall provide at least three cameras to record panoramic and head-on views of the race. One camera shall be located on the finish line:

a. Promptly after a race has been declared "official," video tape recordings shall be replayed for the benefit of the public. In those races where there was a disqualification, video tapes of the head-on views may also be shown with an explanation by the public address announcer.

b. The licensee shall safeguard the tapes of all videotapes for one year after the close of the horse race meeting ~~and promptly deliver to the commission copies of videotapes of those races where there has been an objection, inquiry, protest, or disqualification~~.

c. The stewards may, in their discretion, direct a video camera operator to videotape the activities of any horses or persons handling horses prior to, during or following a race.

4. Each licensee shall provide an electronic timing system. The system shall have the capability of timing the leading horse in at least hundredths of a second. Each licensee shall also provide a qualified person to manually time each

race, including splits of each quarter of a mile, in the event of a malfunction of the electronic system.

5. Each licensee shall provide an internal communication system which links the stewards' stand, racing secretary's office, pari-mutuel department, jockeys' or drivers' room, paddock, test barn, commission veterinarian's office, starting gate, film patrol office, ambulances, public address announcer, patrol judges, and any other personnel designated by the commission.

6. Each licensee shall provide a public address system whereby calls of the races and other pertinent information may be communicated to the public. This system shall be utilized by a qualified person, and the system shall have the capability of transmitting throughout the stabling area.

7. Each licensee shall provide a totalizator and employ qualified personnel to operate the system, provide maintenance of the hardware, software, and ancillary wagering devices, and be able to perform emergency repairs in case of emergencies. The licensee shall also provide a mutuel board in the infield where approximate odds, amounts wagered in the win, place, and show pools on each betting interest, and other pertinent information may be prominently displayed to the public:

a. The totalizator shall maintain at least two independent sets of pool totals and compare them at least once every 60 seconds. The totalizator shall record in a system log file any difference in the final pool totals;

b. The totalizator shall have the capability of calculating the mutuel pools, approximate odds, probable payoffs and display them to the public at intervals of not more than 60 seconds;

c. The totalizator shall have the capability of being locked and wagering terminated automatically at the command of a steward. Any failure of the system to lock at the start of the race shall be reported immediately by the mutuel manager to the stewards;

d. The totalizator shall have the capability of displaying the probable payouts on various combinations in the daily double, exacta, and quinella wagering, and displaying the payoffs to the public;

e. The totalizator shall have the capability of recording the wagering by individual wagers, including the amount wagered, the betting interest, and the mutuel window where the wager was placed. The records of the wagering shall be promptly made available to the commission upon request. The licensee shall preserve the records of the wagering for one year after closing of the horse race meeting. The records shall not be destroyed without permission of the commission;

f. The personnel operating the totalizator shall report immediately to the stewards any malfunction in the system, or what they perceive to be any unusual patterns in the wagering;

g. The totalizator personnel shall make available to the commission any special reports or requests that may assist the commission in carrying out its statutory duties and responsibilities for the conduct of horse racing; and

h. The commission may require an independent certified audit of the totalizator's software attesting to the accuracy of its calculations and the integrity of its accounting processes.

8. Each licensee shall provide at least one human ambulance and at least one equine ambulance within the enclosure at all times during those hours when the racing and training surface is open for racing and exercising. However, a human ambulance shall not be required to be present during the exercising of Standardbred horses. The ambulances shall be manned and equipped to render immediate assistance, and shall be stationed at a location approved by the stewards.

a. The equine ambulance must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The equine ambulance must be able to navigate on the racetrack during all weather conditions and transport a horse outside the enclosure.

b. The equine ambulance must be equipped with large portable screens to shield a horse from public view, ramps to facilitate loading a horse, adequate means of loading a horse that is down, a rear door and a door on each side, a padded interior, a movable partition to initially provide more room to load a horse and to later restrict a horse's movement, a shielded area for the person who is attending to the horse, and an adequate area for the storage of water and veterinary medicines and equipment.

c. A licensee shall not conduct a race unless an equine ambulance or a commission veterinarian-approved substitute is readily available.

d. The equine ambulance, its supplies and attendants, and the operating procedures for the vehicle must be approved by the commission veterinarian.

e. The licensee shall maintain a properly equipped human ambulance, staffed with certified paramedics at any time the racetrack is open for racing or exercising horses. However, a human ambulance shall not be required to be present during the exercising of Standardbred horses. If the ambulance is being used to transport an individual, horses may not be raced or exercised until the ambulance is replaced.

f. Unless otherwise approved by the stewards, a human ambulance shall follow the field at a safe distance during the running of races, or in the event of inclement weather, two ambulances shall be parked to render immediate service. The human ambulance must be parked at an entrance to the racing surface unless the

ambulance is being used to transport a person or when it is following the field during the running of a race.

g. During a racing day, the licensee shall maintain a first aid room equipped with at least two beds and other appropriate equipment, and the services of at least one physician during flat race meetings.

9. Each licensee shall maintain lighting for the racetrack and the patron facilities that is adequate to ensure the safety and security of the patrons, participants and horses. Lighting to ensure the proper operation of the videotape and photofinish devices must be approved by the commission.

a. The licensee shall maintain adequate additional lighting in the stable area as required by the commission.

b. If racing is conducted at night, the licensee shall maintain a backup lighting system that is sufficient to ensure the safety of patrons, participants and horses.

D. Safety. Each unlimited licensee shall employ sufficient trained personnel to provide for the safety and security of the public and others who have business within the enclosure. Each licensee shall also take all measures to prevent the outbreak of fires within the enclosure and develop plans for the quick extinguishing of any fires that should occur.

1. Each licensee shall provide sufficient trained security personnel under the supervision of a qualified director of security. If the licensee contracts with a private security service, the security service must be bonded and meet all applicable licensing requirements. If the licensee establishes its own security force, then director of security shall forward to the commission detailed plans for the screening, hiring, and training of its own personnel.

2. The director of security of each licensee shall cooperate fully with the commission and its staff, federal and state law enforcement agencies, local police and fire departments, and industry security services to enforce all laws and regulations to ensure that horse racing in the Commonwealth of Virginia is of the highest integrity.

3. Each licensee shall develop a detailed security plan describing the equipment, i.e., fences, locks, alarms, and monitoring devices; the procedures to admit persons to restricted areas, i.e., stabling area, paddock, jockeys' or drivers' room, vault, mutuel lines, totalizator room, and test barn; and the trained personnel in sufficient numbers to provide for the safety and security of all persons during racing and nonracing hours.

4. Each licensee may provide a perimeter fence around the entire enclosure, but shall fence off the stabling area. The entrance to the stabling area shall be guarded on a 24-hour basis by uniformed security personnel so that unauthorized persons shall be denied access to the restricted stabling area. The licensee shall also provide for routine patrolling by uniformed security personnel on a 24-hour basis within the stabling area.

5. During racing hours, the licensee shall provide uniformed security personnel to guard the entrances to the paddock, jockeys' or drivers' room, ~~stewards' stand,~~ and other restricted areas as may be deemed appropriate by the commission so that unauthorized persons shall be denied access to them.

6. The licensee's director of security shall submit to the commission ~~and Virginia State Police~~ a written report describing every arrest or completed incident of security investigation or rule violation including the person charged, the charges against the person, the present whereabouts of the person, and disposition of the charges, if any.

7. The licensee's director of security shall submit to the commission a detailed plan describing the procedures to be followed in case of fire or any other emergency within the enclosure. The plan shall contain the resources immediately available within the surrounding communities to cope with fire or other emergencies, route of evacuation for the public, controlling traffic, and those resources available from the surrounding communities for police, fire, ambulance, and rescue services.

8. Each licensee shall observe and enforce all state and local building codes and regulations pertaining to fire prevention, and shall prohibit the following:

a. Smoking in horse stalls, feed rooms, or under the shedrow;

b. Open fires and oil or gasoline burning lanterns or lamps in the stable area;

c. The unsafe use of electrical appliances or other devices which would pose a hazard to structures, horses, permittees, or the public; and

d. Keeping flammable materials including cleaning fluids or solvents in the stabling area.

Part III
Pari-Mutuel Wagering

11VAC10-20-260. Generally.

A. Permitted wagering. All permitted wagering shall be under a pari-mutuel wagering system whereby the holders of winning tickets divide the total amount wagered, less retainage, in proportion to the sums they have wagered individually. All other systems of wagering other than pari-mutuel, e.g., bookmaking and auction-pool selling, are prohibited and any person participating or attempting to participate in prohibited wagering shall be excluded from the enclosure or satellite facility.

~~A.~~ B. Persons under the age of 18 are prohibited from wagering. No person under the age of 18 shall be permitted by any licensee to purchase or cash a pari-mutuel ticket. No employee of the licensee shall knowingly sell or cash any pari-mutuel ticket for a person under the age of 18.

~~B.~~ C. Posted order of finish. Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as posted on the display devices and declared "official" by the stewards. Any subsequent change in the order of finish or award of purse money as may result from a ruling by the stewards or commission shall in no way affect the pari-mutuel payout.

~~C.~~ D. Errors in payment. The licensee shall be responsible for the correctness of all payouts posted as "official" on the display devices. If an error is made in posting the payout figures on the display devices and discovered before any tickets are cashed, the error shall be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error on the display devices.

1. The licensee shall compare the two independent final pool totals and payouts calculated by the totalizator prior to posting them on the display devices. ~~In the event of a discrepancy between the two sets of pool totals and payouts and the inability of the totalizator to determine which of the sets is correct, the highest pool total and payouts shall be used.~~

2. If an error is made in posting the payout figures on the display devices and discovered after tickets have been cashed, where the public is underpaid, the amount of the underpayment shall be added to the same pool immediately following. Where the public is overpaid, the amount of the overpayment shall be absorbed by the licensee.

3. If any underpayment is discovered after the close of the horse race meeting or an opportunity does not exist to add the amount of the underpayment to the same pool, the total underpayment shall be placed in an interest-bearing account and added to the same pool at the next race meeting of the same breed.

~~D.~~ E. Minimum wagers. The minimum wager for straight wagering shall be $2.00. The licensee may determine the minimum wager for multiple wagering, which shall be no less than $ .10.

~~E.~~ F. Minimum payouts. The licensee shall pay to the holder of any ticket entitling the holder to participate in the distribution of a pari-mutuel pool the amount wagered by the holder plus a minimum profit of 5.0% or $ .01, whichever is greater. If such a payout creates a deficiency in the pari-mutuel pool, the licensee shall make up the deficiency from its share of the pari-mutuel wagering.

The licensee, with the approval of the stewards, may bar wagering on a horse or entry in any or all pari-mutuel pools in a stakes race, handicap, futurity or other special event where the licensee has good and sufficient reason to believe that accepting wagers on the horse or entry may result in a deficiency or minus pool. The decision to bar wagering on a horse or entry shall be announced publicly before wagers are accepted on that race.

~~F.~~ G. Posting of regulations. A general explanation of this chapter may be posted for the benefit of the public in the wagering areas of the enclosure and satellite facilities.

~~G.~~ H. Identification of holder. The licensee shall require positive identification of a holder of a valid winning pari-mutuel ticket before the payment when, in the stewards' discretion, circumstances warrant this action.

~~H.~~ I. Wagers placed in cash. The licensee shall only accept wagers placed in cash or vouchers and then only at the racetrack or satellite facilities. It shall be the responsibility of the licensee to instruct the mutuel clerks to accept wagers on a "cash only" basis.

11VAC10-20-330. Multiple wagering.

A. Generally. Daily double, quinella, exacta, trifecta, quinella double, pick (n), twin trifecta, and superfecta pari-mutuel wagering pools shall be considered "multiple wagering." In any race or races, the daily double, quinella, exacta, trifecta, quinella double, pick (n), twin trifecta, and superfecta pools are treated separately and the distribution of the pools are calculated independently of each other. The "net pool" to be distributed shall be all sums wagered in the pool, less retainage and breakage, as defined elsewhere.

B. Daily double pools. The daily double wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first in the two races specified as the daily double. If either of the selections fails to win, the pari-mutuel ticket is void, except as otherwise provided. The amount wagered on the winning combination, the horse or wagering interest which finishes first in the first race coupled with the horse or wagering interest finishing first in the second race of the daily double, is deducted from the net pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning daily double. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to daily double pools:

1. If there is a dead heat for first including two different wagering interests in one of the two daily double races, the daily double pool is distributed as if it were a place pool, with one-half of the net pool allocated to wagers combining the single winner of one daily double race and one of the wagering interests involved in the dead heat in the other daily double race, and with the other one-half of the net pool allocated to the wagers combining the single winner of one daily double race and the other wagering interest involved in the dead heat in the other daily double race.

2. If there are dead heats for first involving different wagering interests in each of the daily double races which result in winning combinations, the net pool shall be allocated equally to the winning combinations after first deducting from the net pool the amount wagered on all winning combinations for proportionate allocation to the winning daily double combinations.

3. If no daily double ticket is sold combining the horse or wagering interest which finishes first in one of the daily double races, the daily double pool is distributed as if it were a win pool, with the net pool allocated to wagering combinations which include the horse or wagering interest which finished first in one of the daily double races.

4. If no daily double ticket is sold combining the horses or wagering interests which finish first in both the first and second race of the daily double, then the winning combinations for distribution of the daily double profit shall be that combining the horses or wagering interests which finished second in each of the daily double races.

5. If, after daily double wagering has begun, a horse not coupled with another as a wagering interest in the first race of the daily double is excused by the stewards or is prevented from obtaining a fair start, then daily double wagers combining the horse shall be deducted from the daily double pool and shall be promptly refunded.

6. If, after the first race of the daily double has been run, a horse not coupled with another as a wagering interest in the second race of the daily double is excused by the stewards or prevented from obtaining a fair start, then daily double wagers combining the winner of the first daily double race with the horse, which was excused or was prevented from obtaining a fair start, shall be allocated a consolation daily double.

7. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or wagering interest scheduled to start in the second daily double race, the quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with the horse prevented from racing in the second daily double race. The return to the holder includes the amount wagered and the profit. The consolation payoff shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

8. If for any reason the first race of the daily double is cancelled and declared "no contest" a full and complete refund shall be promptly made of the daily double pool.

9. If for any reason the second race of the daily double is cancelled and declared "no contest," the net daily double pool shall be paid to the holders of daily double tickets which include the winner of the first race. If no such ticket is sold, then the net daily double pool shall be paid to the holders of daily double tickets which include the second place horse. If no daily double tickets were sold on the second place horse, then the licensee shall make a prompt refund.

C. Quinella pools. The quinella wager is the purchase of a pari-mutuel ticket to select the first two horses to finish in the race. The order in which the horses finish is immaterial. The amount wagered on the winning combination, the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit. The net pool is divided by the amount wagered on the winning combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the quinella pools:

1. If there is a dead heat for first between horses including two different wagering interests, the net quinella pool is distributed as if no dead heat occurred. If there is a dead heat among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and the pool is allocated to wagers combining any of the three horses finishing in the dead heat for first.

2. If there is a dead heat for second between horses including two different wagering interests, the net quinella pool is distributed as if it were a place pool and it is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second. If the dead heat is among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.

3. If horses representing a single wagering interest finish first and second, the net quinella pool shall be allocated to wagers combining the single wagering interest with the horse or wagering interest with the horses or wagering interest which finishes third.

4. If no quinella ticket is sold combining the first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.

5. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.

6. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, or combining the two horses which finished in a dead heat for second, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining any of the first three finishers with any other horses.

7. If no quinella ticket is sold combining the first two finishers, then the net quinella pool shall be distributed as if it were a place pool and it is allocated to wagers combining the first finisher with any other horses and to wagers combining the second finisher with any other horse.

8. If no quinella ticket is sold combining horses or wagering interests as would require distribution, a full and complete refund shall be made of the entire quinella pool.

9. If a horse is excused by the stewards, no further quinella tickets shall be issued designating that horse, and all quinella tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

D. Exacta pools. The exacta wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first and second in a race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first and the horse finishing second, in exact order, is the amount to be deducted from the net exacta pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning exacta combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the exacta pool:

1. If no ticket is sold on the winning combination of an exacta pool, the net exacta pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and holders of tickets selecting the second place horse to finish second.

2. If there is a dead heat between two horses for first place, the net exacta pool shall be calculated and distributed as a place pool, one-half of the net exacta pool being distributed to holders of tickets selecting each of the horses in the dead heat to finish first with the other horse to finish second.

In case of a dead heat between two horses for second place, the net exacta pool shall be calculated as a place pool, one-half of the net exacta pool being distributed to holders of tickets selecting the horse to finish first and one horse in the dead heat, and the other one-half being distributed to holders selecting the horse to finish first and the other horse in the dead heat.

3. If there is a dead heat for second place and if no ticket is sold on one of the two winning combinations, the entire net exacta pool shall be calculated as a win pool and distributed to holders of the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net exacta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

4. If an entry finishes first and second, or mutuel field horses finish first and second, the net pool shall be distributed to holders of tickets selecting the entry to win combined with the horses having finished third.

5. If no ticket is sold that would require distribution of an exacta pool, the licensee shall make a complete and full refund of the exacta pool.

6. If a horse is excused by the stewards, no further exacta tickets shall be issued designating that horse, and all exacta tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

E. Trifecta pools. The trifecta wager is purchase of a pari-mutuel ticket to select the three horses that will finish first, second, and third in a race. Payment of the ticket shall be made only to the holder who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first, the horse finishing second, and the horse finishing third, in exact order, is deducted from the pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning combination. The return to the holder includes the amount wagered and the profit.

1. If no ticket is sold on the winning combination, the net trifecta pool shall be distributed equally among holders of tickets designating the first two horses in order.

2. If no ticket is sold designating, in order, the first two horses, the net trifecta pool shall be distributed equally among holders of tickets designating the horse to finish first.

3. If no ticket is sold designating the first horse to win, the net trifecta pool shall be distributed equally among holders of tickets designating the second and third horses in order. If no such ticket is sold, then the licensee shall make a prompt refund.

4. If less than three horses finish, the payout shall be made on tickets selecting the actual finishing horses, in order, ignoring the balance of the selection.

5. If there is a dead heat, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position involved in the dead heat, shall be winning tickets. The net trifecta pool shall be calculated as a place pool.

6. If a horse is excused by the stewards, no further trifecta tickets shall be issued designating that horse, and all trifecta tickets previously issued designating the horse shall be refunded and deducted from the gross pool.

F. Quinella double pools. The quinella double requires selection of the first two finishers, irrespective of order, in each of two specified races.

1. The net quinella double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

a. If a coupled entry or mutuel field finishes as the first two contestants in either race, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate wagering interest in the official order of finish for that race, as well as the first two finishers in the alternate quinella double race; otherwise

b. As a single price pool to those who selected the first two finishers in each of the two quinella double races; but if there are no such wagers, then

c. As a profit split to those who selected the first two finishers in either of the two quinella double races; but if there are no such wagers on one of those races, then

d. As a single price pool to those who selected the first two finishers in the one covered quinella double race; but if there were no such wagers, then

e. The entire pool shall be refunded on quinella double wagers for those races.

2. If there is a dead heat for first in either of the two quinella double races involving:

a. Horses representing the same wagering interest, the quinella double pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate wagering interest in the official order of finish for that race.

b. Horses representing two wagering interests, the quinella double pool shall be distributed as if no dead heat occurred.

c. Horses representing three or more wagering interests, the quinella double pool shall be distributed as a profit split.

3. If there is a dead heat for second in either of the quinella double races involving horses representing the same wagering interest, the quinella double pool shall be distributed as if no dead heat occurred.

4. If there is a dead heat for second in either of the quinella double races involving horses representing two or more wagering interests, the quinella double pool shall be distributed as profit split.

5. Should a wagering interest in the first half of the quinella double be scratched prior to the first quinella pool race being declared official, all money wagered on combinations including the scratched wagering interest shall be deducted from the quinella double pool and refunded.

6. Should a wagering interest in the second half of the quinella double be scratched prior to the close of wagering on the first quinella double contest, all money wagered on combinations including the scratched wagering interest shall be deducted from the quinella double pool and refunded.

7. Should a wagering interest in the second half of the quinella double be scratched after the close of wagering on the first quinella double race, all wagers combining the winning combination in the first race with a combination including the scratched wagering interest in the second race shall be allocated a consolation payout. In calculating the consolation payout, the net quinella double pool shall be divided by the total amount wagered on the winning combination in the first race and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers on the winning combination in the first race combined with a combination including the scratched wagering interest in the second race to obtain the consolation payout. Breakage is not declared in this calculation. The consolation payout is deducted from the net quinella double pool before calculation and distribution of the winning quinella double payout. In the event of a dead heat involving separate wagering interests, the net quinella double pool shall be distributed as a profit split.

8. If either of the quinella double races is cancelled prior to the first quinella double race or the first quinella double race is declared "no contest," the entire quinella double pool shall be refunded on quinella double wagers for those races.

9. If the second quinella double race is cancelled or declared "no contest" after the conclusion of the first quinella double race, the net quinella double pool shall be distributed as a single price pool to wagers selecting the winning combination in the first quinella double race. If there are no wagers selecting the winning combination in the first quinella double race, the entire quinella double pool shall be refunded on quinella double wagers for those races.

G. Pick (n) pools. The pick (n) pool requires selection of the first-place finisher in each of a designated number of races. The licensee must obtain approval from the commission or its executive secretary concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in subdivision 1 of this subsection and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission or its executive secretary.

1. The pick (n) pool shall be apportioned under one of the following methods:

a. Method 1, pick (n) with carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the remainder shall be added to the carryover.

b. Method 2, pick (n) with minor pool and carryover. The major share of the net pick (n) pool and carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) contests, the minor share of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n)

races; and the major share shall be added to the carryover.

c. Method 3, pick (n) with no minor pool and no carryover. The net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races, based upon the official order of finish. If there are no winning wagers, the pool is refunded.

d. Method 4, pick (n) with minor pool and no carryover. The major share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If the greatest number of first-place finishers selected is one, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.

e. Method 5, pick (n) with minor pool and no carryover. The major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) races, based on the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) races, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) races. If there are no winning wagers, the pool is refunded.

f. Method 6, pick (n) with minor pool, jackpot, major carryover and jackpot carryover. Predetermined percentages of the net pick (n) pool shall be set aside as a major pool, minor pool, and jackpot pool. The major share of the net pick (n) pool and the major carryover, if any, shall be distributed to those who selected the first-place finisher of each of the pick (n) races, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) races, the major net pool shall be added to the major carryover. If there is only one single ticket selecting the first-place finisher of each of the pick (n) races, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, shall be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first-place finisher of each of the pick (n) races, the jackpot net pool shall be added to the jackpot carryover. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher of the second greatest number of pick (n) races, based on the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) races, the minor net pool of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher of the greatest number of pick (n) races.

2. If there is a dead heat for first in any of the pick (n) races involving:

a. Horses representing the same wagering interest, the pick (n) pool shall be distributed as if no dead heat occurred.

b. Horses representing two or more wagering interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

3. Should a wagering interest in any of the pick (n) races be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host track for the race at the close of wagering on that race, shall be substituted for the scratched wagering interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the wagering interest with the lowest program number. The totalizator shall produce reports showing each of the wagering combinations with substituted wagering interests which became winners as a result of the substitution, in addition to the normal winning combination. When the condition of the racecourse warrants a change of racing surface in any of the legs of a pick (n) with four or more races included, and such change has not been known to the public prior to the close of wagering for the pick (n) pool, the stewards shall declare the changed leg(s) an "all win" race(s) for pick (n) wagering purposes only. An "all win" race(s) will assign the winner of that race(s) to each pick (n) ticket holder as their selection for that race.

4. The pick (n) pool shall be cancelled and pick (n) wagers for the individual performance shall be refunded if:

a. At least two races included as part of a pick three are cancelled or declared "no contest."

b. At least three races included as part of a pick four, pick five or pick six are cancelled or declared "no contest."

c. At least four races included as part of a pick seven, pick eight or pick nine are cancelled or declared "no contest."

d. At least five races included as part of a pick 10 are cancelled or declared "no contest."

5. If at least one race included as part of a pick (n) is cancelled or declared "no contest," but not more than the number specified in subdivision 4 of this subsection, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races for that program. The distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.

6. The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any program, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this chapter. After the pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) races for that program.

7. A licensee may request permission from the commission to distribute the pick (n) carryover on a specific program. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and program for the distribution.

8. Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) races, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races. The pick (n) carryover shall be designated for distribution on a specified date and program only under the following circumstances:

a. Upon approval from the commission as provided in subdivision 7 of this subsection;

b. Upon approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued;

c. On the closing program of a race meeting.

9. If, for any reason, the pick (n) carryover must be held to the corresponding pick (n) pool to a subsequent race meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool on a date and program of the race meeting designated by the commission.

10. With the approval of the commission, a licensee may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

11. Providing information to any person regarding the covered combinations, amounts wagered on specific combinations, number of tickets sold or number of live tickets remaining is strictly prohibited. This chapter shall not prohibit necessary communication between totalizator and mutuel employees for processing of pool data.

12. The licensee may suspend previously approved pick (n) wagering with the approval of the commission. Any carryover shall be held until the suspended pick (n) wagering is reinstated. The licensee may request approval of a pick (n) wager or separate wagering pool for specific programs.

H. Superfecta pools. The superfecta pool requires selection of the first four finishers, in their exact order, for a single race.

1. The net superfecta pool shall be distributed to winning wagers in the following precedence based upon the official order of finish:

a. As a single price pool to those whose combination finished in correct sequence as the first four wagering interests; but if there are no such wagers, then

b. As a single price pool to those whose combination included, in correct sequence, the first three wagering interests; but if there are no such wagers, then

c. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there are no such wagers, then

d. As a single price pool to those whose combination correctly selected the first-place wagering interest only; but if there are no such wagers, then

e. The entire pool shall be refunded on superfecta wagers for that race.

2. If less than four wagering interests finish and the race is declared official, payouts will be made based upon the order of finish of those wagering interests completing the race. The balance of any selection beyond the number of wagering interests completing the race shall be ignored.

3. If there is a dead heat for first involving:

a. Horses representing four or more wagering interests, all of the wagering combinations selecting four wagering interests which correspond with any of the wagering interests involved in the dead heat shall share in a profit split.

b. Horses representing three wagering interests, all of the wagering combinations selecting the three dead-heated wagering interests, irrespective of order, along with the fourth-place wagering interest shall share in a profit split.

c. Horses representing two wagering interests, both of the wagering combinations selecting the two dead-heated

wagering interests, irrespective of order, along with the third and fourth-place wagering interests shall share in a profit split.

4. If there is a dead heat for second involving:

a. Horses representing three or more wagering interests, all of the wagering combinations correctly selecting the winner combined with any of the three wagering interests involved in the dead heat for second shall share in a profit split.

b. Horses representing two wagering interests, all of the wagering combinations correctly selecting the winner, the two dead-heated wagering interests, irrespective of order, and the fourth-place wagering interest shall share in a profit split.

5. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the wagering interests involved in the dead heat for fourth shall share in a profit split.

6. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the wagering interests involved in the dead heat for fourth shall share in a profit split.

~~I. Twin trifecta pools. The twin trifecta pool requires selection of the first three finishers in their exact order, in each of two designated races. Each winning ticket for the first twin trifecta race must be exchanged for a free ticket on the second twin trifecta race in order to remain eligible for the second-half twin trifecta pool. The tickets may be exchanged only at attended windows prior to the second twin trifecta race. Winning first half twin trifecta wagers will receive both an exchange and a monetary payout. Both of the designated twin trifecta races shall be included in only one twin trifecta pool.~~

~~1. After wagering closes for the first-half of the twin trifecta and retainage has been deducted from the pool, the net pool shall then be divided into separate pools: the first-half twin trifecta pool and the second-half twin trifecta pool.~~

~~2. In the first twin trifecta race only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin trifecta race:~~

~~a. As a single price pool to those whose combination finished in correct sequence as the first three wagering interests; but if there is no winning wager, then~~

~~b. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there is no winning wager, then~~

~~c. As a single price pool to those whose combination correctly selected the first place wagering interest only; but if there is no winning wager, then~~

~~d. The entire twin trifecta pool shall be refunded to twin trifecta wagers for that race and the second half race shall be cancelled.~~

~~3. If no first half twin trifecta ticket selects the first three finishers of that race in exact order, winning ticket holders shall not receive any exchange tickets for the second half twin trifecta pool. In this case, the second half twin trifecta pool shall be retained and added to any existing twin trifecta carryover pool.~~

~~4. Winning tickets from the first half of the twin trifecta shall be exchanged for tickets selecting the first three finishers of the second half of the twin trifecta. The second half twin trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta race:~~

~~a. As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first three wagering interests; but if there are no winning tickets, then~~

~~b. The entire second half twin trifecta pool for that race shall be added to any existing carryover moneys and retained for the corresponding second half twin trifecta pool of the next consecutive program.~~

~~5. If a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second half twin trifecta race, the ticket holder may still collect the monetary value associated with the first half twin trifecta pool but forfeits all rights to any distribution of the second half twin trifecta pool.~~

~~6. Should a wagering interest in the first-half of the twin trifecta be scratched, those twin trifecta wagers including the scratched wagering shall be refunded.~~

~~7. Should a wagering interest in the second half of the twin trifecta be scratched, announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched wagering interest. If tickets have not been exchanged prior to the close of wagering of the second twin trifecta race, the ticket holder forfeits all rights to the second half twin trifecta pool. However, if the scratch in the second half of the twin trifecta occurs five minutes or less prior to post time, then the licensee shall have discretion to cancel all twin trifecta wagers and make a prompt refund.~~

~~8. If, due to a late scratch, the number of wagering interests in the second half of the twin trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first half winning tickets shall be entitled to the second half twin trifecta pool for that contest as a single price pool, but not the twin trifecta carryover.~~

~~9. If there is a dead heat or multiple dead heats in either the first or second half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a wagering interest involved in a dead heat as finishing in~~

any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

a. The first half of the twin trifecta, the payout shall be calculated as a profit split; and

b. The second half of the twin trifecta, the payout shall be calculated as a single price pool.

10. If either of the twin trifecta races are cancelled prior to the first twin trifecta race or the first twin trifecta race is declared "no contest," the entire twin trifecta pool shall be refunded in twin trifecta wagers for that race and the second half shall be cancelled.

11. If the second half twin trifecta race is cancelled or declared "no contest," all exchange tickets and outstanding first half winning twin trifecta tickets shall be entitled to the net twin trifecta pool for that race as a single price pool, but not twin trifecta carryover. If there are no such tickets, the net twin trifecta pool shall be distributed as described in subdivision 3 of this subsection.

12. The twin trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any program, the amount in the twin trifecta carryover equals or exceeds the designated cap, the twin trifecta carryover will be frozen until it is won or distributed under other provisions of this chapter. After the twin trifecta carryover is frozen, 100% of the net twin trifecta pool for each individual race shall be distributed to winners of the first half of the twin trifecta pool.

13. A written request for permission to distribute the twin trifecta carryover on a specific program may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and program for the distribution.

14. Should the twin trifecta carryover be designated for distribution on a specified date and program, the following precedence will be followed in determining winning tickets for the second half of the twin trifecta after completion of the first half of the twin trifecta:

a. As a single price pool to those whose combination finished in correct sequence as the first three wagering interests; but if there are no such wagers, then

b. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there are no such wagers, then

c. As a single price pool to those whose combination correctly selected the first place wagering interest only; but if there are no such wagers, then

d. As a single price pool to holders of valid exchange tickets.

e. As a single price pool to holders of outstanding first half winning tickets.

15. During a program designated by the commission to distribute the twin trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of wagering interests in their correct order of finish for the first half of the twin trifecta. If there are no wagers correctly selecting the first, second or third place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first and second place wagering interests. If there are no wagers correctly selecting the first and second place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first place wagering interest only. If there are no wagers selecting the first place wagering interest only in the first half of the twin trifecta, all first half tickets will become winners and will receive 100% of that day's net twin trifecta pool and any existing twin trifecta carryover.

16. The twin trifecta carryover shall be designated for distribution on a specified date and program only under the following circumstances:

a. Upon written approval from the commission as provided in subdivision 14 of this subsection.

b. Upon written approval from the commission when there is a change in the carryover cap or when the twin trifecta is discontinued.

c. On the closing program of the race meeting.

17. If, for any reason, the twin trifecta carryover must be held over to the corresponding twin trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin trifecta carryover plus accrued interest shall then be added to the second half twin trifecta pool of the following meet on a date and program so designated by the commission.

18. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

19. The licensee must obtain written approval from the commission concerning the scheduling of twin trifecta contests, the percentages of the net pool added to the first half pool and second half pool, and the amount of any cap to be set on the carryover. Any changes to the approved twin trifecta format require prior approval from the commission.

VA.R. Doc. No. R13-3544; Filed February 1, 2013, 2:44 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 12 of the Code of Virginia, which exempts agency action relating to instructions for application or renewal of a license, certificate, or registration required by law.

Title of Regulation: **11VAC10-45. Advance Deposit Account Wagering (repealing 11VAC10-45-25).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: March 1, 2013.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

Summary:

This action repeals 11VAC10-45-25, Temporary licenses to conduct account wagering, in accordance with the Governor's Regulatory Reform Initiative.

11VAC10-45-25. ~~Temporary licenses to conduct account wagering.~~ (Repealed.)

~~A. If an applicant for a license to operate account wagering has not been able to reach an agreement with an unlimited licensee and representatives of the recognized majority horsemen's organizations concerning the distribution of the retainage after good faith negotiations, the license applicant may submit its application together with an affidavit specifying and certifying its offer to an unlimited licensee and the recognized horsemen's groups, attesting that it has entered into good faith negotiations with both, that it has offered the terms specified and certified in its affidavit, and that its offer has been rejected, stating with particularity the basis given to it for rejection of its offer and by whom it was rejected. In such event, the commission shall (i) consider the applicant's request for a temporary license as provided in subsection B of this section and (ii) be authorized to appoint an impartial third party to mediate the negotiations regarding the contractual agreement between the applicant and an unlimited licensee and representatives of the recognized majority horsemen's groups concerning the distribution of the remaining portion of the retainage. If during the term of the temporary license, the parties are unable to reach agreement through mediation, the commission shall specify the percentage of the total gross handle of wagers placed with the account wagering applicant from within the Commonwealth to be paid by the applicant to an unlimited licensee and representatives of the recognized majority horsemen's groups. In doing so, the commission shall consider among other factors, the contractual agreements that other account wagering licensees have with an unlimited licensee and representatives of the recognized majority horsemen's groups. The percentage specified by the commission shall be the best offer made by either (a) the account wagering applicant or (b) the unlimited licensee and the representatives of the recognized majority horsemen's groups. The percentage specified by the commission shall be effective for one year from the one year term of the applicant's temporary license.~~

~~B. Upon receipt of the application and affidavit described in subsection A of this section, the commission may grant a temporary license to operate account wagering to any applicant for a license to conduct account wagering whose application is complete except for a contractual agreement, approved by the commission, between such entity and an unlimited licensee and representatives of the recognized majority horsemen's groups concerning the distribution of the portion of the retainage remaining after the license fee has been paid to the commission and that is otherwise deemed by the commission to be fully qualified to conduct deposit wagering in the Commonwealth. Such license shall expire at the end of six months and shall be subject to one renewal. If a temporary license is not granted, the applicant is entitled to a hearing on the issue of qualifications.~~

~~C. If a temporary license is granted, the temporary licensee shall pay to the commission one-half percent of the gross total handle of wagers placed with the temporary licensee from within the Commonwealth on the tenth day of the month following the month in which the temporary licensee receives wagers from within the Commonwealth. Each month the temporary licensee shall also pay an amount equal to the average of all account wagering licensees in the Commonwealth, as calculated by the commission, into an escrow account in the name of the commission no later than the tenth of the month following the month in which such wagers are placed. Such escrow account shall be in a financial institution approved by the commission and shall be distributed within three business days by the commission in equal amounts to any unlimited licensee and representatives of the recognized majority horsemen's groups, until such time as the unlimited licensee, representatives of the recognized horsemen's groups, and the temporary account wagering licensee reach an agreement regarding the retainage that is acceptable to the commission and the commission has granted a license to operate account wagering replacing the temporary license.~~

~~D. A temporary license may be revoked summarily by the commission for any cause set forth in this chapter without complying with subsection A of this section. Revocation of a temporary license shall be effective upon service of the order of revocation upon the licensee or upon the expiration of three business days after the order of the revocation has been mailed to the licensee either at his residence or the address given for the business in the license application. No further notice shall be required.~~

VA.R. Doc. No. R13-3547; Filed February 1, 2013, 2:53 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 23 of the Code of Virginia when promulgating regulations pertaining to the administration of medication or other substances foreign to the natural horse.

Title of Regulation: **11VAC10-180. Medication (amending 11VAC10-180-70, 11VAC10-180-75, 11VAC10-180-80, 11VAC10-180-90).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: March 1, 2013.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

Summary:

The amendment permits blood samples submitted to testing laboratories to be in the form of serum in addition to plasma. The testing laboratory currently used by the Virginia Racing Commission requires blood samples be submitted in the form of serum instead of plasma. The term plasma will remain in the regulations in the event that the Virginia Racing Commission decides to utilize a different testing laboratory in the future that would require the blood samples to be submitted in plasma form. This amendment is made in accordance with the Governor's Regulatory Reform Initiative.

11VAC10-180-70. Phenylbutazone, flunixin and other NSAIDs.

A. Generally. By this regulation, the Virginia Racing Commission specifically permits the use of either phenylbutazone or flunixin (but not concurrently) in racehorses in the quantities provided for in this chapter.

B. Quantitative testing. Any horse to which phenylbutazone or flunixin has been administered shall be subject to testing at the direction of the commission veterinarian to determine the quantitative levels of phenylbutazone and flunixin or the presence of other substances which may be present.

C. Disciplinary actions. The stewards may take disciplinary actions for reports of quantitative testing by the primary testing laboratory for levels of phenylbutazone quantified at levels above 2.0 micrograms per milliliter of serum or plasma or flunixin quantified at levels above 20 ng per milliliter of serum or plasma in horses following races, qualifying races, and official timed workouts for the stewards or commission veterinarian, and may use the most recent revision of the Association of Racing Commissioners International (RCI) Uniform Classification Guidelines for Foreign Substances as a guide. The stewards, in their discretion, may impose other more stringent disciplinary actions against trainers or other permit holders who violate the provisions under which phenylbutazone or flunixin is permitted by the commission.

11VAC10-180-75. Androgenic and anabolic steroids.

A. All androgenic and anabolic steroids are prohibited in racing horses, except as provided below.

B. Residues of the major metabolite of stanozolol, nandrolone, boldenone and testosterone at concentrations less than the thresholds indicated below are permitted in test samples collected from racing horses.

C. Concentrations of these substances identified in subsection B of this section shall not exceed the following total threshold concentrations (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates):

1. Metabolite of stanozolol (16Beta-hydroxystanozolol) – 25 pg/ml in serum or plasma or 1 ng/ml in urine for all horses regardless of gender.

2. Boldenone – 200 pg/ml in serum or plasma or 15 ng/ml in urine in male horses other than geldings. No boldenone is permitted in geldings or female horses.

3. Nandrolone:

a. 50 pg/ml in serum or plasma or 1 ng/ml in urine in geldings, fillies, and mares.

b. 50 pg/ml in serum or plasma or 45 ng/ml in urine in male horses other than geldings.

c. Male horses other than geldings will not be tested.

4. Testosterone.

a. 25 pg/ml in serum or plasma or 20 ng/ml in urine in geldings.

b. 25 pg/ml in serum or plasma or 55 ng/ml in urine in fillies and mares.

c. Male horses other than geldings will not be tested.

D. The presence of more than one of the four substances identified in subsection B of this section at concentrations greater than the individual thresholds indicated in subsection C of this section or a combination of any two or more substances recognized as androgenic or anabolic is prohibited.

E. Test samples collected from male horses other than geldings must be so identified to the laboratory.

F. Any horse administered an androgenic or anabolic steroid to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold, the horse is eligible to be removed from the list.

G. The stewards may take disciplinary actions for reports of quantitative testing by the primary testing laboratory indicating the presence of one or more androgenic or anabolic steroid at concentrations above the individual thresholds indicated in subsection C of this section and may use the most recent revision of the Association of Racing Commissioners

International (RCI) Uniform Classification Guidelines for Foreign Substances as a guide.

11VAC10-180-80. Permitted race day substances.

A. Generally. The following substances that have been determined to be solely for the benefit and welfare of the horse~~.~~, nonperformance altering, of no danger to riders/drivers, and unlikely to interfere with the detection of prohibited substances, may be administered to a horse on race day are: Intravenous commercially available electrolyte solutions including calcium and magnesium, but not including bicarbonate, providing such administration is a minimum of three hours prior to the post time for that horse's race and administered under veterinary supervision within the limits of this chapter.

B. Bleeder medications. By this regulation, the Virginia Racing Commission specifically permits the use of bleeder medications in only those horses that:

1. Have been placed on the bleeders list by the stewards;

2. Have raced on furosemide in another jurisdiction ~~and~~ on the last previous start in a pari-mutuel race, as indicated by the past performance chart or by verification by the commission veterinarian from that racing jurisdiction, or both; or

3. Have been placed on the furosemide list by the stewards. A horse is eligible for inclusion on the furosemide list if the licensed trainer and a licensed veterinarian determine it is in the horse's best interest to race with furosemide, and the prescribed commission form is presented to the commission veterinarian prior to the close of entries for the horse's race. A horse placed on the furosemide list without demonstrating an episode of exercise-induced pulmonary hemorrhage is not restricted from racing for the usual recovery period described in 11VAC10-180-85 D. However, any future episode of exercise-induced pulmonary hemorrhage shall be considered a reoccurrence of bleeding for the purpose of determining restrictions from racing, as provided in this chapter.

a. A trainer or owner may discontinue the administration of furosemide to his racehorse only with the permission of the stewards. The request must be submitted in writing on forms prescribed by the commission and prior to entering the horse in a race.

b. A horse removed from the furosemide list may not be placed back on the furosemide list for a period of 60 calendar days unless the horse suffers an external bleeding incident witnessed by the commission veterinarian or his designee. In such case, the horse shall be placed on the bleeders list as though that bleeding incident was a reoccurrence of bleeding and subjected to a minimum 30-day or 90-day restriction for recovery as provided in this chapter.

C. Furosemide.

1. Procedures for usage. The use of furosemide shall be permitted by the commission only in horses eligible to receive bleeder medications and under the following circumstances:

a. Furosemide shall be administered intravenously within the enclosure of the horse race facility by a veterinarian who is a permit holder.

b. The furosemide dosage administered shall not exceed 10 ml (500 mg) and shall not be less than 3 ml (150 mg).

c. The veterinarian administering the furosemide shall deliver a furosemide treatment report to the commission no later than two hours prior to post time. The furosemide treatment report shall contain the following:

(1) The trainer's name, date, horse's name, and horse's identification number;

(2) The time furosemide was administered to the horse;

(3) The dosage level administered for this race;

(4) The barn and stall number; and

(5) The signature of the practicing veterinarian, who is a permit holder.

2. Furosemide quantification. Furosemide levels must not exceed 100 nanograms per milliliter (ng/ml) of <u>serum or</u> plasma and urine specific gravity measuring 1.010 or lower. Furosemide must be present in the <u>serum or</u> plasma or urine of any horse that has been designated in the program as being treated with furosemide.

D. Disciplinary actions.

1. For the first violation of the regulation pertaining to furosemide quantification (subdivision C 2 of this section), the stewards shall issue a written reprimand to the trainer and to the practicing veterinarian, if applicable.

2. For the second violation of the regulation pertaining to furosemide quantification (subdivision C 2 of this section), the stewards shall fine the trainer, practicing veterinarian or both an amount not to exceed $500.

3. For the third violation of the regulation pertaining to furosemide quantification (subdivision C 2 of this section) within a 365-day period, the stewards shall suspend or fine the trainer, practicing veterinarian, or both, not to exceed $1,000 and 15 days.

4. The stewards, in their discretion, may impose other more stringent disciplinary actions against trainers or other permit holders who violate the provisions under which furosemide is permitted by the commission, regardless of whether or not the same horse is involved.

E. Adjunct bleeder medications. The Virginia Racing Commission permits the use of no more than one adjunct bleeder medication in horses that receive furosemide as provided for in this chapter. Such medications, if administered to a horse, must be administered on race day no

less than three hours before post time. Permissible adjunct bleeder medications and maximum dosages are:

1. Conjugated estrogens, not to exceed 25 milligrams.

2. Aminocaproic acid, not to exceed 2.5 grams.

3. Tranexamic acid, not to exceed 1 gram.

4. Carbazochrome, not to exceed 5 milliliters.

F. Program designation. The licensee shall be responsible for designating in the program those horses racing on furosemide. The designation shall also include those horses making their first start while racing on furosemide. In the event there is an error, the licensee shall be responsible for making an announcement to be made over the public address system and taking other means to correct the information published in the program.

G. Discontinue use of furosemide. A trainer or owner may discontinue the administration of furosemide to his horse only with the permission of the stewards and prior to entering the horse in a race.

11VAC10-180-90. Bicarbonate testing.

A. Generally. By this regulation, the Virginia Racing Commission prohibits the feeding or administration to a horse on race day of any bicarbonate-containing substance or other alkalinizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or carbon dioxide in the horse.

B. Test values. A serum or plasma total carbon dioxide level exceeding 37.0 millimoles per liter constitutes a positive test.

C. Testing procedure. The stewards or commission veterinarian may, at their discretion and at any time, order the collection of test samples from any horses present within the enclosure for determination of serum or plasma pH or concentration of bicarbonate, carbon dioxide, or electrolytes. Prerace-testing may be done at a time and manner directed by the commission veterinarian. If testing post race, blood samples shall be taken at least one hour after racing. Whether prerace or postrace, the sample shall consist of at least two blood tubes taken from the horse to determine the serum total carbon dioxide concentration. If the chief racing chemist finds that the total carbon dioxide levels in the tubes exceed the standard test values of 37.0 millimoles per liter, then he shall inform the stewards of the positive test results.

D. Split samples prohibited. The procedures for split sample testing shall not apply to bicarbonate testing procedures.

E. Disciplinary actions. The stewards shall, absent mitigating circumstances specifically noted in their findings, impose the following disciplinary action for violation of this section:

1. First offense: $2,500 fine and 90-day suspension; loss of purse.

2. Second offense: $5,000 fine and 180-day suspension; loss of purse.

3. Third offense: Revocation of license.

The stewards also may refer the case to the commission for further disciplinary action.

VA.R. Doc. No. R13-3548; Filed February 1, 2013, 2:59 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **24VAC15-10. Standards and Procedures Governing Intrastate Rail Rates in Virginia (repealing 24VAC15-10-10 through 24VAC15-10-510).**

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

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

Public Comment Deadline: March 29, 2013.

Agency Contact: Wayne N. Smith, Senior Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9449, or email wayne.smith@scc.virginia.gov.

Summary:

The federal statute authorizing state regulation of intrastate rail rates has been repealed, eliminating the legal authority for the State Corporation Commission to enforce the regulations. Therefore, this regulatory action repeals the existing Standards and Procedures Governing Intrastate Rail Rates in Virginia (24VAC15-10).

AT RICHMOND, JANUARY 31, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2013-00004

Ex Parte: In re: Repealing Standards and
Procedures Governing Intrastate Rail Rates

ORDER FOR NOTICE AND COMMENT

As provided by § 12.1-13 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may promulgate rules and regulations to administer laws within its jurisdiction. As provided by § 56-99.2 of the Code, "[t]he Commission shall also have the authority to establish, by rule or regulation, standards and procedures to administer the rates, rules, classifications and practices of railroad

companies exclusively in accordance with federal law." In 1990, the Commission adopted Standards and Procedures Governing Intrastate Rail Rates in Virginia ("Standards and Procedures")[1] in accordance with § 56-99.2 of the Code and federal law then in effect, specifically, the Staggers Rail Act.[2] The Standards and Procedures are set forth in Title 24 of the Virginia Administrative Code.[3]

Congress subsequently repealed the federal statute underlying the Commission's adoption of the Standards and Procedures.[4] Since Congress repealed the federal statute, the Commission is of the opinion that the Standards and Procedures contained in Title 24 of the Virginia Administrative Code should be considered for repeal. We will establish procedures for receiving comments in support of or in opposition to repeal and for receiving requests for a hearing. If no one files a written request for a hearing on the proposed repeal of the regulations, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed repeal of the regulations, may adopt the proposed repeal of the regulations.

Accordingly, IT IS ORDERED THAT:

(1) As provided by §§ 12.1-13, 12.1-28, 56-99.1, and related provisions of the Code, the case is docketed and assigned Case No. CLK-2013-00004.

(2) The proposal that Chapter 10 of Title 24 of the Virginia Administrative Code, set forth in 24 VAC 15-10-10 through 24 VAC 15-10-510, be repealed shall be attached hereto and made a part hereof.

(3) All interested persons who desire to comment in support of or in opposition to the proposed repeal or to request a hearing to oppose the proposed repeal of the regulations shall file such comments or hearing requests on or before March 29, 2013, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All filings shall refer to Case No. CLK-2013-00004. Interested persons desiring to submit comments electronically on or before March 29, 2013, may do so by following the instructions available on the Commission's website: http://www.scc.virginia.gov/case.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to repeal the regulations, to be forwarded to the Virginia Registrar for publication in the Virginia Register of Regulations and shall make available this Order and the attached proposal to repeal the regulations on the Commission's website: http://www.scc.virginia.gov/case.

(5) The Commission's Office of General Counsel forthwith shall mail a copy of this Order, together with the proposal to repeal the regulations, to the registered agents of all railroads operating in Virginia.

(6) On or before February 20, 2013, the Commission's Office of General Counsel shall file with the Clerk of the Commission proof of the mailing of notice prescribed in Ordering Paragraph (5) above.

(7) The case is continued.

AN ATTESTED COPY hereof, together with a copy of the proposed repeal of the regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel, Division of Information Resources, and Division of Utility and Railroad Safety.

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[1] Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte, in re: Adoption of Standards and Procedures to Administer the Staggers Rail Act of 1980, Case No. RRR-1983-00003, Order Adopting Regulations, 1990 S.C.C. Ann. Rept. 363 (Jan. 3, 1990).

[2] Staggers Rail Act of 1980, Pub. L. No. 96-448, Sec. 214, 94 Stat. 1895, 1913-15 (1980).

3 24 VAC 15-10.

[4] ICC Termination Act of 1995, Pub. L. No. 104-88, Sec. 102, 109 Stat. 803, 804, codified as 49 U.S.C. § 701 nt. repealing Staggers Rail Act of 1980, Pub. L. No. 96-448, Sec. 214, 94 Stat. 1895, 1913-15 (1980).

VA.R. Doc. No. R13-3579; Filed February 4, 2013, 10:41 a.m.

EXECUTIVE ORDER NUMBER 57 (2012)

Establishing the Governor's Rural Jobs Council

Importance of the Issue

Economic opportunity and free enterprise is the bedrock of a stable and prosperous Commonwealth. Virginia is home to abundant resources, fiscal responsibility and boundless human potential, giving rise to the entrepreneurial spirit evident throughout this great Commonwealth. However, in light of the unprecedented economic difficulties facing Virginia families and businesses, and the ever increasing competiveness of the global economy, bold and innovative ideas are necessary for the Commonwealth to continue to succeed.

Virginia's rural communities are some of the most naturally abundant regions in the Commonwealth. From the Eastern Shore to the highlands of southwest Virginia, it is clear that Virginia is blessed with a wealth of natural beauty and resources. These many opportunities make Rural Virginia a destination for major companies, home to Virginia's two largest industries, Agriculture and Forestry, and an inviting place to start and grow a small business. The entrepreneurial spirit is strong in our rural communities and generated much prosperity over many generations.

The Commonwealth is fortunate to benefit from pro-growth policies that continue to spur economic development and job creation and Virginia's unemployment rate continues to remain low, second lowest east of the Mississippi. While that news is welcomed, we must continue to do everything possible to support our rural communities that have not experienced the job growth seen in some other regions of the state.

The following measures are crucial steps to continue promoting economic recovery and job creation in Virginia with a focus on our rural communities.

Establishment of the Council

Building on the success of the Governor's Commission on Job Creation and Economic Development and the rural policy agenda, we must harness the unlimited potential in rural Virginia, to create greater opportunities. Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Rural Jobs Council.

Composition of the Council

The Governor's Rural Jobs Council shall receive the full staff support of the Chief Jobs Creation Office, the Deputy Secretary of Commerce and Trade for Rural Economic Development, and the Secretaries of Commerce and Trade, Agriculture and Forestry, Natural Resources, Transportation, Technology, Finance, Education and Administration. The Council shall also include up to 25 legislative and non-legislative citizen members representing a cross segment of industry and business sectors. All agencies, as deemed necessary by the Secretaries of Commerce and Trade and Agriculture and Forestry, shall participate and provide assistance as requested. In addition, each executive branch agency and state entity that has a significant impact on rural Virginia shall designate one person to serve as a liaison to the Council. Further, I reserve the authority to designate any other such citizens as I deem appropriate to serve on the Council. The Virginia Economic Development Partnership and the Center for Rural Virginia shall provide staff support for the Council. The Governor shall appoint the chair and vice chair(s) of the Council.

Members of the Council shall serve without compensation.

Charge for the Council

The Council shall have the following responsibilities:

1. Identify impediments to and opportunities for job creation in Rural Virginia

2. Recommend strategies to improve the K-12 education and the workforce pipeline

3. Produce a comprehensive and meaningful Economic and Infrastructure Policy for Rural Virginia; and

4. Make recommendations to improve the tax and regulatory environment in the Commonwealth to maintain and increase the Commonwealth's standing as the best place to do business in the United States of America.

An estimated 500 hours of staff time will be required to support the council. An estimated $2,000.00 in office materials is expected to fund the council. Such funding as is necessary for the term of the council's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Council, as authorized by § 2.2-135(B) of the Code of Virginia.

The Council shall provide its first report of recommendations and action items to the Governor no later than April 1, 2013. The Council shall thereafter provide periodic supplemental reports setting forth additional recommendations and actions items, and reporting on agency progress implementing the Council's recommendations adopted by the Governor.

Pursuant to § 2.2-135 of the Code of Virginia, the Council shall remain in effect for a period of one year.

Given under my hand and under the Seal of the Commonwealth of Virginia this 29th day of January, 2013.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 58 (2012)

Establishing a Statewide Traffic Incident Management Committee

As the chief executive officer for the Commonwealth of Virginia, I hereby issue this Executive Order to the Executive Branch Cabinet members, agency heads, managers, supervisors, and employees in order to formally establish an advisory committee to public safety leaders and transportation experts committed to the management of traffic incidents. Nothing in this Executive Order should be construed as imposing an unfunded mandate on any independent or non-executive branch agency of the Commonwealth of Virginia.

Background and Importance of the Initiative:

Virginia has a vested interest in reducing traffic congestion and promoting traffic safety. Traffic congestion not only has a negative impact on the quality of life and safety of its citizens, it also has a significant financial impact. The U.S. Department of Transportation listed traffic congestion as "one of the single largest threats" to the Nation's economic prosperity and way of life. In the 2009 Urban Mobility Report published by the Texas Transportation Institute (TTI), data calculated in 2007 reported that traffic congestion in the top 439 urban areas in the United States amounted to 4.2 billion hours of wasted time and 2.8 billion gallons of wasted fuel. This equaled approximately $87.2 billion in lost revenue. In 2009, that amount had increased to $115 billion.

In 2009, Virginia had the sixth highest commute time to work in the nation. According to a study conducted by TTI that same year, the metro area around Washington, DC, had the highest average number of hours of delay (70) per traveler in the nation. Even minor disruptions in traffic flow have significant impacts on congestion. The National Traffic Incident Management Coalition (NTIMC) estimates that 4 minutes of travel delay time result for every minute a highway lane is blocked due to an incident.

While there are many factors which contribute to congestion (i.e., road capacity and condition, commuting demands, lack of public transportation, and population), other unpredictable factors also create traffic problems. In Virginia, it is estimated that more than half of all congestion is non-recurring caused by crashes, disabled vehicles, adverse weather, work zones, special events, and other temporary disruptions to the transportation system. Compounding the problem is the issue of secondary crashes. The National Highway Traffic Safety Administration estimates that 36% of all crashes on the Capital Beltway in Virginia and Maryland are secondary crashes. The Federal Highway Administration estimates the likelihood of a secondary crash increases by 2.8% for each minute the primary incident continues to be a hazard.

Traffic incidents also present a tremendous hazard for first responders. According to the NTIMC, traffic crashes and "struck-by" incidents are leading causes of on-duty injuries and deaths for law enforcement, firefighters, emergency medical personnel, and towing and recovery personnel. Reducing incident clearance times will improve first responder safety.

Better management of traffic incidents is one key to reducing congestion and improving safety. In the 2009 Urban Mobility study, TTI calculated that in the 272 urban areas where improved incident management procedures were implemented, the resulting reduction in incident-related congestion saved 143.3 million hours and $3.06 million in revenue.

Historically, first responder incident management procedures have been focused on responder safety at the scene with limited consideration for the benefits derived through the utilization of quick clearance strategies.

In November of 2010, in response to concerns regarding coordination of efforts to address Traffic Incident Management (TIMs), the Governor established, through the Secretary of Public Safety in cooperation and partnership with the Secretary of Transportation, the Virginia Traffic Incident Management Committee. The Statewide TIMs Committee began to meet in December of 2010 to discuss strategies to reduce traffic congestion and secondary crashes by better managing incidents when they occur. The Committee began by reviewing the National Unified Goals (NUG) of responder safety, quick clearance of incidents, and improved interoperable communications between responding agencies. The TIMs Committee unanimously agreed that these principles should be promoted and employed in any traffic incident management strategy, training, or policy the Commonwealth adopts.

Over the last two years, the Statewide TIMs Committee has put forth three primary initiatives which will promote better traffic incident management through the use of these NUG concepts. The first initiative includes the promotion and promulgation of the NUG concepts at existing local TIMs groups and creating new groups where none previously existed. These local TIMs groups are made up of first responders who are charged with looking for ways to better manage traffic and traffic related incidents in their respective jurisdictions. A significant number of the local committees have been in existence for many years, with the most established groups being located in or around population centers such as Northern Virginia, Tidewater, Richmond, and Roanoke.

Currently, representatives from the Department of State Police, Virginia Department of Transportation, and the Virginia Department of Emergency Management lead or participate in over 60 of these local TIMs groups across the Commonwealth. The use of local TIMs groups has provided an effective and logical way for the Statewide TIMs Committee to promulgate initiatives and provide guidance to local first responders. It is through the local TIMs groups that the Statewide TIMS Committee has introduced or reinforced the NUG concepts to our local emergency response stakeholders. It has also created a forum for all responding stakeholders to meet in non-emergency settings to discuss strategies, scene communications and individual stakeholder procedures.

Second, the Statewide TIMs Committee reached out to the Federal Highway Administration, which subsequently selected Virginia as one of the first states to pilot a multidisciplinary TIMs "train-the-trainer" course which emphasizes the application of NUG concepts in traffic incident management. In June 2012, approximately 30 trainers from all first responder disciplines received this training and will begin to hold TIMs training for all first responders across the Commonwealth beginning January of 2013.

Finally, the Statewide TIMs Committee created and is currently reviewing and finalizing for distribution a Statewide Traffic Incident Management Manual which emphasizes the NUG concepts. Once adopted by the TIMs Committee, this manual will provide uniform classification of incident types and seriousness while defining the roles and responsibilities of stakeholders when responding to and mitigating incidents on the highways of the Commonwealth.

The Statewide TIMs Committee, in conjunction with the local TIMs groups throughout the Commonwealth, has proven to be a productive and efficient method of managing and coordinating the important issue of traffic safety.

Consequently, as Governor, I believe this approach should continue and I therefore in accordance with the authority vested in me by Article V of the Constitution of Virginia and by § 2.2-134 of the Code of Virginia, create the Statewide Traffic Incident Management Committee in this executive order.

Formalization of the Committee:

The Statewide Traffic Incident Management Committee shall consist of the following individuals or their designee:

Chair:
Superintendent, Virginia State Police

Members:
Commissioner, Virginia Department of Transportation
State Coordinator Virginia Department of Emergency Management
Executive Director, Virginia Department of Fire Programs
Director, Department of Criminal Justice Services
Representative, Virginia Department of Health, Office of Emergency Medical Services
Executive Director, Virginia Association of Chiefs of Police
Executive Director, Virginia Sheriffs Association
President, Virginia Association of Volunteer Rescue Squads
President, Virginia Fire Chiefs Association
President, Virginia Professional Fire Fighters Association
President, Virginia Association of Towing and Recovery
President, Virginia Association of Public-Safety Communications Officials

Any other person(s) and such support staff whom the Secretary of Public Safety deems necessary and proper to carry out the assigned functions.

Roles and Responsibilities of Committee:

The Statewide Traffic Incident Management Committee serves as an advisory committee to public safety leaders and transportation experts committed to the management of traffic incidents.

The committee will promote activities that include developing a comprehensive traffic incident manual to be completed by July of 2013.

The committee will promote traffic incident management by promoting the NUG for TIM, including responder safety, safe, quick clearance, and interoperable communications; encouraging the development of TIM regional teams, promoting collaboration, communication and cooperation among the Commonwealth's emergency responders; and keeping emergency responders up to date on national rules, regulations and trends related to safe roadway incident operations.

The Statewide Traffic Incident Management Committee shall solicit best practices to improve the response of Virginia agencies charged with the prevention, and mitigation of traffic incidents. These guidelines should be used to create local and regional traffic incident management (TIM) plans consistent with the NUG objectives of responder safety, safe quick clearance, and prompt, reliable incident communications.

Staffing and Funding:

Staff necessary for the Committee will be provided by the respective agencies participating on the Committee. The estimated direct cost of the Committee is $1,000. Costs associated with implementing the guidelines developed will

be determined and potential funding sources shall be identified by the Committee.

Effective Date of the Executive Order:

This Executive Order shall be effective upon its signing and pursuant to § 2.2-135 of the Code of Virginia shall remain in force and effect for a year or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 4th day of February, 2013.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NO. 59 (2013)

Continuing the Virginia Indian Commemorative Commission

Importance of the Issue

Native Americans have lived in the land now known as Virginia for thousands of years, their history having been and continuing to be documented. The historical record confirms that Virginia Indians provided aid and comfort to the British colonists in 1607 and were instrumental in the establishment of the first permanent English-speaking settlement in North America at Jamestown.

The legacy of the indigenous peoples of the Commonwealth has been recorded in the names of many Virginia locations and landmarks, such as the Cities of Chesapeake and Roanoke, the Counties of Accomack, Appomattox, and Powhatan, and the Chickahominy, Mattaponi, Pamunkey, Potomac, Powhatan, and Rappahannock Rivers, as well as many other sites. Despite hardships brought about by the loss of lands, languages, and civil rights, American Indians in Virginia have persisted and continued to contribute to the Commonwealth through agriculture, land stewardship, teaching, military and civil service, the arts, and other avenues of productive citizenship.

Continuation of the Virginia Indian Commemorative Commission

In recognition that the courage, persistence, determination, and cultural values of Virginia's Indians have significantly enhanced and contributed to society, the General Assembly approved House Joint Resolution 680 (2009), requesting the creation of a commission to recommend an appropriate monument in Capitol Square to commemorate the life, achievements, and legacy of American Indians in the Commonwealth. On October 22, 2009, Governor Kaine issued Executive Order 100 that established the Virginia Indian Commemorative Commission. Since then, the Commission has met regularly and developed a plan for execution of the monument, but there is more work to be done. Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Virginia Indian Commemorative Commission.

Composition of the Commission

The Virginia Indian Commemorative Commission shall consist of the Governor, the Lieutenant Governor of Virginia, the Speaker of the House of Delegates, or their respective designees, three members of the House of Delegates appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, the Clerk of the House of Delegates, the Chairwoman of the Senate Committee on Rules, two citizen members of the Senate appointed by the Senate Committee on Rules, the Clerk of the Senate, the Executive Director of the Capitol Square Preservation Council, three members who shall be representatives of Virginia Indians to be appointed by the Governor, and the Executive Director of the Virginia Capitol Foundation. Additional members may be appointed at the Governor's discretion. The Chairman and the Vice Chairman shall be appointed by the Governor.

Members of the Commission shall serve without compensation, but they may receive reimbursement for expenses incurred in the discharge of their official duties.

Charge for the Commission

The Commission shall identify an artist, select a design, and take all necessary actions to coordinate the construction, pursuant to applicable state construction policies, of an appropriate tribute monument on Capitol Square to commemorate the life, achievements, and legacy of American Indians in the Commonwealth. The Commission shall seek private funding for the operation and support of the Commission and the erection of an appropriate monument. However, the costs of implementation of the Commission, its work, and the compensation and reimbursement of members, estimated to be $5,000.00, shall be borne by the Commission from such private funds as it may acquire to cover the costs of its operation and work. The Commission may establish an organization with 501c(3) status for fundraising purposes. The Commission is vested with all the powers to carry out the intent of the General Assembly under House Joint Resolution 680 (2009). All agencies of the Commonwealth shall provide assistance to the Commission, upon request. An estimated 200 hours of staff time will be required to support the work of the Commission.

The Commission shall report annually the status of its work, including any findings and recommendations, to the General Assembly, by December 1st each year.

Effective Date of the Executive Order:

This Executive Order rescinds Executive Order 37 (2011), becomes effective upon its signing, and shall remain in effect for one year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 5th day of February, 2013.

/s/ Robert F. McDonnell
Governor

STATE CORPORATION COMMISSION

Bureau of Insurance

February 1, 2013

Administrative Letter 2013-01

To: Continuing Care Retirement Communities

Re: Supplemental Information and Other Required Disclosures

Section 38.2-4902 A 15 of the Code of Virginia allows the State Corporation Commission to require disclosure of material information in the disclosure statement filed by Continuing Care Retirement Communities ("CCRC"). In order to assist residents in understanding the financial position and the results of operations of a CCRC, we ask that each provider include supplemental information on its facilities and other consolidated entities in its audited financial statements for the two most recent years. In addition, we ask that each provider include a summary of the financial condition of each facility. Please find attached the format samples for the supplemental and financial summary information. We ask that this information be included in the provider's next annual filing with the State Corporation Commission Bureau of Insurance.

Section 38.2-4904 A of the Code of Virginia requires the provider to make the annual disclosure statement available by written notice to each resident at no cost. In accordance with § 38.2-4904 D of the Code of Virginia, the provider should amend its currently filed disclosure statement at any time if an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or failing to state any material fact required. The provider must file any amendment with the State Corporation Commission Bureau of Insurance before distributing it to any resident. The provider is obligated to notify each resident of the existence of any such amendment or amended disclosure statement.

An amendment would be required if the provider has concerns about its ability to continue as a going concern, is unable to perform fully its obligations pursuant to its contracts due to financial instability, or has any problems with meeting the terms of its debt obligations. The State Corporation Commission Bureau of Insurance should be notified immediately of any such financial concerns.

Sections 38.2-4910 A and B of the Code of Virginia require the provider to hold meetings at least quarterly with the residents or representatives elected by the residents of the continuing care facility for the purpose of free discussion of issues relating to the facility. These issues may include income, expenditures and financial matters as they apply to the facility and proposed changes in policies, programs, facilities and services. The provider is required to give the resident's organization a copy of all submissions to the Commission. The provider is also required to give residents seven days' notice of each meeting.

Questions concerning this administrative letter may be addressed to: Ms. Daryl Hepler, Senior Insurance Financial Analyst, telephone (804) 371-9999, or email daryl.depler@scc.virginia.gov or Ms. Toni Janoski, Senior Insurance Financial Analyst, telephone (804) 371-9945, or email toni.janoski@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

* * *

February 1, 2013

Administrative Letter 2013-02

To: All Insurers and Other Interested Parties

Re: Revisions to the Virginia Insurance Continuing Education Program Requirements, effective January 1, 2013

Note: All insurers receiving this administrative letter are expected to instruct their currently appointed agents to review it and familiarize themselves with the contents. The letter may be accessed through the Bureau of Insurance website at: http://www.scc.virginia.gov/boi/adminlets/index.aspx.

During the 2012 General Assembly session, the Virginia General Assembly amended Article 7 of Chapter 18, Title 38.2 of the Code of Virginia to streamline the Continuing Education ("CE") process for insurance agents subject to Virginia Insurance CE requirements. These amendments included the elimination of the provision that required agents whose licenses had been terminated for failure to comply with CE requirements to wait 90 days before reapplying for a license. In addition, pursuant to House Bill 209, the amendments to Article 7 make several modifications that are technical in nature.

Notably, beginning January 1, 2013:

• All resident insurance agents subject to Virginia insurance CE are required to complete three CE hours of insurance ethics in lieu of the previously required two hours of insurance law and regulations. These three credit hours of insurance ethics may include insurance law and regulations applicable in Virginia.

• The deadline for completing all coursework and paying the nonrefundable $15 Continuance fee for the 2013-2014 biennium is November 30, 2014.

• Agents who have not fully complied with all CE requirements for the 2013-2014 biennium will be mailed a notice of pending license termination on or about December 1, 2014.

• Agents will have a 31-day period (beginning on December 1, 2014) as a final opportunity to correct any CE deficiencies, by completing the required coursework and/or paying the $15 nonrefundable Continuance fee.

• Agents who have not met all CE program requirements will have their licenses administratively terminated by the Bureau of Insurance ("Bureau") effective January 1, 2015.

It is important to note that the amendments to Article 7 take effect at the commencement of the 2013-2014 biennium and that no changes have been made to the current 2011-2012 biennium. Agents had until December 31, 2012 to meet all CE compliancy requirements for the current biennium. CE compliance for Virginia resident agents means completing the required Virginia Insurance Continuing Education Board's approved CE courses for the appropriate number of hours for the appropriate content and paying the nonrefundable $15 Continuance fee. The nonrefundable $15 Continuance fee must be paid by both resident and nonresident agents. If all CE requirements are not met, the Bureau will administratively terminate licenses on or about September 1, 2013.

Beginning February 2013, visit www.virginiainsurancece.com for further information regarding the revised 2013-2014 Virginia Insurance CE program.

Visit the Bureau's website http://www.scc.virginia.gov/boi/pro/index.aspx for additional Producer Licensing information.

Questions concerning this administrative letter may be addressed to: Preston Winn, Manager, Producer Licensing Section, Bureau of Insurance, State Corporation Commission, telephone (804) 371-9631, or email preston.winn@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

Public Meeting and Public Comment for a TMDL Implementation Plan in Three Creek, Mill Swamp, and Darden Mill Run Watersheds; Southampton, Sussex, Greensville, and Brunswick Counties

The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation will host a public meeting on a water quality study for Three Creek, Mill Swamp, and Darden Mill Run located in the counties of Southampton, Sussex, Greensville, and Brunswick on Thursday March 21, 2013.

The meeting will start at 6:30 p.m. in the Southampton Board of Supervisors Meeting Room located at 26022 Administration Center Drive, Courtland. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

The waters listed for this study were identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairments are based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for E. coli bacteria.

The meeting will review the final implementation plan for the impaired waters. The implementation plan (IP) is developed to provide a clean up plan that will lead to attainment of the water quality standards. Public participation and stakeholder involvement are necessary in order to develop an effective and reasonable IP. This meeting will present the findings of the total maximum daily load (TMDL) study and the necessary steps in the IP development.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The TMDL report has been approved by Environmental Protection Agency (September 28, 2012) and can be found at http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/chowanrvr/threecreekec.pdf.

The public comment period on materials presented at this meeting will extend from March 22, 2013, to April 22, 2013. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Meeting and Public Comment for Total Maximum Daily Load Studies in the Cities of Virginia Beach and Chesapeake

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for several creeks located in the cities of Virginia Beach and Chesapeake on Wednesday, February 27, 2013.

The meeting will start at 6:30 p.m. at Creeds Ruritan Barn, Virginia Beach Farm Bureau Office, 1057 Princess Anne Road, Virginia Beach. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Beggars Bridge Creek, Upper and Lower Hell Point Creek, Muddy Creek, Lower Ashville Bridge Creek, Pocaty River, and Middle North Landing River were identified in Virginia's Water Quality Assessment and Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Pocaty River and Lower Ashville Bridge Creek were identified in Virginia's Water Quality Assessment and Integrated Report as impaired for not supporting the aquatic life use. The impairment is based on water quality monitoring data reports of sufficient violations of Virginia's water quality standard for dissolved oxygen. Lower Ashville Bridge Creek is also impaired for not supporting the aquatic life use due to violations of the pH water quality standard.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop total maximum daily loads for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 28, 2013, to March 29, 2013. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Public Meeting and Notice of Public Comment for a Water Quality Study (TMDL) of the Maury River and Tributaries

Public meetings: Two meetings will be hosted at two convenient locations within the Maury watershed. The first will be held Tuesday, February 26, 2013, at the Effinger Volunteer Fire Department, 2824 Collierstown Road, Lexington, VA 24450. This meeting will start with a no-cost community dinner at 6 p.m. (RSVP to Tara Sieber at telephone (540) 574-7870 by February 22, 2013). The second will be held Wednesday, March 6, 2013, at 7 p.m. at the Natural Bridge Volunteer Fire Department, 5705 S. Lee Highway, Natural Bridge, VA 24578. All meetings are open to the public and all are welcome. In the case of inclement weather, please contact Tara Sieber at telephone (540) 574-7870.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech's Biological Systems Engineering Department, will present preliminary data for the development of a water quality study known as a total maximum daily load (TMDL) for the Maury River and its tributaries, including Cedar Creek, North Fork and South Fork Buffalo Creek, the mainstem of Buffalo Creek, and Colliers Creek. This is an opportunity for local residents to share information about the area and its local streams. A public comment period will follow the meetings (February 26, 2013, through April 8, 2013).

Meeting description: Two public meetings will be held to introduce to the local community the water quality improvement process in Virginia, known as the TMDL Process, invite their participation and solicit their contributions, and review the next steps. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Description of study: Several streams in the Maury River watershed do not meet Virginia's water quality standards due to excessive bacteria and have been placed on the 2006, 2008, and 2010 § 303(d) TMDL Priority List and Report as impaired. The bacteria standard preserves the "Primary Contact (recreational or swimming)" designated use for Virginia waterways. Excessive bacteria levels may pose a threat to human health. This water quality study reports on the sources of bacterial contamination and recommends reductions to meet total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels need to be reduced to the TMDL amount. Virginia agencies are working to identify sources of bacterial contamination in the Maury River and its tributaries, including the following waterways:

Stream	County	Length (miles)	Impairment
Colliers Creek	Rockbridge	13.77 mi	Bacteria (E. coli)
North Fork Buffalo Creek	Rockbridge	7.28 mi	
South Fork Buffalo Creek	Rockbridge	13.24 mi	
Buffalo Creek	Rockbridge	15.51 mi	

Maury River	Buena Vista and Rockbridge	12.84 mi	
Cedar Creek	Rockbridge	11.49	

In addition, Colliers Creek does not host a healthy and diverse population of aquatic life, and subsequently was listed as impaired for the "General Benthic (Aquatic life)" water quality standard. This water quality study will review all data collected and determine the cause of the benthic impairment through a weight of evidence approach. Reductions and a TMDL for the cause of the impairment will be developed.

Stream	County	Length (miles)	Impairment
Colliers Creek	Rockbridge	13.77 mi	Aquatic Life

How to comment: The public comment period for these public meetings will end on April 8, 2013. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to: Tara Sieber, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

State Implementation Plan Revision (Proposed) - Consumer and Commercial Products (Rev. A12)

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 revisions 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 affected by this action are as follows: Emission Standards for Asphalt Paving Operations (Article 39), Emission Standards for Portable Fuel Container Spillage (Article 42), Emission Standards for Architectural and Industrial Maintenance Coatings (Article 49), and Emission Standards for Consumer Products (Article 50) of 9VAC5-40 (Existing Stationary Sources).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments (repeals of the above-listed articles) should be submitted as a revision to the SIP; i.e., whether reference to the repealed articles should be removed from the SIP.

Public comment period: February 25, 2013, to March 27, 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: Because the regulation amendments have been adopted by the board in accordance with the Administrative Process Act and have subsequently become effective, 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: This revision consists of removing Articles 39, 42, 49, and 50 of 9VAC5-40 from the SIP because they were repealed in their entirety. These articles were repealed because they have been replaced by corresponding articles in 9VAC5-45 (Consumer and Commercial Products), which contains updated provisions for controlling emissions from asphalt paving operations, portable fuel containers, architectural and industrial maintenance coatings, and consumer products. The provisions of 9VAC5-45 were not affected by the repeal of these regulations. There is therefore no longer a need for reference to the repealed regulations in Virginia's SIP.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review regulation documents: The proposal and a supporting document 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,

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: 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 LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 16, 2013, and January 28, 2013. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Four (13)

"Valley's February 2013 Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective January 17, 2013)

Director's Order Number Six (13)

Virginia's Instant Game Lottery 1397 "20X The Money" Final Rules for Game Operation (effective January 23, 2013)

Director's Order Number Seven (13)

Virginia Lottery's "Pet Lovers Sweepstakes" Final Requirements for Operation (effective January 23, 2013)

Director's Order Number Eight (13)

Virginia's Instant Game Lottery 1421 "Pet Lovers" Final Rules for Game Operation (effective January 23, 2013)

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The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 24, 2013.

Director's Order Number Sixteen (13)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on January 25, 2013.

Game 1085	Maximum Millions
Game 1227	Blackjack Bonus
Game 1236	Hot $1,000
Game 1248	Casino Cash
Game 1260	Diamond 7's
Game 1284	Emerald 8's
Game 1295	Cash Line Bingo **(TOP)**
Game 1298	Ace in the Hole
Game 1306	$100,000 Cash Cyclone **(TOP)**
Game 1325	Super Lucky 8's
Game 1352	Double Match
Game 1366	Hasbro
Game 1375	Holiday Cheer
Game 1376	Cashing Through the Snow
Game 1377	Trim the Tree
Game 1378	Gift Tree

The last day for lottery retailers to return for credit unsold tickets from any of these games will be March 1, 2013. The last day to redeem winning tickets for any of these games will be July 24, 2013, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of July 24, 2013, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order is effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
January 17, 2013

STATE WATER CONTROL BOARD

Proposed Consent Order for Loudoun County Sanitation Authority

An enforcement action has been proposed for Loudoun County Sanitation Authority for violations in Loudoun County. The State Water Control Board proposes to issue a consent order to Loudoun County Sanitation Authority to resolve violations of State Water Control Law and Regulations regarding an unauthorized discharge from the sanitary sewer collection system associated with the Upper Foley Pump Station. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from February 26, 2013, through March 28, 2013.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 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.