



# VIRGINIA

## REGISTER OF REGULATIONS

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# VIRGINIA REGISTER INFORMATION PAGE

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair, **Gregory D. Habeeb**; **Ryan T. McDougle**; **Pamela S. Baskerville**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## September 2015 through October 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
32:1	August 19, 2015	September 7, 2015
32:2	September 2, 2015	September 21, 2015
32:3	September 16, 2015	October 5, 2015
32:4	September 30, 2015	October 19, 2015
32:5	October 14, 2015	November 2, 2015
32:6	October 28, 2015	November 16, 2015
32:7	November 10, 2015 ( <b>Tuesday</b> )	November 30, 2015
32:8	November 24, 2015 ( <b>Tuesday</b> )	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 ( <b>Monday</b> )	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016
32:15	March 2, 2016	March 21, 2016
32:16	March 16, 2016	April 4, 2016
32:17	March 30, 2016	April 18, 2016
32:18	April 13, 2016	May 2, 2016
32:19	April 27, 2016	May 16, 2016
32:20	May 11, 2016	May 30, 2016
32:21	May 25, 2016	June 13, 2016
32:22	June 8, 2016	June 27, 2016
32:23	June 22, 2016	July 11, 2016
32:24	July 6, 2016	July 25, 2016
32:25	July 20, 2016	August 8, 2016
32:26	August 3, 2016	August 22, 2016
33:1	August 17, 2016	September 5, 2016
33:2	August 31, 2016	September 19, 2016
33:3	September 14, 2016	October 3, 2016
33:4	September 28, 2016	October 17, 2016
33:5	October 12, 2016	October 31, 2016

\*Filing deadlines are Wednesdays unless otherwise specified.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider promulgating **12VAC30-121, Medicare-Medicaid Demonstration Waivers** and amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**. The purpose of the proposed action is to create the Commonwealth Coordinated Care program, which enables individuals who are eligible for both Medicare and Medicaid services (dual eligibles) to receive acute, primary, and long-term care services in a coordinated managed care system.

The dual eligible population is of particular interest for a managed care program because the participants represent some of the most vulnerable citizens who typically have extensive medical, behavioral health, social, and long-term care needs. In the Commonwealth, dual eligibles are currently excluded from managed care because Medicare, being their first payer of services, covers their acute care services. Also, managed care organizations did not originally cover long-term care services (neither nursing facility services nor home and community-based services). These dual eligible persons have been receiving acute and long-term care services in Medicaid's fee-for-service system.

As a result of being in the fee-for-service system, no single health care provider or entity is responsible for coordinating all of these individuals' care, resulting in an inefficient system that is cumbersome for the individuals with misaligned benefit structures and opportunities for cost shifting. This system has likely led to unnecessary hospital admissions, unnecessary use of nursing facilities, and the mismanagement of medications.

Integrating primary and acute care services with long-term care and behavioral health services into one delivery system will streamline the delivery of services by offering ongoing access to quality health and long-term care services, care coordination, and referrals to appropriate community resources. This will also empower the Commonwealth's full dual eligible beneficiaries to remain independent, residing in settings of their choice for as long as possible.

The Social Security Act (§ 1932(a)) permits the combining of Medicare and Medicaid services to dual eligible individuals under the authority of a Financial Administration Demonstration Waiver. The goal of this action is to provide integrated care to dual eligible individuals who are currently excluded from participating in managed care programs. This change will enable these participants to access their primary, acute, behavioral health, and long-term care services through

a single managed delivery system, thereby increasing the coordination of services across the spectrum of care.

Commonwealth Coordinated Care (CCC) Program participants will include adult full benefit dual eligible individuals (ages 21 and older), including full benefit dual eligible individuals in the Elderly or Disabled with Consumer Direction (EDCD) Waiver and full benefit dual eligible individuals residing in nursing facilities. Individuals who are required to "spend down" income in order to meet Medicaid eligibility requirements will not be eligible. The CCC Program also will not include individuals for whom DMAS only pays a limited amount each month toward their cost of care (e.g., deductibles only) such as: (i) qualified Medicare beneficiaries (QMBs); (ii) special low income Medicare beneficiaries (SLMBs); (iii) qualified disabled working individuals (QDWIs); or (iv) qualified individuals (QIs).

The proposed regulatory action will allow DMAS to combine certain aspects of managed care, long-term care, and Medicare into one program. The program is expected to offer participants care coordination, which will, it is anticipated, improve their quality of care. To accomplish this, DMAS is including certain populations and certain services previously excluded from managed care into a new managed care program. This new managed care program is being offered on a voluntary basis in five regions of the Commonwealth: Central Virginia, Tidewater, Northern Virginia, Charlottesville/Western, and the Roanoke region. The program has been phased in on a regional basis over the first 12 months of the program, starting with the Central Virginia and Tidewater regions. Eligible individuals were notified of the opportunity to enroll during March 2014 and the first opportunity for enrollment was effective on April 1, 2014. The remaining three regions were phased in later in 2014.

Covered services will include the following:

1. All Medicare Parts A, B, and D services (including inpatient, outpatient, durable medical equipment (DME), skilled nursing facilities (NFs), home health, and pharmacy);
2. The majority of Medicaid State Plan services that are not covered by Medicare, including behavioral health and transportation services;
3. Medicaid-covered EDCD Waiver services: adult day health care, personal care (consumer and agency directed), respite services (consumer and agency directed), personal emergency response system (PERS), transition coordination, and transition services;
4. Personal care services for persons enrolled in the Medicaid Works program;
5. Nursing facility services; and
6. Flexible benefits that will be at the option of participating plans.

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

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# Notices of Intended Regulatory Action

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Statutory Authority: § 32.1-325 of the Code of Virginia; §§ 1932 and 1915(c) of the Social Security Act.

Public Comment Deadline: October 7, 2015.

Agency Contact: Matthew Behrens, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 625-3673, FAX (804) 786-1680, or email matthew.behrens@dmas.virginia.gov.

VA.R. Doc. No. R15-3786; Filed August 10, 2015, 8:46 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-141, Family Access to Medical Insurance Security Plan**. The purpose of the proposed action is to grant eligibility to applicable qualified state employees or their dependents who are otherwise eligible to enroll in the FAMIS MOMs program to be enrolled in the program. Current regulations exclude state employees who have access to subsidized health insurance coverage from enrolling in the FAMIS MOMs program, even if they are otherwise eligible by income and residency. This amendment will only affect state employees who are qualified for employer-sponsored health insurance; wage employees are not eligible to receive a state contribution toward the cost of their health coverage.

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

Statutory Authority: § 32.1-351 of the Code of Virginia; Title XXI of the Social Security Act.

Public Comment Deadline: October 7, 2015.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R16-4365; Filed August 10, 2015, 7:49 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending **18VAC15-40, Virginia Certified Home Inspectors Regulations**. The certified home inspector program is a voluntary regulatory program administered by the Board for Asbestos, Lead, and Home Inspectors. Chapter 411 of the

2015 Acts of Assembly requires anyone who conducts a home inspection on a new residential structure to be certified by the board and to have successfully completed a training module developed by the board in conjunction with the Department of Housing and Community Development. The training module must be based on the International Residential Code component of the Virginia Uniform Statewide Building Code. Certification would become mandatory for those individuals who wish to conduct a home inspection on new residential structures. The board is required to develop regulation to implement Chapter 411 of the 2015 Acts of Assembly for implementation on July 1, 2016. The act further requires the board to develop the training module prior to July 1, 2016, and make such training module available for use in accordance with Chapter 411.

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

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Comment Deadline: October 7, 2015.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R16-4423; Filed August 17, 2015, 10:43 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for **22VAC40-185, Standards for Licensed Child Day Centers**, and **22VAC40-186, Standards for Licensed Child Day Centers**, which was published in **29:3 VA.R. 341 October 8, 2012**.

Agency Contact: Debra O'Neill, Child Care Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7648, FAX (804) 726-7132, or email debra.oneill@dss.virginia.gov.

VA.R. Doc. No. R13-3376; Filed August 19, 2015, 3:45 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-295, Temporary Assistance for Needy Families (TANF)**. The current regulation describes fair hearings and administrative disqualification hearings. While those are different types of

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## Notices of Intended Regulatory Action

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hearings, the current regulation can be interpreted as meaning fair hearings and administrative disqualification hearings are the same. The agency proposes amending 22VAC40-295-140 to provide further clarification regarding the interplay between the two hearing processes and eliminate the misunderstanding about these separate processes.

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

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

Public Comment Deadline: October 7, 2015.

Agency Contact: Bridget Shelmet, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7144, FAX (804) 726-7357, or email [bridget.shelmet@dss.virginia.gov](mailto:bridget.shelmet@dss.virginia.gov).

VA.R. Doc. No. R16-4443; Filed August 9, 2015, 10:07 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### Proposed Regulation

Title of Regulation: **1VAC30-45. Certification for Noncommercial Environmental Laboratories (amending 1VAC30-45-10, 1VAC30-45-30 through 1VAC30-45-130, 1VAC30-45-300 through 1VAC30-45-400, 1VAC30-45-500, 1VAC30-45-510, 1VAC30-45-520, 1VAC30-45-600, 1VAC30-45-610, 1VAC30-45-660, 1VAC30-45-670, 1VAC30-45-720 through 1VAC30-45-771, 1VAC30-45-775, 1VAC30-45-791, 1VAC30-45-796, 1VAC30-45-798, 1VAC30-45-811, 1VAC30-45-850; adding 1VAC30-45-95; repealing 1VAC30-45-530, 1VAC30-45-780 through 1VAC30-45-788, 1VAC30-45-800 through 1VAC30-45-808, 1VAC30-45-820 through 1VAC30-45-829).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 6, 2015.

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

Basis: Section 2.2-1102 A 1 of the Code of Virginia authorizes the Department of General Services (DGS) to prescribe regulations necessary or incidental to the performance of the department's duties or execution of powers conferred by the Code of Virginia.

Section 2.2-1105 A of the Code of Virginia authorizes the Division of Consolidated Laboratory Services (DCLS) to establish and conduct a program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring required pursuant to the Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), or the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). Section 2.2-1105 C of the Code of Virginia authorizes DCLS to establish a fee system to pay for the costs of the certification program.

Purpose: Environmental laboratories are required by § 2.2-1105 of the Code of Virginia to be certified before submitting data to the Department of Environmental Quality (DEQ) under Virginia's air, water, and waste laws and regulations. This statutory requirement is carried out by DCLS under the

regulatory requirements of 1VAC30-45 (noncommercial laboratories) and 1VAC30-46 (commercial laboratories).

Certifying environmental laboratories to a single set of standards has several benefits. Certification promotes continuous quality improvement. Certification gives confidence that work is performed properly and to a known standard. Under the certification program, assurance is provided that all environmental laboratories meet the same proficiency testing and quality assurance and quality control standards. Meeting these standards ensures that the laboratories have the ability to produce environmental test data of known quality and defensibility for levels of pollutants in environmental samples. The limits set by DEQ for air and water pollutants and for solid and hazardous waste help protect our environment and public health. Laboratory measurements of environmental samples determine compliance with Virginia's environmental laws and therefore are the key to providing protection of public health and welfare. Certifying laboratories to one standard reduces the uncertainties associated with decisions made by the regulatory agencies that affect the protection of human health and the environment.

Current fees charged under the program are insufficient to support the program as required by § 2.2-1105 C of the Code of Virginia. The current fees are inadequate for three reasons. First, the fees were set initially using an estimate of the number of laboratories to be certified that was too high. Second, the program fees were established in 2004 and do not account for inflation in the intervening years. Third, the fee structure does not take into account the variety and amount of testing done by the laboratories that DCLS certifies.

The original estimate of laboratories that would be covered by the program was based on limited information provided by DEQ and other sources. Using this information, DCLS estimated the number of in-house and commercial laboratories that were serving DEQ permit holders. This estimate proved to be too high and the resulting fees, based on these estimates, are too low. The revised fees are based on the number of laboratories currently certified under the program.

The current fee provisions do not include a factor for inflation. The fees were proposed in 2004 in regulations that did not become final until 2009. The cost of living has increased by approximately 20% since 2004. The revised fees have been adjusted to account for this increase in the cost of living.

The current fee provisions do not take into account the range of testing and the variety of testing done by the certified

laboratories. This results in fees that do not mirror the scope of the laboratory testing. The work performed by DCLS to certify a laboratory is directly related to the number of test methods performed and the number of matrices tested by the laboratory. The revised fee structure accounts for these differences. The revised fees are adjusted in proportion to the number of test methods a laboratory performs and for the number of matrices tested.

The agency has gained operational experience through certifying laboratories since January 2009. The proposed action revises the procedures used to certify the laboratories, eliminating provisions that no longer apply and revising some provisions to make the program more efficient. This includes the addition of procedures to suspend laboratory certification. Suspension is a benefit to the laboratory that may otherwise have its certification withdrawn.

Noncommercial environmental laboratories perform proficiency tests quite well. During a 31-month period (2010, 2011, and the first nine months of 2012), these laboratories had a 95.79% success rate. Through this experience DCLS has determined that reducing the annual requirement for two proficiency test studies for each field of certification to one proficiency test study will reduce the cost of the program for the laboratories and for the agency without reducing the benefit gained from the certification program.

The current regulation contains requirements for laboratories that perform toxicity, asbestos, or radiochemical testing. No current noncommercial environmental laboratory performs these specialized types of tests. DCLS is removing these requirements in this proposal for this reason. Only those requirements pertinent to noncommercial laboratories should be included in the regulation. The proposal does stipulate that if a noncommercial environmental laboratory decides to perform one or more of these types of tests, the laboratory would have to meet the requirements for these types of testing that are set out in the 2009 TNI Standards incorporated by reference into proposed 1VAC30-46. These laboratories would also need to pay the test category fees for these types of testing as set out in proposed 1VAC30-46.

The quality control requirements that are part of Article 4 (1VAC30-45-600 et seq.) in the current regulation are based on the 2003 NELAC standards. The NELAC Institute (TNI) has revised the 2003 standards and now requires TNI-accredited laboratories to meet the 2009 standards. The 2009 TNI Standards have eliminated or increased flexibility for a number of these quality control requirements. DCLS is proposing in a separate rulemaking (1VAC30-46) that commercial environmental laboratories meet the 2009 TNI Standards. Where TNI has revised these provisions to make them more flexible or has eliminated requirements, this proposed action does the same so that the noncommercial laboratories will not be required to meet standards more stringent than the commercial laboratories.

Substance: The substantive revisions to 1VAC30-45 are listed below.

1. 1VAC30-45-40. The definition of "environmental analysis" includes two exceptions that DCLS has previously made through guidance.
2. 1VAC30-45-70 B. The procedures pertinent to the initial certification period are deleted. The initial certification period was established as January 1, 2009, to January 1, 2012, when DCLS certified environmental laboratories for the first time. Because DCLS has completed the initial certification of noncommercial environmental laboratories, these provisions no longer apply.
3. 1VAC30-45-70 C. The requirement for laboratories to file an application for renewal every other year is deleted. Renewal can be done efficiently without an additional application process.
4. 1VAC30-45-95. A new section pertaining to suspension is added. Suspension provides the laboratory an opportunity to correct a problem that would ordinarily cause the agency to withdraw certification from the laboratory. This section sets out the procedures used to suspend laboratory certification in part or in total. DCLS also may provide extra time under these provisions for a lab to correct deficiencies before suspension occurs.
5. 1VAC30-45-110. The procedures to deny or withdraw certification are revised. The notification procedures are revised to be more explicit. The appeal process provisions are simplified, referring only to the Administrative Process Act.
6. 1VAC30-45-130. The current fees are replaced by a system and new fees that reflect the current costs of the program. The revised fees account for inflation since 2004. Revised fees represent more closely the cost of certifying each laboratory. These fees take into account the number of test methods and the number of matrices for which the laboratory seeks or maintains certification. The cost of certifying a laboratory is directly proportional to the number of methods and matrices to be certified.
7. 1VAC30-45-500 through 1VAC30-45-520. The requirement for two successful proficiency test studies every year is replaced by a requirement for one successful proficiency test study per year for each field of certification. A laboratory may participate in a second proficiency test study if the first test is unsuccessful. The revision to the proficiency test requirements includes revised procedures.
8. 1VAC30-45-530. The specific requirements for aquatic toxicity proficiency testing are deleted. Noncommercial environmental laboratories currently certified under the program do not perform this type of testing because it is specialized.

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## Regulations

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9. 1VAC30-45-750 B, 1VAC30-45-780 through 1VAC30-45-789, 1VAC30-45-800 through 1VAC30-45-809, and 1VAC30-45-819 through 1VAC30-45-840. The quality control requirements for toxicity, radiochemical, and asbestos testing are deleted. These types of testing are not performed by noncommercial environmental laboratories currently certified under the program because this testing is specialized. If a noncommercial laboratory wishes to become certified for one or more of these types of testing, the laboratory will be required to meet the 2009 TNI Standards requirements for toxicity, radiochemical, and asbestos testing.

10. Over 20 provisions in Article 4, the quality system standards, have been deleted, relaxed, or made more flexible. These provisions were revised to ensure that they are no more stringent than the accreditation standards for commercial laboratories. DCLS is proposing in a separate rulemaking to accredit commercial laboratories to the requirements of the 2009 TNI Standards replacing the currently used 2003 NELAC Standards. These changes are a result of the change to the 2009 TNI Standards for commercial laboratories.

Issues: The advantage to the general public is the maintenance of up-to-date standards for the certification of noncommercial environmental laboratories. There are no disadvantages to the public.

There are two primary reasons this action is necessary for DCLS and the Commonwealth. First the revisions to 1VAC30-45 modify or reduce the program's administrative requirements making the program more efficient to operate. Second charging the revised fees will enable the agency to cover the cost of the certification program. There are no disadvantages to the agency or Commonwealth.

There are a number of advantages for the environmental laboratories certified under 1VAC30-45. Many of these proposed revisions reduce the costs for the noncommercial laboratories. The main examples of the revisions that reduce cost for the laboratories are described below.

The proposed action drops the requirement to perform proficiency test studies from two to one each year for each field of certification. Noncommercial environmental laboratory costs will drop as a result. In some cases this reduced requirement may offset the increase in fees proposed in this action. The noncommercial laboratories have demonstrated a high success rate in the performance of proficiency tests. These laboratories have often asked that the proficiency test study requirement be limited to one proficiency test. DCLS believes reducing the requirement from two to one proficiency test each year will not have a negative effect on the efficacy of the program.

The noncommercial laboratories will also benefit from the changes to the quality system standards. These revisions delete or relax standards or provide flexibility in meeting the

standards. These changes reduce the costs of certification for the laboratories.

The primary disadvantage of the proposed action for the affected laboratories is the increase in fees. The fee structure is revised to reflect the actual cost to the agency of certifying each laboratory. The fees are increased generally and will be charged annually rather than every other year. The increase in fees should be offset by the reduction in the proficiency test requirement.

### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Division of Consolidated Laboratory Services (DCLS) proposes to amend its regulations that govern certification of noncommercial environmental laboratories. Current regulations were initially proposed in 2004 and became effective in 2009. Now that DCLS has had several years of experience in certifying noncommercial laboratories, they are proposing to amend these regulations to remove obsolete language, make many clarifying changes to regulatory text and also to make several substantive changes to these regulations. The substantive changes that DCLS proposes will:

1. Add two types of tests that do not qualify under the regulatory definition of environmental analysis,
2. Remove the requirement that certified noncommercial labs fill out a renewal application,
3. Add new rules that will govern suspension of non-compliant laboratories and revise the rules that govern denial and withdrawal of certification,
4. Make changes to quality control rules in these regulations so that they are harmonized with DCLS's regulations that govern commercial environmental laboratories,
5. Reduce the number of successful proficiency tests that labs must complete each year from two to one for each field of certification and
6. Increase fees.

Result of Analysis. Benefits likely outweigh costs for most proposed regulatory changes. For some proposed changes, there is insufficient information to ascertain whether benefits outweigh costs.

Estimated Economic Impact. Current regulations define "environmental analysis" and list several types of testing that are excluded from this definition. Laboratories are not required to be certified under these regulations (for the purposes of complying with the Virginia Air Pollution Control Act, the Virginia Waste Management Act and the State Water Control Act) in order to perform tests that are on the excluded list. DCLS now proposes to add two tests; geochemical and permeability testing for solid waste compliance and materials specification for air quality compliance when product certifications specify the data

required by an air permit such as fuel type, BTU content, sulfur content or VOC content, will be added to the excluded list. DCLS staff reports that these tests are currently exempted in DCLS guidance. No entity is likely to incur any costs on account of this regulatory change. Regulated entities will likely gain some benefit from this change as language in regulation is legally enforceable and regulated entities are entitled to notice of any changes to such language and are also entitled to participate in the process that any proposed changes must go through.

Current regulations require certified labs to fill out a renewal application at least 90 days before the expiration date of their current certification. DCLS proposes to drop this requirement as they believe that renewal of certification can be accomplished without a formal application (by the lab attesting to compliance with applicable regulation, reporting acceptable proficiency test results and by paying the required renewal fees). No entity is likely to incur any costs on account of this proposed change as labs will still have to remain in compliance with these regulations. Affected labs will save some time and may also save some money (if they were not submitting their renewal application electronically) on account of this change.

Current regulations allow DCLS to decertify labs that are not in compliance with regulations or that have been found to have falsified any data or have provided false information to support certification. Labs that are decertified currently would have to reapply for certification. DCLS proposes to amend regulatory language for decertification to increase clarity and also proposes to add rules for suspension of certification. Under these new rules, DCLS will be able to notify labs of deficiencies and, in most cases, give them up to 60 days to remediate those deficiencies. Under proposed regulations, if a lab has deficiencies, has been notified of those deficiencies and does not remediate them within the allowed time, DCLS will be able to suspend certification for 6 months or the remainder of the certification period (whichever is longer). Adding language that allows suspension of certification will benefit both the department and affected labs. The department will have a remedy short of decertification for the labs under their purview. Labs will benefit from these changes as they will allow labs time to address identified problems without going through the time and expense of reapplying for certification after they have fixed their issues. No entity is likely to incur any additional expense under these proposed changes.

Current regulations are not identical to regulations for the certification of commercial environmental laboratories. DCLS proposes to delete or relax several quality control requirements in current regulations so that these regulations are no more stringent than those for commercial environmental labs. DCLS, for instance, proposes to delete language that requires a copy of certification statements be retained in analysts' personnel files. No entity is likely to incur additional costs on account of changes like these.

Noncommercial environmental labs are likely to accrue some time and money savings on account of these changes that harmonize rules for noncommercial and commercial environmental labs.

Current regulations require certified labs to complete proficiency testing for each field of certification approximately every 6 months. DCLS proposes to only require one successful test per certification field each year in order to maintain certification. DCLS estimates that this change will save labs that only perform simple test procedures (STP labs) between \$149 and \$245 per year. General labs will save between \$198 and \$296 per year. This regulatory change will benefit labs while still requiring labs to prove proficiency in testing for which they are certified.

Current regulations require renewal of certification biennially and include a fee schedule that was written in 2004 (and only effective since 2009) when this certification program became required by legislation. When current fees were set, DCLS had limited information from DEQ and other sources and over-estimated how many labs would need to be certified (and, therefore, underestimated the approximate portion of the cost of the certification program each lab would have to bear). As a consequence of both an initial underestimation of sufficient fees and because fees have not been adjusted as the cost of this certification program has risen, DCLS now proposes to require certification to be renewed every year and to increase fees for renewal.

Current renewal fees for the 56 certified STP labs are between \$475 and \$600 every two years. Fees for the 53 certified general labs currently range between \$2,825 and \$5,200 every two years. DCLS proposes to set the annual renewal fee for STP labs at \$600. DCLS also proposes to increase fees for renewal of certification for general labs. DCLS staff estimates that fees for 47 STP labs will increase by 100%; fees for the remaining 9 STP labs will increase 153%. DCLS staff estimates that fees for general labs will increase between 2% and 56%; fees for two labs will increase between 2% and 6%, fees for 22 labs will increase by between 19% and 28%, fees for 27 labs will increase between 31% and 48% and fees for two labs will increase between 50% and 56%.

DCLS will benefit from these fee increases as they will likely allow this regulatory program to be more fully self-funded. To the extent that this program provides a benefit to the public, proposed fee increases will allow that benefit to continue. Labs will bear the costs of these increased fees. There is insufficient information to ascertain whether the benefits of increasing fees will outweigh the costs of doing so.

Businesses and Entities Affected. DCLS reports that they certify 109 noncommercial labs under the provisions of these regulations. Of these 109 labs certified, 80 belong to local governments, 13 are owned by industrial companies, one is owned by a private water utility, eight belong to the

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Commonwealth of Virginia and seven are run by agencies of the federal government. None of these laboratories qualify as small businesses.

**Localities Particularly Affected.** Localities with certified labs will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action is unlikely to affect employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** For affected privately owned noncommercial labs, increasing fees will likely cause a small decrease in company profits and in the value of companies that own these labs.

**Small Businesses: Costs and Other Effects.** No small businesses will be affected by these proposed regulatory changes.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small businesses will be affected by these proposed regulatory changes.

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

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

**Agency's Response to Economic Impact Analysis:** The agency is providing the following comments on the July 6, 2015, revised economic impact analysis (EIA).

**Estimated Economic Impact - page 3, first full paragraph.** The regulation for commercial environmental laboratories

(1VAC30-46) is being revised separately. The standards that commercial environmental laboratories currently meet and will have to continue to meet under revised 1VAC30-46 are different than those for noncommercial environmental laboratories under revised 1VAC30-45. The quality control standards are the same in both regulations as currently written. The quality control standards for noncommercial environmental laboratories are being harmonized under this proposed revision to provide flexibility or to lessen the quality control requirements where the revised standards for the commercial environmental laboratories also do so. Where the proposed revisions to 1VAC30-46 for commercial environmental laboratories provide flexibility or reduce requirements pertaining to these standards, the revisions to 1VAC30-45 provide these identical changes to ensure that the noncommercial laboratories are meeting no more stringent standards than the commercial laboratories.

**Estimated Economic Impact - page 3, second full paragraph; and page 4, first full paragraph.** The agency background document, TH02, on page 10, addresses the overall cost change of the proposed revisions to 1VAC30-45. While the noncommercial laboratories will incur higher fees, the reduction in the requirement to perform proficiency testing (PT) studies each year will greatly compensate for this increase in fees.

DCLS provides four examples in the TH02 to demonstrate how fees will change under the new fee structure given the reduction in the requirement to perform PT studies. The four examples follow for comparison.

**Example A:** A laboratory performing a total of 8 test methods on nonpotable water in four test categories (oxygen demand, bacteriology, physical, and inorganic chemistry) will see a fee increase of 19% [current fee annualized is \$1787.50; proposed annual fee is \$2125; increase of \$337.50].

**Example B:** A laboratory performing a total of 8 methods on nonpotable water in four test categories (bacteriology, physical, inorganic chemistry, and organic chemistry) will see a fee increase of 24% [current fee annualized is \$1900; proposed annual fee is \$2350; increase of \$450].

**Example C:** A laboratory performing a total of 11 methods on nonpotable water and solid and chemical materials in two test categories (physical and inorganic chemistry) will see a fee increase of 28% [current fee annualized is \$1637.50; proposed annual fee is \$2090; increase of \$452.50].

**Example D:** A laboratory performing a total of 9 methods on nonpotable water and solid and chemical materials in four test categories (oxygen demand, physical, bacteriology, and inorganic chemistry) will see a fee increase of 31% [current fee annualized is \$1787.50; proposed annual fee is \$2345; increase of \$915].

Most laboratories performing any number of tests defined as simple test procedures (STP) will incur a fee increase of 100%. These laboratories currently pay \$600 every two years.

Under the proposal they will pay \$600 annually, an increase of \$300 each year.

At the same time, DCLS will require only one proficiency test study for each field of certification (matrix, technology/method, and analyte). This is a significant cost reduction for both the STP laboratories and the general laboratories. A typical STP laboratory performs nonpotable water testing for E. coli, total suspended solids, and biochemical oxygen demand. Some STPs perform only two of these tests; others test pH in addition to these tests. The majority of the STP labs (64%) will see an overall savings on average of between \$149 and \$245 each year due to the reduced proficiency testing requirement.

A typical general environmental lab performs tests for simple and complex nutrients as well as those tests performed by the STP labs. Others add a test for total residual chlorine to the basic STP lab tests. The majority of the general environmental labs (64% or 34 labs) will save on average between \$198 and \$296 each year from the reduction in the requirement to perform PT studies. Twelve other general environmental laboratories are certified for many fields of

certification, including test methods for organic chemistry and chemical metals testing. Their savings will be greater but their fees will be higher as well.

Using the four examples above, the reduction in PT costs would be as follows: Example A=\$296; Example B=\$289; Example C=\$362; and Example D=\$341.

The PT costs illustrated above are an average of the prices charged by four approved PT providers that offer all the PT studies required by these laboratories.

Overall Changes in Laboratory Cost to Maintain Certification. While the proposed fees will increase, the cost of maintaining certification will be reduced overall. The reduction in the requirement to purchase and perform PT studies from two to one each year will offset the increase in fees for all laboratories. This can be demonstrated by using the four examples shown above for general environmental laboratories.

DESCRIPTION	EXAMPLE A	EXAMPLE B	EXAMPLE C	EXAMPLE D
Current annualized fee	\$1787.50	\$1900.00	\$1637.50	\$1787.50
Current PT cost	\$592.00	\$578.00	\$724.00	\$682.00
Total current fee and PT costs	\$2379.50	\$2478.00	\$2361.50	\$2469.50
Proposed annual fee	\$2125.00	\$2350.00	\$2090.00	\$2345.00
Reduced PT cost under proposal	\$296.00	\$289.00	\$362.00	\$341.00
Total proposed fee and PT costs	\$2421.00	\$2639.00	\$2452.00	\$2686.00
<b>TOTAL INCREASE IN COST TO MAINTAIN CERTIFICATION UNDER PROPOSAL</b>	\$41.50 (1.7%)	\$161.00 (6.5%)	\$90.50 (3.8%)	\$216.50 (8.8%)

The laboratories performing only simple test procedures (STP) will also benefit from the reduction in the requirement to purchase and perform PT studies from two to one each year. The PT section above indicates that 64% of STP laboratories would see an average savings between \$149 and \$245 per year. To demonstrate the overall cost change for STP laboratories, two examples are provided using these PT cost savings. Example E will see a savings of \$149 each year. Example F will see a savings of \$245 each year.

DESCRIPTION	EXAMPLE E	EXAMPLE F
Current annualized fee	\$300.00	\$300.00
Current PT cost	\$298.00	\$490.00
Total current fee and PT costs	\$598.00	\$790.00
Proposed annual fee	\$600.00	\$600.00
Reduced PT cost under proposal	\$149.00	\$245.00
Total proposed fee and PT costs	\$749.00	\$845.00
<b>TOTAL INCREASE IN COST TO MAINTAIN CERTIFICATION UNDER PROPOSAL</b>	\$151.00 (25.3%)	\$55.00 (6.7%)

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The increase in the proposed fees is substantially reduced by the reduction in PT study requirements proposed under the revisions to 1VAC30-45. The examples provided show an overall increase of cost (fees and PT studies) for the noncommercial laboratories ranging from 1.7% to 25.3% annually compared with the increase in fees of 19% to 100%.

## Summary:

*The proposed amendments (i) streamline the procedures for application and renewal of certification, (ii) reduce the requirement to perform proficiency test studies to one study annually for each field of certification, (iii) eliminate requirements for specialized testing that noncommercial laboratories currently do not perform, (iv) add procedures for suspension of certification to provide a laboratory time to correct problems to avoid decertification, (v) make explicit the requirements to notify a laboratory that the agency has cause to deny certification or to decertify, (vi) simplify the appeal procedure language, (vii) restructure and modify the fee system and increase the fees paid by laboratories, and (viii) eliminate or provide increased flexibility for a number of quality system provisions (Article 4).*

## Part I General Provisions

### 1VAC30-45-10. Purpose.

Section 2.2-1105 of the Code of Virginia directs the Division of Consolidated Laboratory Services to establish a program to certify environmental laboratories that perform tests, analyses, measurements or monitoring required pursuant to the Commonwealth's air, waste and water laws and regulations. This chapter sets out the required standards and the process by which owners of noncommercial environmental laboratories may obtain certification for their laboratories. ~~1VAC30-46 covers commercial environmental laboratories and NELAP accredited environmental laboratories seeking reciprocal accreditation in Virginia.~~

### 1VAC30-45-30. Applicability.

A. This chapter applies to any owner of a noncommercial environmental laboratory.

B. Any environmental laboratory owned by an agency of the federal government may be certified as follows:

1. By ~~DGS DCLS~~ DCLS to the standards set out in this chapter; or
2. By a federal primary ~~accrediting authority~~ accreditation body to the standards established by ~~the National Environmental Laboratory Accreditation Conference~~ TNI.

C. Citizen monitoring groups. Section 62.1-44.19:11 of the Code of Virginia both establishes a citizen water quality monitoring program for Virginia and encourages the growth of the program. The Department of Environmental Quality (DEQ) has a separate program of quality assurance and quality control (QA/QC) standards for citizen monitoring groups and their laboratories to follow. The following

laboratories shall meet the DEG QA/QC requirements developed for the purposes of citizen monitoring of water quality in lieu of the requirements of 1VAC30-45 or 1VAC30-46:

1. Laboratories owned by citizen monitoring groups.
2. Laboratories at institutions of higher education affiliated with citizen monitoring groups for the purposes of analyzing samples for the groups.

~~D. Environmental research performed by environmental laboratories owned by institutions of higher education.~~ Institutions of higher education. Environmental laboratories owned by institutions of higher education located in Virginia that perform analyses for the purpose of providing environmental research data to DEQ at DEQ's request shall meet the QA/QC requirements specified by DEQ. An environmental laboratory owned by an institution of higher education located in Virginia that performs environmental research for DEQ shall not be subject to the requirements of either 1VAC30-45 or 1VAC30-46 unless DEQ requires the laboratory to do so.

### 1VAC30-45-40. Definitions.

~~Where a term is defined in this section, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. Unless specifically defined in this section, the terms used in this chapter shall have the meanings commonly ascribed to them by recognized authorities. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.~~

"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.

"Accuracy" means the degree of agreement between an observed value and an accepted reference value. Accuracy includes a combination of random error (precision) and systematic error (bias) components that are due to sampling and analytical operations. Accuracy is an indicator of data quality.

"Algae" means simple single-celled, colonial, or multicelled, mostly aquatic plants, containing chlorophyll and lacking roots, stems and leaves that are either suspended in water (phytoplankton) or attached to rocks and other substrates (periphyton).

"Aliquot" means a portion of a sample taken for analysis.

"Analyte" means the substance or physical property to be determined in samples examined.

"Analytical method" means a technical procedure for providing analysis of a sample, defined by a body such as the Environmental Protection Agency or the American Society for Testing and Materials, that may not include the sample preparation method.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of an organization and its systems or both to defined criteria.

"Assessor" means the person ~~who performs on-site assessments of laboratories' capability and capacity for meeting the requirements under this chapter by examining the records and other physical evidence for each one of the tests for which certification has been requested~~ assigned by DCLS to perform, alone or as part of an assessment team, an assessment of an environmental laboratory.

"Audit" means a systematic evaluation to determine the conformance to quantitative and qualitative specifications of some operational function or activity.

"Authority" means, in the context of a governmental body or local government, an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

"Batch" means environmental samples that are prepared together or analyzed together or both with the same process and personnel, using the same lot or lots of reagents. "Analytical batch" means a batch composed of prepared environmental samples (extracts, digestates or concentrates) that are analyzed together as a group. An analytical batch can include prepared samples originating from various environmental matrices and can exceed 20 samples. "Preparation batch" means a batch composed of one to 20 environmental samples of the same matrix that meets the criteria in this definition for "batch" and with a maximum time between the start of processing of the first and last sample in the batch to be 24 hours.

"Benthic macroinvertebrates" means bottom dwelling animals without backbones that live at least part of their life cycles within or upon available substrates within a body of water.

"Blank" means a sample that has not been exposed to the analyzed sample stream in order to monitor contamination during sampling, transport, storage or analysis. The blank is subjected to the usual analytical and measurement process to establish a zero baseline or background value and is sometimes used to adjust or correct routine analytical results. Blanks include the following types:

1. Field blank. A blank prepared in the field by filling a clean container with pure deionized water and appropriate preservative, if any, for the specific sampling activity being undertaken.
2. Method blank. A sample of a matrix similar to the batch of associated samples (when available) that is free from the analytes of interest and is processed simultaneously with and under the same conditions as samples through all steps of the analytical procedures, and in which no target analytes or interferences are present at concentrations that impact the analytical results for sample analyses.

"Calibration" means to determine, by measurement or comparison with a standard, the correct value of each scale reading on a meter, instrument or other device. The levels of the applied calibration standard should bracket the range of planned or expected sample measurements.

"Calibration curve" means the graphical relationship between the known values, such as concentrations, of a series of calibration standards and their instrument response.

"Calibration standard" means a substance or reference material used to calibrate an instrument.

"Certified reference material" means a reference material one or more of whose property values are certified by a technically valid procedure, accompanied by or traceable to a certificate or other documentation that is issued by a certifying body.

"Client" or "customer" means the Department of Environmental Quality (DEQ) when used in the context of quality assurance and specific quality control provisions.

"Commercial environmental laboratory" means an environmental laboratory where environmental analysis is performed for another person.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

~~"DGS DCLS"~~ "DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Demonstration of capability" means the procedure to establish the ability of the analyst to generate data of acceptable accuracy and precision.

"Detection limit" means the lowest concentration or amount of the target analyte that can be determined to be different from zero by a single measurement at a stated degree of confidence.

"Environmental analysis" or "environmental analyses" means any test, analysis, measurement, or monitoring used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§ 10.1-1300 et seq., § 10.1-1400 et seq., and § 62.1-44.2 et seq., respectively, of the Code of Virginia). For the purposes of these regulations, any test, analysis, measurement, or monitoring required pursuant to the regulations promulgated under these three laws, or by any permit or order issued under the authority of any of these laws or regulations is "used for the purposes" of these laws. The term shall not include the following:

1. Sampling of water, solid and chemical materials, biological tissue, or air and emissions.
2. Field testing and measurement of water, solid and chemical materials, biological tissue, or air and emissions, except when performed in an environmental laboratory rather than at the site where the sample was taken.

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3. Taxonomic identification of samples for which there is no national accreditation standard such as algae, benthic macroinvertebrates, macrophytes, vertebrates and zooplankton.

4. Protocols used pursuant to § 10.1-104.2 of the Code of Virginia to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purposes of nutrient management.

5. Geochemical and permeability testing for solid waste compliance.

6. Materials specification for air quality compliance when product certifications specify the data required by an air permit such as fuel type, Btu content, sulfur content, or VOC content.

"Environmental laboratory" or "laboratory" means a facility or a defined area within a facility where environmental analysis is performed. A structure built solely to shelter field personnel and equipment from inclement weather shall not be considered an environmental laboratory.

"Establishment date" means the date set for the accreditation program under 1VAC30-46 and the certification program to be established under this chapter.

"Establishment of certification program" or "established program" means that ~~DGS-DCLS~~ DCLS has completed the initial accreditation of environmental laboratories covered by 1VAC30-46 and the initial certification of environmental laboratories covered by 1VAC30-45.

"Facility" means something that is built or installed to serve a particular function.

"Field of certification" or "FoC" means ~~an approach to certifying laboratories by those~~ matrix, technology/method, and analyte/analyte group analyte combinations for which DCLS offers certification.

"Field of proficiency testing" or "FoPT" means analytes for which a laboratory is required to successfully analyze a PT sample in order to obtain or maintain certification, collectively defined as matrix, technology/method, and analyte.

"Field testing and measurement" means any of the following:

1. Any test for parameters under 40 CFR Part 136 for which the holding time indicated for the sample requires immediate analysis; or
2. Any test defined as a field test in federal regulation.

The following is a limited list of currently recognized field tests or measures that is not intended to be inclusive: continuous emissions monitoring; ~~on-line~~ online monitoring; flow monitoring; tests for pH, residual chlorine, temperature and dissolved oxygen; and field analysis for soil gas.

"Finding" means an assessment conclusion ~~that identifies a condition having a significant effect on an item or activity.~~ An assessment finding is normally a deficiency and is

~~normally accompanied by specific examples of the observed condition.~~ referenced to a laboratory certification standard and supported by objective evidence that identifies a deviation from a laboratory certification standard requirement.

"Governmental body" means any department, agency, bureau, authority, or district of the United States government, of the government of the Commonwealth of Virginia, or of any local government within the Commonwealth of Virginia.

"Holding time ~~(or maximum allowable holding time)~~" means the maximum time that a sample ~~may be held prior to analysis and still be considered valid or not compromised~~ can elapse between two specified activities.

~~"Initial certification period" means the period during which DGS-DCLS is accepting and processing applications for the first time under this chapter as specified in 1VAC30-45-60.~~

"International System of Units (SI)" means the coherent system of units adopted and recommended by the General Conference on Weights and Measures.

"Laboratory control sample" or "LCS" means a sample matrix, free from the analytes of interest, spiked with verified known amounts of analytes or a material containing known and verified amounts of analytes. It is generally used to establish intra-laboratory or analyst specific precision and bias or to assess the performance of all or a portion of the measurement system. "Laboratory control sample" or "LCS" may also be named laboratory fortified blank, spiked blank, or QC check sample.

"Laboratory manager" means the person who has overall responsibility for the technical operation of the environmental laboratory and who exercises actual day-to-day supervision of laboratory operation for the appropriate fields of testing and reporting of results. The title of this person may include but is not limited to laboratory director, technical director, laboratory supervisor or laboratory manager.

"Legal entity" means an entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue, and make decisions through agents as in the case of corporations.

"Limit of detection" or "LOD" means an estimate of the minimum amount of a substance that an analytical process can reliably detect. An LOD is analyte and matrix specific and may be laboratory dependent.

"Limit of quantitation" or "LOQ" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence.

"Local government" means a municipality (city or town), county, sanitation district, or authority.

"Macrophytes" means any aquatic or terrestrial plant species that can be identified and observed with the eye, unaided by magnification.

"Matrix" means the component or substrate that may contain the analyte of interest. A matrix can be a field of certification matrix or a quality system matrix.

1. Field of certification matrix. These matrix definitions shall be used when certifying a laboratory.

a. ~~Non-potable~~ Nonpotable water. Any aqueous sample that has not been designated a potable or potential potable water source. Includes surface water, groundwater, effluents, water treatment chemicals, and TCLP or other extracts.

b. Solid and chemical materials. Includes soils, sediments, sludges, products and byproducts of an industrial process that results in a matrix not previously defined.

c. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.

d. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

2. Quality system matrix. For purposes of batch and quality control requirement determinations, the following matrix types shall be used:

a. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

b. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.

c. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source.

d. Nonaqueous liquid. Any organic liquid with less than 15% settleable solids.

e. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.

f. Solids. Includes soils, sediments, sludges and other matrices with more than 15% settleable solids.

g. Chemical waste. A product or ~~by-product~~ byproduct of an industrial process that results in a matrix not previously defined.

h. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Matrix spike (spiked sample or fortified sample)" means a sample prepared by adding a known mass of target analyte to a specified amount of matrix sample for which an independent estimate of target analyte concentration is

available. Matrix spikes are used, for example, to determine the effect of the matrix on a method's recovery efficiency.

"Matrix spike duplicate (spiked sample or fortified sample duplicate)" means a second replicate matrix spike prepared in the laboratory and analyzed to obtain a measure of the precision of the recovery for each analyte.

"National Environmental Laboratory Accreditation Conference (NELAC)" means a voluntary organization of state and federal environmental officials and interest groups with the primary purpose to establish mutually acceptable standards for accrediting environmental laboratories. ~~A subset of NELAP.~~

~~"National Environmental Laboratory Accreditation Program (NELAP)" means the overall National Environmental Laboratory Accreditation Program of which NELAC is a part.~~

"National Institute of Standards and Technology" or "NIST" means an agency of the U.S. Department of Commerce's Technology Administration that is working with EPA, states, NELAC, and other public and commercial entities to establish a system under which private sector companies and interested states can be certified by NIST to provide NIST-traceable proficiency testing (PT) samples.

"Negative control" means measures taken to ensure that a test, its components, or the environment do not cause undesired effects, or produce incorrect test results.

"Noncommercial environmental laboratory" means either of the following:

1. An environmental laboratory where environmental analysis is performed solely for the owner of the laboratory.

2. An environmental laboratory where the only performance of environmental analysis for another person is one of the following:

a. Environmental analysis performed by an environmental laboratory owned by a local government for an owner of a small wastewater treatment system treating domestic sewage at a flow rate of less than or equal to 1,000 gallons per day.

b. Environmental analysis performed by an environmental laboratory operated by a corporation as part of a general contract issued by a local government to operate and maintain a wastewater treatment system or a waterworks.

c. Environmental analysis performed by an environmental laboratory owned by a corporation as part of the prequalification process or to confirm the identity or characteristics of material supplied by a potential or existing customer or generator as required by a hazardous waste management permit under 9VAC20-60.

d. Environmental analysis performed by an environmental laboratory owned by a Publicly Owned Treatment Works (POTW) for an industrial source of

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wastewater under a permit issued by the POTW to the industrial source as part of the requirements of a pretreatment program under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31.

e. Environmental analysis performed by an environmental laboratory owned by a county authority for any municipality within the county's geographic jurisdiction when the environmental analysis pertains solely to the purpose for which the authority was created.

f. Environmental analysis performed by an environmental laboratory owned by an authority or a sanitation district for any participating local government of the authority or sanitation district when the environmental analysis pertains solely to the purpose for which the authority or sanitation district was created.

"Owner" means any person who owns, operates, leases or controls an environmental laboratory.

"Person" means an individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

"Physical," for the purposes of fee test categories, means the tests to determine the physical properties of a sample. Tests for solids, turbidity and color are examples of physical tests.

"Positive control" means measures taken to ensure that a test or its components are working properly and producing correct or expected results from positive test subjects.

"Precision" means the degree to which a set of observations or measurements of the same property, obtained under similar conditions, conform to themselves. Precision is an indicator of data quality. Precision is expressed usually as standard deviation, variance or range, in either absolute or relative terms.

~~"Primary accrediting authority accreditation body" means the agency or department designated at the territory, state or federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation to a specific laboratory for a specific field of accreditation~~ body responsible for assessing a laboratory's total quality system, on-site assessment, and PT performance tracking for fields of accreditation.

"Proficiency test or testing (PT)" means evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.

~~"Proficiency test (PT) field of testing" means the approach to offer proficiency testing by matrix, technology/method, and analyte/analyte group.~~

"Proficiency test (PT) sample" means a sample, the composition of which is unknown to ~~both the analyst and the laboratory~~ and is provided to test whether the analyst or laboratory or both laboratory can produce analytical results within specified acceptance criteria.

"Proficiency testing (PT) program" means the aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

"Program," in the context of a regulatory program, means the relevant U.S. Environmental Protection Agency program such as the water program under the Clean Water Act (CWA), the air program under the Clean Air Act (CAA), the waste program under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) or the waste program under the Resource Conservation and Recovery Act (RCRA).

"Publicly Owned Treatment Works (POTW)" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Quality assurance" or "QA" means an integrated system of management activities involving planning, quality control, quality implementation, assessment, reporting and quality improvement to ensure that a product process, item, or service meets defined standards of quality with a stated level of confidence is of the type and quality needed and expected by the client.

"Quality assurance officer" means the person who has responsibility for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the laboratory manager.

"Quality control" or "QC" means the overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of users that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established by the customer; operational techniques and activities that are used to fulfill requirements for quality; and also the system of activities and checks used to ensure that measurement systems are maintained within prescribed limits, providing protection against "out of control" conditions and ensuring that the results are of acceptable quality.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of an agency, organization, or laboratory, to ensure the quality of its product and the utility of its product to its users.

"Quality system" means a structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items), and services. The quality system provides the framework for planning, implementing, and assessing work performed by the organization and for carrying out required quality assurance and quality control activities.

"Range" means the difference between the minimum and maximum of a set of values.

"Reference material" means a material or substance one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement test method, or for assigning values to materials.

"Reference standard" means a standard, generally of the highest metrological quality available at a given location, from which measurements made at that location are derived.

"Responsible official" means one of the following, as appropriate:

1. If the laboratory is owned or operated by a private corporation, "responsible official" means (i) a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated in accordance with corporate procedures.

2. If the laboratory is owned or operated by a partnership, association, or a sole proprietor, "responsible official" means a general partner, officer of the association, or the proprietor, respectively.

3. If the laboratory is owned or operated by a governmental body, "responsible official" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the environmental laboratory.

4. Any person designated as the responsible official by an individual described in subdivision 1, 2 or 3 of this definition, provided the designation is in writing, the designation specifies an individual or position with responsibility for the overall operation of the environmental laboratory, and the designation is submitted to ~~DGS-DCLS~~ DCLS.

"Sampling" means the act of collection for the purpose of analysis.

"Sanitation district" means a sanitation district created under the provisions of Chapters 3 (§ 21-141 et seq.) through 5 (§ 21-291 et seq.) of Title 21 of the Code of Virginia.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Simple test procedures" or "STP" means any of the following:

1. Field testing and measurement performed in an environmental laboratory.
2. The test procedures to determine:
  - a. Biochemical oxygen demand (BOD) or carbonaceous BOD (CBOD);
  - b. Fecal coliform;
  - c. Total coliform;
  - d. Fecal streptococci;
  - e. E. coli;
  - f. Enterococci;
  - g. Settleable solids (SS);
  - h. Total dissolved solids (TDS);
  - i. Total solids (TS);
  - j. Total suspended solids (TSS);
  - k. Total volatile solids (TVS); and
  - l. Total volatile suspended solids (TVSS).

"Standard operating procedure (~~SOP~~)" or "SOP" means a written document that details the method ~~of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted for an operation, analysis, or action with thoroughly prescribed techniques and steps. An SOP is officially approved~~ as the method for performing certain routine or repetitive tasks.

"Standardized reference material (~~SRM~~)" or "SRM" means a certified reference material produced by the U.S. National Institute of Standards and Technology or other equivalent organization and characterized for absolute content, independent of analytical method.

"System laboratory" means a noncommercial laboratory that analyzes samples from multiple facilities having the same owner.

"~~TCLP~~" or "~~toxicity characteristic leachate procedure~~" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW 846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Test" means a technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical

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phenomenon, process or service according to a specified procedure.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Air Pollution Control Law" means any method of analysis required by the Virginia Air Pollution Control Law (§ 10.1-1300 et seq.); by the regulations promulgated under this law (9VAC5) including any method of analysis listed either in the definition of "reference method" in 9VAC5-10-20, or listed or adopted by reference in 9VAC5; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Waste Management Act" means any method of analysis required by the Virginia Waste Management Act (§ 10.1-1400 et seq.); by the regulations promulgated under this law (9VAC20), including any method of analysis listed or adopted by reference in 9VAC20; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Water Control Law" means any method of analysis required by the Virginia Water Control Law (§ 62.1-44.2 et seq.); by the regulations promulgated under this law (9VAC25), including any method of analysis listed or adopted by reference in 9VAC25; or by any permit or order issued under and in accordance with this law and these regulations.

"Test method" means an adoption of a scientific technique for performing a specific measurement as documented in a laboratory standard operating procedure or as published by a recognized authority.

"The NELAC Institute" or "TNI" means the organization whose standards environmental laboratories must meet to become accredited under 1VAC30-46, the regulation governing commercial environmental laboratories in Virginia.

"Toxicity characteristic leachate procedure" or "TCLP" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Traceability" means the property of a result of a measurement whereby it can be related to appropriate standards, generally international or national standards, through an unbroken chain of comparisons.

"U.S. Environmental Protection Agency" or "EPA" means the federal government agency with responsibility for protecting, safeguarding and improving the natural environment (i.e., air, water and land) upon which human life depends.

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

"Virginia Environmental Laboratory Accreditation Program" or "VELAP" means the program DCLS operates to certify environmental laboratories under this chapter.

"Wastewater" means liquid and water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping.

"Zooplankton" means microscopic animals that float freely with voluntary movement in a body of water.

## **1VAC30-45-50. Scope of certification.**

A. Noncommercial environmental laboratories shall be certified based on the general laboratory standards set out in Part II (1VAC30-45-200 et seq.) of this chapter and on the specific test methods or analysis, monitoring or measurement required by regulatory permit or other requirement under the Virginia Air Pollution Control Law, Virginia Waste Management Act, or Virginia Water Control Law, the regulations promulgated under these laws, and by permits and orders issued under and in accordance with these laws or regulations.

B. ~~DGS~~ ~~DCLS~~ DCLS shall review alternative test methods and procedures for certification when these are proposed by the applicant laboratory. The provisions of 1VAC30-45-70 E and 1VAC30-45-90 B govern alternative test methods and procedures.

C. Certification shall be granted for one or more fields of certification, including the matrix, the technology and methods ~~used by the noncommercial environmental laboratory~~, and the individual analytes ~~or analyte groups~~ determined by the particular method used by the laboratory.

## **1VAC30-45-60. General: certification requirements.**

A. Components of certification. The components of certification include review of personnel qualifications, on-site assessment, proficiency testing, and quality systems. The criteria for these components, set out in Part II (1VAC30-45-200 et seq.) of this chapter, shall be fulfilled for certification.

B. Individual laboratory sites and mobile laboratories.

1. Individual laboratory sites are subject to the same application process, assessments, and other requirements as environmental laboratories. Any remote laboratory sites are considered separate sites and subject to separate on-site assessments.

2. Laboratories located at the same physical location shall be considered an individual laboratory site if these laboratories are owned by the same person, and have the same laboratory manager and quality system.

~~3. Laboratories located at separate, noncontiguous physical locations may request to be considered as an individual laboratory site if these laboratories are owned by the same person and have the same laboratory manager and quality system.~~

4. 3. A mobile laboratory, which is configured with equipment to perform analyses, whether associated with a fixed-based laboratory or not, is considered an environmental laboratory and shall require separate certification. This certification shall remain with the mobile laboratory and be site independent. Moving the configured mobile laboratory to a different site will not require a new or separate certification. Before performing analyses at each new site, the laboratory shall ensure that instruments and equipment have been checked for performance and have been calibrated.

**1VAC30-45-70. Process to apply and obtain certification.**

A. Duty to apply. All owners of noncommercial environmental laboratories shall apply for certification as specified by the provisions of this section. Applications for certification must be obtained from DCLS program staff by email at Lab Cert@dgs.virginia.gov.

**B. Timely initial applications.**

~~1. Owners of noncommercial environmental laboratories applying for certification under this chapter for the first time shall submit an application to DGS DCLS no later than September 29, 2009.~~

~~2. Owners of noncommercial environmental laboratories that come into existence after January 1, 2009, shall submit an initial application to DGS DCLS no later than 180 calendar days prior to beginning operation.~~

~~C. Timely renewal applications. The owner of a certified noncommercial environmental laboratory shall submit an application for renewal of certification at least 90 calendar days prior to expiration of certification.~~

B. Owners of noncommercial environmental laboratories applying for certification under this chapter for the first time shall submit an application to DCLS as specified under subsection F of this section.

**C. Renewal and reassessment.**

1. DCLS shall renew certification annually for the certified laboratory provided the laboratory does the following:

- a. Maintains compliance with this chapter.
- b. Attests to this compliance by signing the certificate of compliance provided under subdivision F 3 of this section.
- c. Reports acceptable proficiency test values as required by Article 3 (1VAC30-45-500 et seq.) of Part II of this chapter.
- d. Pays the fee required by 1VAC30-45-130.

2. DCLS shall reassess the certified environmental laboratory during an on-site assessment as required by

Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter.

D. Responsibilities of the owner and operator when the laboratory is owned by one person and operated by another person.

1. When an environmental laboratory is owned by one person but is operated by another person, the operator may submit the application for the owner.

2. If the operator fails to submit the application, the owner is not relieved of his responsibility to apply for certification.

3. While ~~DGS DCLS~~ DCLS may notify noncommercial environmental laboratories of the date their applications are due, failure of ~~DGS DCLS~~ DCLS to notify does not relieve the owner of his obligation to apply under this chapter.

E. Submission of applications for modifications to certification. An owner of a certified noncommercial environmental laboratory shall follow the process set out in 1VAC30-45-90 B ~~to add a new matrix, technology/method, an analyte or analyte group, modify a test method or institute use of a method or technology not in the laboratory's standard operating procedures, including alternative test methods or procedures to modify the laboratory's scope of certification.~~

F. Contents of application.

1. Applications shall include but not be limited to the following information and documents:

- a. Legal name of laboratory;
- b. Name of owner of laboratory;
- c. Name of operator of laboratory, if different than owner;
- d. Street address and description of location of laboratory;
- e. Mailing address of laboratory, if different from street address;
- f. Address of owner, if different from laboratory address;
- g. Name, address, telephone number, facsimile number and ~~e-mail~~ email, as applicable, of responsible official;
- h. Name, address, telephone number, facsimile number and ~~e-mail~~ email, as applicable, of laboratory manager;
- i. Name, address, telephone number, facsimile number and ~~e-mail~~ email, as applicable, of designated quality assurance officer;
- j. Name ~~title~~, and telephone number of laboratory contact person;
- k. Laboratory type (e.g., public water system, public wastewater system or combination of the two, or industrial (with type of industry indicated));
- l. Laboratory hours of operation;

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m. Fields of certification (matrix, technology/method, and ~~analyte/analyte group~~ analyte) for which certification is sought;

~~n. Methods employed, including analytes;~~

~~o. n. The results of the three most recent proficiency test studies one successful unique PT study for each field of proficiency testing as required by Article 3 (1VAC30-45-500 et seq.) of Part II of this chapter;~~

~~p. o. Quality assurance manual; and~~

~~q. Lab identification number (for renewal only); and~~

~~r. p. For mobile laboratories, a unique vehicle identification number, such as a manufacturer's vehicle identification number (VIN#), serial number, or license number.~~

2. Fee. The application shall include payment of the fee as specified in 1VAC30-45-130.

3. Certification of compliance.

a. The application shall include a "Certification of Compliance" statement signed and dated by the responsible official, by the quality control officer and by the laboratory manager.

b. The certification of compliance shall state: "The applicant understands and acknowledges that the laboratory is required to be continually in compliance with the Virginia environmental laboratory certification program regulation (1VAC30, Chapter 45) and is subject to the provisions of 1VAC30-45-100 in the event of noncompliance. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the laboratory or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. Submitting false information or data shall result in denial of certification or decertification. I hereby further certify that I am authorized to sign this application."

G. Completeness determination.

1. ~~DGS-DCLS DCLS~~ shall determine whether an application is complete and notify the laboratory of the result of such determination. ~~During the initial certification period, DGS-DCLS DCLS shall provide this notice within 90 calendar days of its receipt of a laboratory's initial application. Following the initial certification period, DGS-DCLS shall provide this notice within 60 calendar days of DGS-DCLS's receipt of a laboratory's initial application and within 30 calendar days of DGS-DCLS' receipt of a laboratory's renewal application.~~

2. An application shall be determined complete if it contains all the information required pursuant to subsection F of this section and is sufficient to evaluate the laboratory prior to the on-site assessment. Designating an application complete does not preclude ~~DGS-DCLS~~ DCLS from requesting or accepting additional information.

3. If ~~DGS-DCLS~~ DCLS determines that an application is incomplete, ~~DGS-DCLS's~~ the DCLS notification of such determination shall explain why the application is incomplete and specify the additional information needed to make the application complete.

4. ~~Except during the initial certification period, if~~ If DCLS makes no determination is made within 60 within 90 calendar days of ~~DGS-DCLS's~~ its receipt of either (i) the application or (ii) additional information, in the case of an application determined to be incomplete, the application shall be determined to be complete. ~~During the initial certification period, the time period shall be 90 calendar days.~~

5. If the laboratory has not submitted the required additional information within 90 days of receiving a notice from ~~DGS-DCLS~~ DCLS requesting additional information, ~~DGS-DCLS DCLS~~ DCLS may ~~return the incomplete application and~~ inform the laboratory that the application cannot be processed. The laboratory may then submit a new application.

H. Grant of interim certification pending final determination on application.

1. ~~DGS-DCLS~~ DCLS shall grant a laboratory interim certification status under the following conditions:

a. The laboratory's application is determined to be complete;

b. The laboratory has satisfied all the requirements for certification, including all requests for additional information, with the exception of on-site assessment; and

c. ~~DGS-DCLS~~ DCLS is unable to schedule the on-site assessment within ~~90~~ 120 days of its determination that the application is complete ~~(for initial applications) or before the laboratory's certification expires (for renewal applications).~~

2. A laboratory with interim certification status shall have the same rights and status as a laboratory that has been granted certification by ~~DGS-DCLS~~ DCLS.

3. Interim certification expires when ~~DGS-DCLS~~ DCLS issues a final determination on certification.

I. On-site assessment. ~~4.~~ An on-site assessment shall be performed and the follow-up and reporting procedures for such assessments shall be completed in accordance with Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter prior to issuance of a final determination on certification.

~~2. Alternative on-site assessment option. If DGS-DCLS is unable to schedule an on-site assessment under the conditions of subsection H 1 c of this section, the owner of the applicant laboratory may use third-party on-site assessors instead of DGS-DCLS on-site assessors under the following conditions:~~

- ~~a. The third-party on-site assessors are on a DGS-DCLS-approved list of on-site assessors; and~~
- ~~b. The owner of the applicant laboratory agrees to pay the third-party on-site assessors.~~

J. Final determination on certification. ~~1.~~ Upon completion of the certification review process and corrective action, if any, ~~DGS-DCLS~~ DCLS shall grant certification in accordance with subsection K of this section or deny certification in accordance with subsection L of this section.

~~2. Except during the initial certification period, DGS-DCLS shall complete action on a laboratory's application within nine months from the time a completed application is received from the laboratory.~~

K. Grant of certification.

1. When a laboratory meets the requirements specified for receiving certification, ~~DGS-DCLS~~ DCLS shall issue a certificate to the laboratory. ~~The DCLS shall send the certificate shall be sent to the laboratory manager; and shall notify the responsible official shall be notified.~~

2. The director of ~~DGS-DCLS~~ DCLS or his designee shall sign the certificate. The certificate shall include the following information:

- a. Name of owner of laboratory;
- b. Name of operator of laboratory, if different from owner;
- c. Name of responsible official;
- d. Address and location of laboratory;
- e. Laboratory identification number;
- f. Fields of certification (matrix, technology/method, ~~analyte/analyte group~~ and analyte) for which certification is granted;
- g. Any addenda or attachments; and
- h. Issuance date and expiration date.

3. The laboratory shall post the most recent certificate of certification and any addenda to the certificate issued by ~~DGS-DCLS~~ DCLS in a prominent place in the laboratory facility.

4. Certification shall expire ~~two years~~ one year after the date on which certification is granted.

L. Denial of certification.

1. ~~DGS-DCLS~~ DCLS shall deny certification to an environmental laboratory in total if the laboratory is found to be falsifying any data or providing false information to support certification.

2. Denial of certification in total or in part.

a. ~~DGS-DCLS~~ DCLS may deny certification to an environmental laboratory in total or in part if the laboratory fails to do any of the following:

- (1) Pay the required fees.
- (2) Employ laboratory staff to meet the personnel qualifications as required by Part II (1VAC30-45-200 et seq.) of this chapter.
- (3) Successfully analyze and report proficiency testing samples as required by Part II of this chapter.
- (4) Submit a corrective action ~~report~~ plan in accordance with Part II of this chapter in response to a deficiency report from the on-site assessment team within the required 30 calendar days.
- (5) Implement the corrective actions detailed in the corrective action ~~report~~ plan within the time frame specified by ~~DGS-DCLS~~ DCLS.
- (6) Pass required on-site assessment as specified in Part II of this chapter.
- (7) Implement a quality system as defined in Part II of this chapter.

b. ~~DGS-DCLS~~ DCLS may deny certification to an environmental laboratory in total or in part if the laboratory's application is not determined to be complete within 90 calendar days following notification of incompleteness because the laboratory is delinquent in submitting information required by ~~DGS-DCLS~~ DCLS in accordance with this chapter.

c. ~~DGS-DCLS~~ DCLS may deny certification to an environmental laboratory in total or in part if the ~~DGS-DCLS~~ DCLS on-site assessment team is unable to carry out the on-site assessment pursuant to Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter because a representative of the environmental laboratory denied the team entry during the laboratory's normal business hours that it specified in its application.

3. ~~DGS-DCLS~~ DCLS shall follow the process specified in 1VAC30-45-110 when denying certification to an environmental laboratory.

M. Reapplication following denial of certification. ~~1. Upon denial of certification, the laboratory shall wait six months before reapplying for certification.~~ 2. DGS-DCLS DCLS shall not waive application fees for a laboratory reapplying for certification.

**1VAC30-45-80. Maintaining certification.**

A. Certification remains in effect until withdrawn by ~~DGS-DCLS~~ DCLS, withdrawn voluntarily at the written request of the certified laboratory, or until expiration of the certification period. To maintain certification, the certified laboratory shall comply with the elements listed in this section and in 1VAC30-45-90.

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B. Quality systems. Laboratories seeking to maintain certification under this chapter shall assure consistency and promote the use of quality assurance and quality control procedures. Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter specifies the quality assurance and quality control requirements that shall be met to maintain certification.

C. Proficiency tests. Laboratories seeking to maintain certification under this chapter shall perform proficiency tests as required under Article 3 (1VAC30-45-500 et seq.) of Part II of this chapter.

D. Recordkeeping and retention. All laboratory records associated with certification parameters shall be kept as provided by the requirements for records under Part II (1VAC30-45-200 et seq.) of this chapter. These records shall be maintained for a minimum of three years unless the records are required to be maintained for a longer period by another section of this regulation or another regulation. All such records shall be available to ~~DGS DCLS~~ DCLS upon request.

## **1VAC30-45-90. Notifications and changes to certification elements and status.**

A. Changes to key certification criteria. The certified laboratory shall notify ~~DGS DCLS~~ DCLS in writing of any changes in key certification criteria within 30 calendar days of the change. Key certification criteria are laboratory ownership, location, key personnel, and major instrumentation.

### B. Changes to scope of certification.

1. ~~DGS DCLS~~ DCLS may approve a laboratory's application to add a new matrix, technology, analyte, or test method to a laboratory's scope of certification or to otherwise modify the laboratory's scope of certification by performing a data review.

2. To apply, the owner of the certified laboratory shall submit the following to ~~DGS DCLS~~ DCLS:

a. A ~~letter~~ written request signed by the owner that briefly summarizes the addition to be made to the laboratory's scope of certification.

b. Pertinent information demonstrating the laboratory's capability to perform the additional matrix, technology/method, or ~~analyte/analyte group~~ analyte, such as proficiency testing performance and quality control performance.

c. A written standard operating procedure covering the new matrix, technology/method, or ~~analyte/analyte group~~ analyte.

3. ~~DGS DCLS~~ DCLS may approve a laboratory's application for modification to its scope of certification by performing a review of the application materials submitted, without an on-site assessment. The addition of a technology or test method requiring the use of specific equipment may require an on-site assessment. Other reviews of performance and documentation may be carried

out by ~~DGS DCLS~~ DCLS depending on the modification for which the laboratory applies.

4. Within 90 calendar days of the receipt of the application from the certified environmental laboratory, ~~DGS DCLS~~ DCLS shall review and determine whether the proposed modification may be approved.

5. If the proposed modification to the laboratory's scope of certification is approved, ~~DGS DCLS~~ DCLS shall amend the laboratory's certificate of certification.

6. DCLS shall not send the amended certificate of certification to the laboratory until DCLS receives the payment of the fee required under 1VAC30-45-130 F 1.

### C. Change of ownership or location of laboratory.

1. The certified laboratory shall submit a written notification to ~~DGS DCLS~~ DCLS of the change of ownership or location of the laboratory within 30 calendar days of the change. This requirement ~~applies only to fixed-based and not pertaining to change of location~~ does not apply to mobile laboratories.

2. Certification may be transferred when the legal status or ownership of a certified laboratory changes as long as the transfer does not affect the laboratory's personnel, equipment, or organization.

3. If the laboratory's personnel, equipment, or organization are affected by the change of legal status or ownership, ~~DGS DCLS~~ DCLS may require recertification or reapplication in any or all of the categories for which the laboratory is certified.

4. ~~DGS DCLS~~ DCLS may require an on-site assessment depending on the nature of the change of legal status or ownership. ~~DGS DCLS~~ DCLS shall determine the elements of any on-site assessment required.

~~5. When there is a change in ownership, the new owner of the certified laboratory shall assure historical traceability of the laboratory identification numbers.~~

~~6. 5.~~ When there is a change in ownership, the new owner of the certified laboratory shall keep all records and analyses performed by the previous owner ~~under his scope of pertaining to~~ certification for a period of three years, or longer if required by other regulations. These records and analyses are subject to inspection by ~~DGS DCLS~~ DCLS during this three-year period. This provision applies regardless of change of ownership, accountability or liability.

D. Voluntary withdrawal. Any environmental laboratory owner who wishes to withdraw the laboratory from its certification status or from being certified, in total or in part, shall submit written notification to ~~DGS DCLS no later than 30 calendar days before the end of the laboratory's certification term~~ DCLS. ~~Within 30 calendar days,~~ ~~DGS DCLS~~ DCLS shall provide the laboratory with a written notice of withdrawal.

**1VAC30-45-95. Suspension of certification.**

A. DCLS may suspend certification from an environmental laboratory in total or in part to allow the laboratory time to correct the reason for which DCLS may withdraw certification. Suspension is limited to the reasons listed in subsection B of this section.

B. DCLS may suspend certification from an environmental laboratory in part or in total when the laboratory has failed to do any of the following:

1. Participate in the proficiency testing program as required by Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter.
2. Satisfactorily complete proficiency testing studies as required by Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter.
3. Maintain a quality system as defined in Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter.
4. Employ staff that meets the personnel qualifications of Article 1 (1VAC30-45-200 et seq.) of Part II of this chapter.
5. Notify DCLS of any changes in key certification criteria as set forth in 1VAC30-45-90.

C. Process to suspend certification.

1. When DCLS becomes aware of a cause to suspend a laboratory, the agency shall send notification to the responsible official and the laboratory manager stating it appears to DCLS that the laboratory has failed to meet the 1VAC30-45 standards for one or more of the reasons listed in subsection B of this section. DCLS shall send the notification by certified mail.

2. The DCLS notification shall do the following:

- a. Require the laboratory to provide DCLS with documentation of the corrective action already taken with regard to its failure to meet a standard under subsection B of this section.
- b. State the corrective action the laboratory must take and the time allowed for this corrective action to be completed in order to retain certification.

3. The environmental laboratory may proceed to correct the deficiencies for which DCLS may suspend the laboratory's certification.

4. Alternatively the laboratory may state in writing that DCLS is incorrect in its observations regarding potential suspension and give specific reasons why the laboratory believes DCLS should not suspend certification. The laboratory has the right to due process as set forth in 1VAC30-45-110, the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), and Part 2A of the Rules of the Supreme Court of Virginia.

5. With the exception of subdivision B 4 of this section, DCLS may allow the laboratory up to 60 days to correct

the problem for which it may have its certification suspended.

6. DCLS shall set a date for suspension that follows the period provided under subdivision 5 of this subsection to restore certification.

7. If the laboratory does not correct its deficiencies within the time period allowed or pursue options under subdivision 4 of this subsection, DCLS may suspend a laboratory in part or in total.

8. DCLS shall notify the laboratory by letter if the laboratory's certification is suspended in part or in total. DCLS shall send the notification by certified mail. DCLS shall also notify the pertinent Virginia state agency of the laboratory's suspension status.

9. The laboratory may provide information demonstrating why suspension is not warranted in accordance with subdivision 4 of this subsection.

D. Responsibilities of the environmental laboratory and DCLS when certification has been suspended.

1. The term of suspension shall be limited to six months or the period of certification whichever is longer.

2. The environmental laboratory shall not continue to analyze samples or report analysis for the fields of certification for which DCLS has suspended certification.

3. The environmental laboratory shall retain certification for the fields of certification, methods, and analytes where it continues to meet the requirements of this chapter.

4. The laboratory's suspended certification status shall change to certified when the laboratory demonstrates to DCLS that the laboratory has corrected the deficiency or deficiencies for which its certification was suspended.

5. An environmental laboratory with suspended certification shall not have to reapply for certification if the cause or causes for suspension are corrected within the term of suspension.

6. If the laboratory fails to correct the causes of suspension within the term of suspension, DCLS shall decertify the laboratory in total or in part.

**1VAC30-45-100. Decertification.**

A. ~~DGS-DCLS~~ DCLS shall decertify an environmental laboratory in total if the laboratory is found to be falsifying any data or providing false information to support certification.

B. ~~DGS-DCLS~~ DCLS may decertify an environmental laboratory in part or in total when the laboratory has failed to do any of the following:

1. Participate in the proficiency testing program as required by Article 3 (1VAC30-45-500 et seq.) of Part II of this chapter.

2. ~~Complete~~ Satisfactorily complete proficiency testing studies and maintain a history of at least two successful

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~~proficiency testing studies for each affected certified field of testing out of the three most recent proficiency testing studies as defined in as required by Article 3 (1VAC30-45-500 et seq.) of Part II of this chapter.~~

3. Maintain a quality system as defined in Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter.

4. Employ staff that ~~meet~~ meets the personnel qualifications in Article 1 (1VAC30-45-200 et seq.) of Part II of this chapter.

5. Submit an acceptable corrective action ~~report~~ plan after two opportunities as specified in 1VAC30-45-390.

6. Implement corrective action specified in the laboratory's corrective action ~~report~~ plan as set out under 1VAC30-45-390.

7. Notify ~~DGS-DCLS~~ DCLS of any changes in key certification criteria as set forth in 1VAC30-45-90.

8. Use accurate references to the laboratory's certification status in the laboratory's documentation.

9. Allow a DCLS assessment team entry during normal business hours to conduct an on-site assessment required by Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter.

10. Pay the required fees specified in 1VAC30-45-130.

C. ~~DGS-DCLS~~ DCLS shall follow the process specified in 1VAC30-45-110 when decertifying an environmental laboratory.

D. Responsibilities of the environmental laboratory and ~~DGS-DCLS~~ DCLS when certification has been withdrawn.

1. Laboratories that lose their certification in full shall return their certificate to ~~DGS-DCLS~~ DCLS.

2. If a laboratory loses certification in part, ~~an addendum to the certificate shall be issued by DGS-DCLS~~ DCLS shall issue a revised certificate to the laboratory.

3. When the environmental laboratory has lost certification in full or in part, the laboratory shall not continue to analyze samples or report analyses for the fields of certification that DCLS has decertified.

E. After correcting the reason or cause for decertification under ~~1VAC30-45-100~~ subsection A or B of this section, the laboratory owner may reapply for certification under 1VAC30-45-70.

## **1VAC30-45-110. Procedures to deny certification, ~~to~~ or decertify a laboratory, and; appeal procedures.**

### A. Notification.

1. If ~~DGS-DCLS~~ DCLS believes it has grounds DCLS becomes aware of a cause to deny certification or to decertify an environmental laboratory, DGS-DCLS DCLS shall notify the environmental laboratory in writing of its intent to hold an informal fact finding under § 2.2-4019 of the Code of Virginia in order to make a decision on the denial of certification or decertification this information and require

a response from the responsible official. DGS-DCLS DCLS shall send this notification by certified mail to the responsible official and provide a copy to the manager of the environmental laboratory. The notice of informal fact finding shall provide a detailed explanation of the basis for the notice.

2. For a potential denial of certification, the notice shall state that the laboratory has failed to meet the 1VAC30-45 standards and shall specify one or more of the reasons for denial of certification under 1VAC30-45-70 L, providing a detailed explanation of the basis for the denial of certification.

3. For a potential decertification, the notice shall state that the laboratory has failed to meet the 1VAC30-45 standards and shall specify one or more of the reasons for decertification under 1VAC30-45-100 A or B, providing a detailed explanation of the basis for decertification.

4. In its notice, DCLS shall request the laboratory to notify DCLS in writing if the laboratory believes the agency is incorrect in its determination. Before rendering a decision on decertification or denial of certification, DCLS shall provide the opportunity for the laboratory to meet with DCLS in an informal fact-finding proceeding pursuant to § 2.2-4019 of the Code of Virginia.

5. If the laboratory believes DCLS to be incorrect in its determination, the laboratory shall provide DCLS with a detailed written demonstration of why DCLS should not deny certification to or decertify the laboratory. The laboratory shall include this demonstration in the response required under subdivision 6 of this subsection.

6. The laboratory shall provide DCLS with a written response within 30 calendar days of the date of notification from DCLS. The laboratory shall indicate whether it disputes the DCLS determination provided in the agency notice and whether the laboratory requests an informal fact-finding proceeding. If the laboratory does not respond, DCLS shall render its case decision.

~~B. Following the informal fact finding held pursuant to § 2.2-4019 of the Code of Virginia, the director shall render a decision regarding certification, and shall send this notification by certified mail to the responsible official and provide a copy to the manager of the environmental laboratory. If the director's decision is adverse to the environmental laboratory, the responsible official may appeal this decision in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.~~

~~C. The provisions of this section do not preclude informal discussions between DGS-DCLS and any environmental laboratory that has been notified of a possible denial of certification or of decertification. These informal discussions to resolve the concerns that prompted the notice shall be held prior to the informal fact finding proceeding.~~

B. An environmental laboratory may appeal a final decision by DCLS to deny certification to or decertify a laboratory pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. C. The certification status of an environmental laboratory appealing decertification shall not change pending the final decision of the appeals filed under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Part 2A of the Rules of Supreme Court of Virginia.

**1VAC30-45-120. Exemptions.**

A. ~~DGS DCLS~~ DCLS may grant a partial or full exemption from the requirements of this chapter based on compliance and performance.

B. ~~DGS DCLS~~ DCLS may consider granting an exemption if a laboratory applies for an exemption and has met all certification requirements for a period of four consecutive years.

C. An environmental laboratory may apply for an exemption by submitting a request. The request shall include the following information:

1. The scope of the requested exemption;
2. Whether the exemption should be partial or total;
3. If partial, what form the exemption will take; and
4. Why the exemption is appropriate.

D. Upon receiving an application for an exemption, ~~DGS DCLS~~ DCLS shall provide notice of the request for an exemption in the Virginia Register of Regulations.

E. The notice shall provide a 30-day comment period on the request and shall specify the nature of the request.

F. ~~DGS DCLS~~ DCLS shall grant or deny the exemption request and provide a written response to the requesting laboratory within 90 calendar days of receipt of the request.

G. Exemptions granted by ~~DGS DCLS~~ DCLS shall be for a period of no more than 24 months.

**1VAC30-45-130. Fees.**

A. General.

1. ~~Fees shall be submitted with all applications, including reapplications, for certification and all renewal applications for certification. Applications shall not be designated as complete until the fee is received by DGS DCLS. Environmental laboratories shall pay a fee with all applications, including reapplications, for certification. DCLS shall not designate an application as complete until it receives payment of the fee.~~
2. Each certified environmental laboratory shall pay an annual fee to maintain its certification. DCLS shall send an invoice to the certified environmental laboratory.
3. Fees shall be nonrefundable.

**B. Fee computation.**

1. ~~Fees shall be computed based on the test methods for which a laboratory seeks certification and on the laboratory type. For the purpose of fee calculation, the designations for the laboratory type are (i) a general environmental laboratory or (ii) an environmental laboratory performing only simple test procedures.~~
2. ~~The fee shall be the total of the base fee and the test category fees for the specific laboratory type to be certified.~~
3. ~~The test category fees cover categories for the test methods to be certified as specified in the laboratory's application.~~
4. ~~If the total of the base fee and the test category fees is more than the maximum fee designated for the specific laboratory type to be certified, the laboratory shall pay the maximum fee.~~

C. ~~Laboratories~~ B. Environmental laboratories performing only simple test procedures shall pay an annual fee of \$600.

1. ~~The base fee shall be \$100.~~
2. ~~The maximum fee shall be \$600.~~

**D. General environmental laboratories.**

1. ~~The base fee shall be \$1,700.~~
2. ~~The maximum fee shall be \$5,200.~~

**E. Test category fees.**

1. ~~Fees shall be charged for each category of tests to be certified.~~
2. ~~The fee for each category includes one or more analytical methods unless otherwise specified. With the exception of the test categories labeled oxygen demand and physical, test categories related to test methods for water are defined by 40 CFR 136.3.~~
3. ~~Fees:~~

TEST CATEGORY	FEE
Oxygen demand (BOD or COD)	\$375
Bacteriology	\$375
Inorganic chemistry, fewer than four methods	\$375
Inorganic chemistry, four or more methods	\$750
Chemistry metals, one — two methods	\$450
Chemistry metals, more than two methods	\$1,000
Organic chemistry, fewer than four methods	\$600
Organic chemistry, four or more methods	\$1,200
Aquatic toxicity, acute methods only	\$400
Aquatic toxicity, acute and chronic methods	\$700
Radiochemical	\$1,000
Physical	\$375

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## C. Fee computation for general environmental laboratories.

1. Fees shall be applied on an annual basis.
2. Environmental laboratories shall pay the total of the base fee and the test category fees set out in subsections D and E of this section.

## D. Base fees for general environmental laboratories.

1. DCLS determines the base fee for a laboratory by taking into account both the total number of methods and the total number of field of certification matrices for which the laboratory would be certified.
2. DCLS shall charge the base fees set out in Table 1. The base fee for a laboratory is located by first finding the row for the total number of methods to be certified and then finding the box on that row located in the column headed by the total number of matrices to be certified. For example, DCLS charges a base fee of \$1300 to a laboratory performing a total of eight methods for one matrix.

Number of Methods	1 Matrix	2 Matrices
1 - 9	\$1300	\$1430
10 - 29	\$1400	\$1575
30 - 99	\$1550	\$1825

## E. Test category fees for general environmental laboratories.

1. The test category fees cover the types of testing for which a laboratory may be certified as specified in the laboratory's application or as certified at the time of annual billing.
2. Fees shall be charged for each category of tests to be certified.
3. Fees shall be charged for the total number of field of certification matrices to be certified under the specific test category. For example, if a laboratory is performing inorganic chemistry for both nonpotable water and solid and chemical materials matrices, the fee for this test category would be found in the column for two matrices.
4. The fee for each category includes one or more analytical methods unless otherwise specified.
5. DCLS shall charge the test category fees set out in Table 2. The test category fees for a laboratory are located by first finding the row with the total number of test methods for the test category to be certified. The fee to be charged for the test category will be found on that row in the column headed by the total number of matrices to be certified. A laboratory performing four test methods for inorganic chemistry in nonpotable water and solid and chemical materials (two matrices) would be charged a test category fee of \$375.

## 6. Noncommercial environmental laboratories that perform toxicity, radiochemical, or asbestos testing shall pay the test category fees established for these types of testing in 1VAC30-46-150.

Test Category	Fees by Number of Matrices	
	One	Two
Oxygen demand	\$225	\$335
Bacteriology, 1 - 3 total methods	\$175	\$265
Bacteriology, 4 or more total methods	\$220	\$330
Physical, 1 - 5 total methods	\$175	\$265
Physical, 6 - 10 total methods	\$220	\$330
Inorganic chemistry, 1 - 10 total methods	\$250	\$375
Inorganic chemistry, 11 - 20 total methods	\$315	\$475
Inorganic chemistry, 21 - 49 total methods	\$394	\$590
Chemistry metals, 1 - 5 total methods	\$325	\$490
Chemistry metals, 6 - 20 total methods	\$410	\$615
Organic chemistry, 1 - 5 total methods	\$400	\$600
Organic chemistry, 6 - 20 total methods	\$500	\$750

## 7. Fee examples. Three examples are provided.

### a. Example 1:

Base Fee	One matrix and four test methods	\$1300
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (2 methods)	\$175
Nonpotable Water	Oxygen demand (1 method)	\$225
Nonpotable Water	Physical (1)	\$175
TOTAL		\$1875

b. Example 2:

<u>Base Fee</u>	<u>One matrix and 15 test methods</u>	<u>\$1400</u>
<u>Test Category Fees</u>		
<u>One Matrix</u>		
<u>Nonpotable Water</u>	<u>Bacteriology (2 methods)</u>	<u>\$175</u>
<u>Nonpotable Water</u>	<u>Inorganic chemistry (9 methods)</u>	<u>\$250</u>
<u>Nonpotable Water</u>	<u>Chemistry metals (2 methods)</u>	<u>\$325</u>
<u>Nonpotable Water</u>	<u>Oxygen demand (1 method)</u>	<u>\$225</u>
<u>Nonpotable Water</u>	<u>Physical (1)</u>	<u>\$175</u>
<u>TOTAL</u>		<u>\$2550</u>

c. Example 3:

<u>Base Fee</u>	<u>Two matrices and 27 test methods</u>	<u>\$1575</u>
<u>Test Category Fees</u>		
<u>One Matrix</u>		
<u>Nonpotable Water</u>	<u>Bacteriology (4 methods)</u>	<u>\$220</u>
<u>Nonpotable Water</u>	<u>Oxygen demand (1 method)</u>	<u>\$225</u>
<u>Solid and Chemical Materials</u>	<u>Chemistry metals (1 method)</u>	<u>\$325</u>
<u>Two Matrices</u>		
<u>Nonpotable Water and Solid and Chemical Materials</u>	<u>Inorganic chemistry (13 methods)</u>	<u>\$475</u>
<u>Nonpotable Water and Solid and Chemical Materials</u>	<u>Physical (7 methods)</u>	<u>\$330</u>
<u>TOTAL</u>		<u>\$3150</u>

F. Additional fees. Additional fees shall be charged to laboratories applying for the following: (i) modification to scope of certification under 1VAC30-45-90 B, (ii) transfer of ownership under 1VAC30-45-90 C, (iii) exemption under 1VAC30-45-120, ~~(iv) request that multiple noncontiguous laboratory sites be considered as one site under 1VAC30-45-60 B-3, or~~ (iv) petition for a variance under 1VAC30-45-140.

1. For any certified environmental laboratory that applies to modify its scope of certification as specified under 1VAC30-45-90 B, DCLS shall assess a fee determined by the method in subsection G of this section.

2. Under 1VAC30-45-90 C, DCLS may charge a transfer fee to a certified laboratory that transfers ownership. A fee shall be charged if DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the transfer of ownership. DCLS shall assess a fee determined by the method in subsection G of this section. If, under 1VAC30-45-90 C, DCLS determines that the change of ownership or location of laboratory requires recertification of or reapplication by the laboratory, the laboratory shall pay the application fees required under this section.

~~3.~~ 3. General environmental laboratories applying for an exemption under 1VAC30-45-120 shall pay an initial application fee of \$250 ~~and if the exemption is granted, up to an additional \$1,000 depending on the scope of the exemption.~~ \$700 plus an additional fee based on the actual time needed for DCLS to assess the exemption request. The total fee shall not exceed the actual time DCLS takes to assess the exemption request. Laboratories performing only simple test procedures applying for an exemption under 1VAC30-45-120 shall pay an initial application fee of \$100 ~~and if the exemption is granted, up to an additional \$1,000 depending on the scope of the exemption.~~ The fee assessed for the scope of the exemption shall be based on the actual time needed for DGS DCLS to make the ~~determination~~ \$300 plus an additional fee based on the actual time needed for DCLS to assess the exemption request. The total fee shall not exceed the actual time DCLS takes to assess the exemption request. The fee assessed shall be calculated using the method in subsection G of this section.

~~2.~~ For any certified environmental laboratory that applies to modify its scope of certification as specified under 1VAC30-45-90 B, DGS DCLS shall assess a fee determined by the method in subsection G of this section.

~~3.~~ Under 1VAC30-45-90 C, DGS DCLS may charge a transfer fee to a certified laboratory that transfers ownership. A fee shall be charged if DGS DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the

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~~transfer of ownership. DGS DCLS shall assess a fee determined by the method in subsection G of this section. If DGS DCLS determines that a fee should be charged, the fee shall be a minimum of \$100 and a maximum of \$1,000. If, under 1VAC30-45-90 C, DGS DCLS determines that the change of ownership or location of laboratory requires recertification of or reapplication by the laboratory, the laboratory shall pay the application fees required under this section.~~

~~4. Under 1VAC30-45-60 B 3, the owner of multiple noncontiguous laboratories may request that DGS DCLS consider these laboratories to be one site. If, as a result of the request being granted, DGS DCLS needs to perform multiple on-site assessments, DGS DCLS shall charge a fee for the additional on-site assessments. The fee shall be the sum of reasonable travel costs and labor charges for the additional on-site assessments. The labor charges will be determined following the method in subsection G of this section.~~

~~5. 4. Under 1VAC30-45-140, any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. ~~DGS DCLS~~ DCLS shall charge a an initial fee for the time needed of \$700 plus an additional fee based on the actual time needed for DCLS to review the petition, including any on-site assessment required. The total fee shall not exceed the actual time DCLS takes to review and make a determination on the request for a variance. The fee shall be determined by the method specified in subsection G of this section.~~

## G. Fee determination.

1. The fee shall be the sum of the total hourly charges for all reviewers plus any on-site review costs incurred.
2. An hourly charge per reviewer shall be determined by (i) obtaining a yearly cost by multiplying the reviewer's annual salary by 1.35 (accounts for overhead such as taxes and insurance) and then (ii) dividing the yearly cost by 1,642 (number of annual hours established by Fiscal Services, DGS, for billing purposes).
3. The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.
4. If an on-site review is required, travel time and on-site review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

H. Out-of-state laboratories - travel costs. The owner of an environmental laboratory located in another state who applies for certification under this chapter shall also pay a fee equal to the reasonable travel costs associated with conducting an on-site assessment at the laboratory. Reasonable travel costs include transportation, lodging, per diem, and telephone and duplication charges.

I. ~~DGS DCLS~~ DCLS shall derive the travel costs charged under subsections G and H of this section from the

Commonwealth of Virginia reimbursement allowances and rates for lodging, per diem, and mileage.

## Article 2

### On-Site Assessment

#### **1VAC30-45-300. Frequency of on-site assessment.**

A. A comprehensive on-site assessment shall be conducted of each laboratory as a condition for granting certification initially ~~and at renewal every two years.~~ DCLS shall reassess each certified laboratory every two years starting from the date of the previous assessment plus or minus six months.

B. Other on-site assessments.

1. If ~~DGS DCLS~~ DCLS identified a deficiency on a previous on-site assessment, the agency may conduct a follow-up on-site assessment.
2. ~~DGS DCLS~~ DCLS may conduct an on-site assessment when a laboratory applies to modify its scope of certification; when a transfer of owner occurs that affects personnel, equipment, or the laboratory facilities; or when a laboratory applies for an exemption or a variance. Any other change occurring in a laboratory's operations that might reasonably be expected to alter or impair analytical capability and quality may trigger an on-site assessment.

#### **1VAC30-45-310. Announced and unannounced on-site assessments.**

A. ~~DGS DCLS~~ DCLS may conduct, at its discretion, either announced or unannounced on-site assessments.

B. Advance notice of an assessment shall not be necessary.

C. To the maximum extent practical, ~~DGS DCLS~~ DCLS, when necessary, shall work with the owner of an environmental laboratory to obtain government security clearances for assessment personnel as far in advance as possible. The owner of the environmental laboratory shall facilitate expeditious attainment of the necessary clearances.

D. To the maximum extent practical, assessment personnel shall minimize disruption of a laboratory's operations and take into account competing demands on the time of laboratory personnel.

#### **1VAC30-45-320. Request for records.**

Prior to the actual site visit, ~~DGS DCLS~~ DCLS may request in writing from a laboratory those records required to be maintained by this chapter.

#### **1VAC30-45-330. Areas to be assessed.**

~~DGS DCLS~~ DCLS shall assess the laboratory against the personnel and quality control standards in Article 1 (1VAC30-45-200 et seq.) and Article 4 (1VAC30-45-600 et seq.) of this part. The specific areas evaluated in an on-site assessment shall include but not be limited to:

1. Adequacy of the laboratory facility.
2. Organization and management of the laboratory.
3. Qualifications and experience of laboratory personnel.
4. Receipt, tracking and handling of samples.

5. Quantity, condition, and performance of laboratory instrumentation and equipment.
6. Preparation and traceability of calibration standards.
7. Test methods (including the adequacy of the laboratory's standard operating procedures as well as confirmation of the analyst's adherence to SOPs, and the analyst's proficiency with the described task).
8. Data reduction procedures, including an examination of raw data and confirmation that final reported results can be traced to the raw data/original observations.
9. Quality assurance and quality control procedures, including adherence to the laboratory's quality assurance plan and adequacy of the plan.
10. Recordkeeping.

**1VAC30-45-340. National security considerations.**

A. Assessments at facilities owned or operated by federal agencies or contractors may require security clearances, appropriate badging, or a security briefing before the assessment begins.

B. The laboratory shall notify ~~DGS-DCLS~~ DCLS in writing of any information that is controlled for national security reasons and cannot be released to the public.

**1VAC30-45-350. Arrival, admittance, and opening conference.**

A. Arrival. Assessment personnel shall arrive at the laboratory during established working hours. The laboratory manager (or, if unavailable, the laboratory manager's designee) shall be located as soon as possible after the assessment personnel arrive on the premises.

B. Admittance of assessment personnel.

1. A laboratory's refusal to admit the assessment personnel for an on-site assessment shall result in an automatic failure of the laboratory to receive certification or loss of an existing certification by the laboratory, unless there are extenuating circumstances that are accepted and documented by ~~DGS-DCLS~~ DCLS. The team leader for the assessment personnel shall notify ~~DGS-DCLS~~ DCLS as soon as possible after refusal of entry.

2. DCLS shall consider any verbal or physical threat to the health and safety of its assessors or any overt antagonism towards its assessors as a refusal to admit the assessors for the purpose of on-site assessment. The assessors shall vacate the laboratory and shall notify DCLS as soon as possible of the circumstances of this refusal to admit. This refusal to admit shall result in an automatic failure of the laboratory to receive certification or the automatic loss of an existing certification by the laboratory.

C. Health and safety.

1. Under no circumstance, and especially as a precondition to gain access to a laboratory, shall assessment personnel be required or even allowed to sign any waiver of

responsibility on the part of the laboratory for injuries incurred during an assessment.

2. Assessment personnel shall comply with all facility and laboratory safety procedures.

D. Opening conference. An opening conference shall be conducted and shall address the following topics:

1. The purpose of the assessment;
2. The identification of assessment personnel;
3. The test methods that will be examined;
4. Any pertinent records and procedures to be examined during the assessment and the names of the individuals in the laboratory responsible for providing assessment personnel with such records;
5. The roles and responsibilities of laboratory staff and managers;
6. Any special safety procedures that the laboratory may think necessary for the protection of assessment personnel;
7. The standards and criteria that will be used in judging the adequacy of the laboratory operation;
8. Confirmation of the tentative time for the exit conference; and
9. Discussion of any questions the laboratory may have about the assessment process.

**1VAC30-45-380. Closing conference.**

A. Assessment personnel shall meet with representatives of the laboratory following the assessment for a closing conference.

B. During the closing conference, assessment personnel shall inform the laboratory of the preliminary findings and the basis for such findings. The laboratory shall have an opportunity to provide further explanation or clarification relevant to the preliminary findings. If the laboratory objects to the preliminary findings during the closing conference, all objections shall be documented by the assessment personnel and included in the final report to ~~DGS-DCLS~~ DCLS.

C. Additional problem areas may be identified in the final report.

D. Any potentially illegal activity that may be the subject of further action shall not be discussed in the closing conference.

**1VAC30-45-390. Follow-up and reporting procedures.**

A. ~~DGS-DCLS~~ DCLS shall present an assessment report to the laboratory within 30 calendar days of the assessment.

B. If there are deficiencies identified in the assessment report, the laboratory shall have 30 calendar days from the date of its receipt of the assessment report to provide a response to ~~DGS-DCLS~~ DCLS. This response shall be called a corrective action ~~report~~ plan.

C. An exception to the deadlines specified in subsections A and B of this section may occur in appropriate circumstances. Two circumstances that may be considered appropriate by

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~~DGS-DCLS~~ DCLS are where a possible enforcement investigation or other action has been initiated or where the laboratory shows good cause for an extension.

D. The corrective action ~~report~~ plan shall include the following:

1. Any objections that the laboratory has with regard to the assessment report;
2. The action that the laboratory proposes to implement to correct each deficiency identified in the assessment report; and
3. The time period required to accomplish the corrective action.

E. ~~DGS-DCLS~~ DCLS shall determine and shall notify the laboratory within 30 calendar days of receipt whether the corrective action ~~report~~ plan is an acceptable response to the deficiencies identified in the assessment report.

F. If the corrective action ~~report~~ plan (or a portion of the ~~report~~ plan) is determined to be unacceptable to remedy the deficiency, ~~DGS-DCLS~~ DCLS shall provide written notification to the responsible official and manager of the laboratory including a detailed explanation of the basis for such determination. Following receipt of such notification, the laboratory shall have an additional 30 calendar days to submit a revised corrective action ~~report~~ plan acceptable to ~~DGS-DCLS~~ DCLS.

## **1VAC30-45-400. Documentation of on-site assessment.**

A. Checklists. The checklists used by assessment personnel during the assessment shall become a part of ~~DGS-DCLS~~ DCLS's file for the laboratory.

B. Assessment report format.

1. The final assessment report shall contain a narrative description of the adequacy of the laboratory as it relates to the assessment standards specified in this chapter and in 1VAC30-45-330.
2. Assessment reports shall contain:
  - a. Name of owner of the laboratory (or operator of the laboratory, if different from the owner);
  - b. Identification of the laboratory assessed;
  - c. Date of the assessment;
  - d. Identification and affiliation of all assessment personnel;
  - e. Identification of participants in the assessment process;
  - f. Identification of analytes and test methods assessed;
  - g. Statement of the objective of the assessment;
  - h. Summary;
  - i. Assessment observations, findings (including any deficiencies), objections noted by the laboratory, and requirements; and
  - j. Comments and recommendations.

3. The assessment findings and requirements shall be referenced to the standards in Part II (1VAC30-45-200 et seq.) of this chapter so that both the finding is understood and the specific requirement is outlined. The assessor shall specify the laboratory records, documents, equipment, procedures, or staff evaluated and the observations that contributed to each identified deficiency. The assessment report shall support with sufficient data all assessment findings and the overall evaluation of the laboratory.

4. The comments and recommendations section may be used to convey recommendations aimed at helping the laboratory improve.

C. Release of report.

1. The assessment report shall be released initially by ~~DGS-DCLS~~ DCLS to the responsible official and the laboratory manager. The assessment report shall not be released to the public until findings of the assessment and the corrective actions have been finalized, all information relating to national security has been stricken from the report in accordance with prescribed procedures, and the report has been provided to the laboratory.

2. Once the assessment report has been released to the laboratory, any member of the public may request a copy of the report under the requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

~~3. Checklists used by assessment personnel during the on-site assessment shall be provided to the laboratory with the final on-site assessment report.~~

D. The laboratory shall have access to documentation pertaining to any on-site assessment of its facilities. Any laboratory wishing to review its files shall request such assistance of ~~DGS-DCLS~~ DCLS five days prior to visiting ~~DGS-DCLS~~ DCLS. A laboratory may request copies of its documents without visiting ~~DGS-DCLS~~ DCLS. A reasonable fee may be charged for copying, mailing, and staff time.

### Article 3

### Proficiency Testing

## **1VAC30-45-500. Laboratory enrollment in proficiency testing program.**

A. Required level of participation.

~~1. To be certified initially and to maintain certification, a laboratory shall participate in two single-blind, single-concentration PT studies, where available, per year for each PT field of testing for which it seeks or wants to maintain certification. Laboratories applying to be certified for environmental toxicology (aquatic toxicity, sediment toxicity, or soils toxicity) shall meet the requirements of subdivision 3 of this subsection.~~

~~2. Laboratories shall obtain PT samples from any PT provider approved under the requirements of the NELAC standards for proficiency test providers set out in Chapter 2 of the 2003 standards such as NIST. For PT fields of~~

testing having no approved providers listed by NELAC, the laboratory shall consult DGS DCLS for an approved provider.

~~3. Laboratories applying to be certified for environmental toxicology (aquatic toxicity, sediment toxicity, or soils toxicity). To be certified initially and to maintain certification, a laboratory shall participate in at least one PT study per year (i.e., not more than 12 months apart), when available, for each method code (matrix, organism, exposure system and endpoint) for which it seeks or wants to maintain certification. Laboratories seeking certification for aquatic toxicity testing shall meet the requirements of 1VAC30-45-530.~~

1. To be certified initially and to maintain certification, a laboratory shall participate in PT studies as specified in 1VAC30-45-520 B for the fields of certification (FoC) for which the laboratory seeks or wants to maintain certification.

2. The applicant laboratory shall obtain PT samples from a PT provider approved by TNI. If a PT sample is not available from a TNI-approved provider, the laboratory shall consult DCLS for an approved provider.

#### B. Requesting certification.

1. When applying for certification, the laboratory owner shall notify ~~DGS DCLS~~ DCLS of the fields of ~~testing certification~~ for which the laboratory chooses to become certified and shall participate in the appropriate PT studies.

2. For all fields of ~~testing certification~~ for which PT samples are not available, the laboratory shall ensure the reliability of its testing procedures by maintaining a quality system that meets all applicable requirements of Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter.

C. Reporting results. ~~4.~~ Each laboratory shall authorize the PT study provider to release ~~all certification and remediation results and "acceptable" or "not acceptable" status~~ the results of the final evaluation report of the laboratory's PT study directly to ~~DGS DCLS~~ DCLS, in addition to the laboratory.

~~2. The results of all of the PT sample tests including "acceptable" or "not acceptable" status shall be part of the public record.~~

#### **1VAC30-45-510. Requirements for laboratory testing of PT study samples.**

A. ~~The samples shall be analyzed and the results returned to the PT study provider no later than 45 calendar days from the scheduled study shipment date. Samples for environmental toxicology shall be analyzed within 45 calendar days of sample receipt. The laboratory shall report the result within 45 calendar days of completion of the PT. The laboratory shall report the analytical results from its analysis of the PT study to the PT provider on or before the closing date of the study using the reporting format specified by the PT provider.~~

B. The laboratory's management and all analysts shall ensure that all PT samples are managed, analyzed, and

reported in the same manner as real environmental samples utilizing the same staff, methods as used for routine analysis of that analyte, procedures, equipment, and facilities. When analyzing a PT sample, the laboratory shall employ the same calibration, laboratory quality control and acceptance criteria, sequence of analytical steps, number of replicates and other procedures as used when analyzing routine samples.

C. Restrictions on exchanging information. Laboratories shall comply with all of the following restrictions on the transfer of PT samples and communication of PT sample results prior to the time the results of the study are released. Laboratory management or staff shall not:

1. Send any PT sample, or a portion of a PT sample, to another laboratory for any analysis for which it seeks certification or is certified.
2. Knowingly receive any PT sample or portion of a PT sample from another laboratory for any analysis for which the sending laboratory seeks certification or is certified.
3. Communicate with any individual at another laboratory (including intra-company communication) concerning the PT sample.
4. Attempt to obtain the assigned value of any PT sample from their PT provider.

D. Maintenance of records. The laboratory shall maintain copies of all written, printed, and electronic records, including but not limited to bench sheets, instrument strip charts or printouts, data calculations, and data reports, resulting from the analysis of any PT sample for three years or for as long as is required by the applicable regulatory program. These records shall include a copy of the PT study report forms used by the laboratory to record PT results. All of these laboratory records shall be made available to the DCLS assessors ~~of DGS DCLS~~ during on-site ~~audits~~ assessments of the laboratory.

#### **1VAC30-45-520. PT criteria for laboratory certification.**

##### A. Result categories.

1. The criteria described in this section apply individually to each ~~PT field of testing~~ FoPT, as defined by the laboratory seeking to obtain or maintain certification in its certification request. These criteria apply only to the PT portion of the overall certification standard.
2. There are two PT result categories: "acceptable" and "not acceptable."

##### B. Initial and continuing certification.

1. A laboratory seeking to obtain or maintain certification shall successfully complete ~~two PT studies~~ one PT study for each requested ~~PT field of testing~~ FoC within the most recent ~~three rounds attempted~~ FoC.
2. Once a laboratory has been granted certification status, it shall continue to complete PT studies for each ~~PT field of testing~~ FoPT and maintain a history of at least ~~two~~ one acceptable PT ~~studies for each PT field of testing out of the~~

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~~most recent three~~ study each calendar year. The laboratory shall complete its PT studies by September 30 of each calendar year.

~~3. For a laboratory seeking to obtain initial certification, the most recent three rounds attempted shall have occurred within 18 months of the laboratory's application date. When the PT sample used for initial certification was analyzed by the laboratory prior to the date of application, the analysis date of the PT sample shall be no more than 12 months prior to the application date of certification.~~

~~4. For a laboratory seeking initial certification, or for~~ For a laboratory performing supplemental testing, the PT studies shall be at least 15 calendar days apart from the closing date of one study to the shipment date of another study for the same ~~PT field of testing~~ FoPT.

~~5. For a laboratory to maintain certification, completion dates of successive proficiency rounds for a given PT field of testing shall be approximately six months apart. Failure to meet the semiannual schedule is regarded as a failed study.~~

5. When the PT study result is reported by the PT provider as "acceptable" the environmental laboratory has satisfied the PT requirement.

6. When the PT study result is "not acceptable," the environmental laboratory shall follow the procedure in subsection C of this section.

7. DCLS shall consider a laboratory's analytical result for a FoPT not acceptable when the laboratory makes any reporting error or omission that results in a nonspecific match between the analytical result for the FoPT and any criterion that identifies the laboratory or the field of certification for which the PT sample was analyzed for the purpose of initial or continued certification.

## C. Procedure and requirements for "not acceptable" PT study results.

1. When a laboratory receives a PT study result of "not acceptable," the laboratory shall determine the cause for the failure and perform and document corrective action. The corrective action documentation shall be completed within 30 days of receiving the "not acceptable" PT study result and be submitted to DCLS upon request.

2. Upon completion of the corrective action the laboratory shall perform another PT study for each FoPT that had a "not acceptable" result.

3. If the laboratory successfully completes the makeup PT study by receiving an "acceptable" result before December 31, DCLS shall not suspend the laboratory's certification for the pertinent FoC.

4. If the laboratory receives a "not acceptable" result on the makeup PT study, DCLS shall notify the laboratory that there is cause to suspend the laboratory's certification for the FoC for which the PT study was "not acceptable."

5. DCLS shall not extend the period for annual PT study completion beyond December 31 each year. Failure to satisfactorily complete a PT study by December 31 shall result in suspension of certification in total or in part.

6. If the laboratory receives a "not acceptable" result on three successive PT studies, DCLS shall decertify the laboratory for the pertinent FoC until such time that the laboratory:

a. Completes corrective action for all failed studies and submits its corrective action report to DCLS;

b. Obtains an "acceptable" result for the PT studies; and

c. Applies for a change to its scope of certification and pays applicable fees required by 1VAC30-45-90 B and 1VAC30-45-130 F.

7. DCLS shall follow the provisions of 1VAC30-45-110 in decertifying the laboratory.

## ~~C. Supplemental studies.~~

~~1. A laboratory may elect to participate in PT studies more frequently than required by the semiannual schedule. This may be desirable, for example, when a laboratory first applies for certification or when a laboratory fails a study and wishes to quickly reestablish its history of successful performance.~~

~~2. These additional studies shall be reported and are counted and scored the same way as routinely scheduled studies and shall be at least 15 calendar days apart.~~

## ~~D. Failed studies and corrective action.~~

~~1. Whenever a laboratory fails a study, it shall determine the cause for the failure and take any necessary corrective action. It shall then document in its own records and provide to DGS DCLS both the investigation and the action taken.~~

~~2. If a laboratory fails two out of the three most recent studies for a given field of testing, its performance is considered unacceptable for that field. The laboratory shall then meet the requirements of initial certification as described in subsection B of this section.~~

## ~~E. Second failed study.~~

~~1. The PT provider reports laboratory PT performance results to DGS DCLS at the same time that it reports the results to the laboratory.~~

~~2. If a laboratory fails a second study out of the most recent three, as described in subdivision D 2 of this section, DGS DCLS shall take action within 60 calendar days to determine the certification status for the unacceptable PT field of testing.~~

~~F. Scheduling of PT studies. Laboratories shall determine the schedule for their PT studies.~~

~~G. D. Withdrawal from PT studies. A laboratory may withdraw from a PT study for an analyte or analytes or for the entire study if the laboratory notifies both the PT provider and~~

~~DGS DCLS before the closing date of the PT study. This does not exempt the laboratory from participating in the semiannual schedule. any FoPT on or before the close date of the study. Withdrawing from a study shall not exempt the laboratory from meeting the annual analysis requirements necessary for continued certification.~~

**1VAC30-45-530. ~~Special requirements for aquatic toxicity. (Repealed.)~~**

~~A. Laboratories seeking certification for aquatic toxicity testing shall be assessed through on site assessment and evaluation of EPA Discharge Monitoring Report Quality Assurance (DMR QA) test results when available. A failed DMR QA endpoint shall require both of the following:~~

- ~~1. A formal response to DGS DCLS with an explanation of the probable cause for the endpoint failure and description of corrective actions to be taken (where appropriate);~~
- ~~2. A decision by DGS DCLS to accept the response or require additional actions on the part of the laboratory or by DGS DCLS.~~

~~B. If a laboratory's response is unacceptable and DGS DCLS does not require additional on site assessments, the laboratory shall complete another study. Such additional studies shall be conducted at least 15 calendar days from the previous study until the results are acceptable to DGS DCLS. DGS DCLS may conduct additional on site assessments as necessary based on the results of any additional studies.~~

~~C. When the DMR QA whole effluent toxicity portion does not include all test procedures required for a permit, the laboratory shall perform a proficiency test for aquatic toxicity testing.~~

~~D. DGS DCLS shall not base loss of certification for aquatic toxicity testing solely on PT results.~~

Article 4  
Quality System

**1VAC30-45-600. Quality system.**

A. This article sets out the general requirements that an environmental laboratory has to successfully demonstrate to be recognized as competent to carry out specific environmental tests. The environmental laboratory shall establish, implement and maintain a quality system based on the required elements contained in this article.

B. The quality system shall be appropriate to the type, range and volume of testing, analysis, measurement or monitoring performed by the laboratory.

C. The quality system's documentation shall be communicated to, understood by, available to, and implemented by the appropriate personnel. All personnel concerned with testing and calibration activities within the laboratory shall familiarize themselves with the quality documentation and implement the policies and procedures in their work.

~~C. D.~~ If more stringent standards or requirements are included in a mandated test method or by regulation, the laboratory shall demonstrate that such requirements are met. If it is not clear which standard or requirement is more stringent, the standard or requirement from the method or regulation is to be followed.

~~D. E.~~ Provisions pertaining to the management of the quality system appear in 1VAC30-45-610 through 1VAC30-45-700. Provisions pertaining to the technical requirements for the quality system appear in 1VAC30-45-710 through 1VAC30-45-770.

**1VAC30-45-610. Quality manual.**

A. General.

1. The laboratory shall document its quality system in a quality manual. The quality manual shall reflect all quality assurance and quality control practices and programs used by the laboratory. The required elements of the quality system may be described in more than one document.
2. The quality manual shall be maintained current under the responsibility of the quality assurance officer.
3. The quality manual and any related documents shall be communicated to, understood by, available to, and implemented by all laboratory personnel.
4. The quality manual shall include but not be limited to the elements listed in ~~subsection~~ subsections B and C of this section.

B. The elements of a quality manual shall include but not be limited to:

- ~~1. Title page. The quality manual shall list the following items on the title page:~~
  - ~~a. 1.~~ A document title;
  - ~~b. 2.~~ The laboratory's full name and address;
  - ~~c. 3.~~ The name, address (if different from above), and telephone number of the responsible official, laboratory manager, and quality assurance officer;
  - ~~d. 4.~~ The laboratory facility or facilities covered by the quality manual;
  - ~~e. 5.~~ Signed and dated concurrence, with appropriate titles, of the responsible official, laboratory manager, and quality assurance officer; ~~and~~
  - ~~f. 6.~~ The effective date of the quality manual;
- ~~2. 7.~~ Table of contents, and applicable lists of references, glossaries, and appendices; and
- ~~3. 8.~~ A quality policy statement, including objectives of the quality system and commitment to good ethical laboratory practices and to upholding the requirements of this chapter's standards.

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C. The quality manual shall include or reference but not be limited to:

- ~~4.~~ 1. The organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts.
- ~~5.~~ The relationship between management, technical operations, support services and the quality system.
- ~~6.~~ The capabilities of the laboratory or scope of its operation.
- ~~7.~~ 2. Job descriptions of key staff and reference to the job descriptions of other staff.
- ~~8.~~ 3. Processes or procedures for establishing that personnel have adequate training and experience in the duties they are expected to carry out and are receiving any needed training.
- ~~9.~~ Ethics policy statement developed by the laboratory. Processes and procedures for educating and training personnel in their ethical and legal responsibilities including the potential penalties for improper, unethical or illegal actions.
- ~~10.~~ 4. Mechanisms for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work.
- ~~11.~~ 5. Procedures to ensure that all records required by this chapter are retained, as well as procedures for control and maintenance of documentation through a document control system that ensures that all standard operating procedures, manuals, or documents clearly indicate the time period during which the procedure or document was in force.
- ~~12.~~ 6. Procedures for dealing with complaints.
- ~~13.~~ 7. Procedures for audits and data review.
- ~~14.~~ Reference to verification 8. Verification practices that may include inter-laboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes.
- ~~15.~~ 9. Procedures to be followed for feedback and corrective action whenever testing discrepancies are detected, or departures from documented policies and procedures occur.
- ~~16.~~ 10. The laboratory management arrangements for permitting departures from documented policies and procedures or from standard specifications when the departures are planned and controlled.
- ~~17.~~ Reference to the 11. The major equipment and reference measurement standards used as well as the physical facility and environment used by the laboratory in conducting tests.
- ~~18.~~ Reference to procedures 12. Procedures for calibration, verification and maintenance of equipment.
- ~~19.~~ 13. A list of all technology/methods under which the laboratory performs its certified testing.

~~20.~~ The laboratory's procedures 14. Procedures for achieving traceability of measurements, including standards.

~~21.~~ 15. Procedures for receiving, handling, storing, and disposing of submitted samples.

~~22.~~ Reference to procedures 16. Procedures for reporting analytical results.

17. Policy addressing the use of unique electronic signatures, where applicable.

~~C.~~ D. Review and approval of quality manual.

1. The quality assurance officer shall review the laboratory's quality assurance program, manual and any related documentation whenever there is any change in test methods employed by the laboratory, change in equipment, or any other change in the laboratory that affects the quality assurance program.

2. The quality assurance manual shall be reviewed and approved by the quality assurance officer, the laboratory manager, and the responsible official at least annually.

## **1VAC30-45-660. Required records.**

A. Sample handling.

1. The laboratory shall maintain a record of all procedures to which a sample is subjected while in the possession of the laboratory. These shall include but are not limited to all records pertaining to sample preservation, identification, receipt, acceptance or rejection, log-in, storage and tracking. The laboratory shall also maintain sampling information on each sample. This includes time and date of collection, type of sample (grab or composite), type of container, sampling point and preservation.

2. The laboratory shall have documented procedures for the receipt and retention of samples, including provisions necessary to protect the integrity of the samples.

B. Laboratory support activities. The laboratory shall retain the following documents and data:

1. All original raw data, whether hard copy or electronic, for calibrations, samples and quality control measures, including analysts' work sheets and data output records (chromatograms, strip charts, and other instrument response readout records).

2. A written description or reference to the specific test method used that includes a description of the specific computational steps used to translate parametric observations into a reportable analytical value.

3. Copies of final reports.

4. Archived standard operating procedures.

5. Correspondence relating to laboratory activities.

6. All corrective action ~~reports~~ plans, audits, and audit responses.

7. Proficiency test results and raw data.

8. Results of data review, verification, and cross-checking procedures.

C. Analytical records. The laboratory shall retain essential information associated with analytical documents, such as strip charts, tabular printouts, computer data files, analytical notebooks, and run logs. This information includes, but is not limited to, all manual calculations, (e.g., manual integrations); sample preparation; standard and reagent origin, receipt, preparation, and use; quality control protocols and assessment; and method performance criteria.

D. Administrative records. The laboratory shall maintain the following administrative records:

1. Personnel qualifications, experience and training records.
2. Records of demonstration of capability for each analyst or work cell.
3. A log of names, initials and signatures for all individuals who are responsible for signing or initialing any laboratory record.

**1VAC30-45-670. Audits.**

A. Internal audits.

1. The laboratory shall arrange for annual internal audits to verify that its operations continue to comply with the requirements of the laboratory's quality system. It is the responsibility of the quality assurance officer to plan and organize audits as required by a predetermined schedule and requested by management.
2. Trained and qualified personnel who are, wherever resources permit, independent of the activity to be audited, shall carry out these audits. Personnel shall not audit their own activities except when it can be demonstrated that an effective audit will be carried out.
3. Where the audit findings cast doubt on the correctness or validity of the laboratory's calibrations or test results, the laboratory shall take immediate corrective action.
4. A laboratory may have an audit performed under contract by an outside source competent to audit the laboratory's operations.

B. Managerial review.

1. The laboratory management shall conduct a review, at least annually, of its quality system and its testing and calibration activities to ensure its continuing suitability and effectiveness and to introduce any necessary changes or improvements in the quality system and laboratory operations.
2. The review shall take account of reports from managerial and supervisory personnel, the outcome of recent internal audits, assessments by external bodies, the results of inter-laboratory comparisons or proficiency tests, corrective actions and other relevant factors.

3. The laboratory shall have a procedure for review by management and maintain records of review findings and actions.

4. Where the staff of a laboratory is limited to a single analyst, a supervisor may perform a managerial review.

C. Audit review. All audit and review findings and any corrective actions that arise from them shall be documented. The laboratory management shall ensure that these actions are discharged within the agreed time frame as indicated in the quality manual or standard operating procedures or both. For clarification, documentation of audit and review findings should be a simple procedure, essentially a memorandum setting out the findings of the audit and managerial review and any action to follow.

D. Corrective actions.

1. In addition to providing acceptance criteria and specific protocols for corrective actions in the method standard operating procedures, the laboratory shall implement general procedures to be followed to determine consistently when departures from documented policies, procedures and quality control have occurred. These procedures may include but are not limited to the following:

- a. Identify the individual or individuals responsible for assessing each quality control data type;
- b. Identify the individual or individuals responsible for initiating or recommending corrective actions or both;
- c. Define how the analyst shall treat a data set if the associated quality control measurements are unacceptable;
- d. Specify how out-of-control situations and subsequent corrective actions are to be documented; and
- e. Specify procedures for management (including the quality assurance officer) to review corrective action ~~reports~~ plans.

2. To the extent possible, samples shall be reported only if all quality control measures are acceptable. If a quality control measure is found to be out of control, and the data are to be reported, all samples associated with the failed quality control measure shall be reported with the appropriate data qualifiers.

**1VAC30-45-720. Equipment and reference materials.**

A. The laboratory shall be furnished with all items of equipment, including reference materials, required for the correct performance of tests for which certification is sought. The laboratory shall maintain records of reference materials sufficient to provide proper performance of tests. In those cases where the laboratory needs to use equipment outside its permanent control it shall ensure that the relevant requirements of this article are met.

B. All equipment shall be properly maintained, inspected and cleaned. Maintenance procedures shall be documented.

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C. Any item of the equipment that has been subjected to overloading or mishandling, or that gives suspect results, or has been shown by verification or otherwise to be defective shall be taken out of service immediately, clearly identified as being out of service and, wherever possible, stored at a specified place until it has been repaired and shown by calibration, verification or test to perform satisfactorily. The laboratory shall examine the effect of this defect on previous calibrations or tests.

D. Each item of equipment including reference materials shall be labeled, marked or otherwise identified to indicate its calibration status.

E. Records of each major item of equipment significant to the tests performed shall be maintained. These records shall include documentation on all routine and non-routine maintenance activities. The laboratory shall maintain records of reference materials sufficient to provide proper performance of tests. The records shall include:

1. The name of the item of equipment;
2. The manufacturer's name, type identification, and serial number or other unique identification;
- ~~3. Date received and date placed in service (if available);~~
4. 3. Current location, where appropriate;
- ~~5. If available, condition when received (e.g., new, used, reconditioned);~~
- ~~6.~~ 4. Copy of the manufacturer's instructions, where available;
- ~~7.~~ 5. Dates and results of calibrations or verifications or both and date of the next calibration or verification;
- ~~8.~~ 6. Details of maintenance carried out to date and planned for the future; and
- ~~9.~~ 7. History of any damage, malfunction, modification or repair.

## **1VAC30-45-730. Test methods and standard operating procedures.**

### A. Methods documentation.

1. The laboratory shall have documented instructions on the use and operation of all relevant equipment, on the handling and preparation of samples, and for calibration or testing, where the absence of such instructions could jeopardize the calibrations or tests.
2. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be maintained up to date and be readily available to the staff.

### B. Standard operating procedures (SOPs).

1. Laboratories shall maintain SOPs that accurately reflect all phases of current laboratory activities such as assessing data integrity, corrective actions, handling customer complaints, and all test methods. These documents, for example, may be equipment manuals provided by the manufacturer or internally written documents. The test

methods may be copies of published methods as long as any changes or selected options in the methods are documented and included in the laboratory methods manual.

2. The SOPs shall be organized. Each SOP shall clearly indicate the effective date of the document, the revision number, and the signature or signatures of the responsible laboratory manager or managers.

3. Copies of all SOPs shall be accessible to all personnel.

### C. ~~Laboratory methods manuals.~~ SOPs for laboratory methods.

1. The laboratory shall have and maintain an ~~in-house methods manual or manuals~~ SOP for each certified analyte or test method.

2. This ~~manual may consist of copies of published or referenced methods or standard operating procedures that have been~~ SOP may be a copy of a published or referenced method or may be written by the laboratory. In cases where modifications to the published method have been made by the laboratory or where the referenced test method is ambiguous or provides insufficient detail, these changes or clarifications shall be clearly described. Each test method shall include or reference where applicable:

- a. Identification of the test method;
- b. Applicable matrix or matrices;
- c. ~~Method detection limit~~ Limits of detection or quantitation;
- d. Scope and application, including ~~components~~ parameters to be analyzed;
- e. Summary of the test method;
- f. Definitions;
- g. Interferences;
- h. Safety;
- i. Equipment and supplies;
- j. Reagents and standards;
- k. Sample collection, preservation, shipment and storage;
- l. Quality control;
- m. Calibration and standardization;
- n. Procedure;
- o. ~~Calculations~~ Data analysis and calculations;
- p. Method performance;
- q. Pollution prevention;
- r. Data assessment and acceptance criteria for quality control measures;
- s. Corrective actions for out-of-control data;
- t. Contingencies for handling out-of-control or unacceptable data;
- u. Waste management;

- v. References; and
- w. Any tables, diagrams, flowcharts and validation data.

D. Test methods.

1. Laboratories shall use (i) promulgated test methods in accordance with the Code of Federal Regulations; (ii) test methods stated in any current permit issued by ~~Virginia~~ the State Air Pollution Control Board, the Virginia Waste Management Board, or the State Water Control Board; or (iii) alternate test procedures approved by the board issuing the permit or the Department of Environmental Quality, including applicable quality assurance requirements, and sample preservation, container, storage, and holding time requirements. Laboratories shall use the latest valid edition of a method unless it is not appropriate to do so.
2. The laboratory shall use appropriate test methods and procedures for all tests and related activities within its responsibility (including sample handling, transport and storage, preparation and analysis). The method and procedures shall be consistent with the accuracy required and with any standard specifications relevant to the calibrations or tests concerned.
3. When the use of reference test methods for a sample analysis is mandated, only those methods shall be used.
4. Where test methods are employed that are not required, as in the Performance Based Measurement System approach, the methods shall be fully documented and validated (see subsection E of this section).

E. Demonstration of capability.

1. Prior to acceptance and institution of any test method, satisfactory initial demonstration of method capability is required. In general, this demonstration does not test the performance of the method in real world samples, but in the applicable and available clean quality system matrix sample (a quality system matrix in which no target analytes or interferences are present at concentrations that impact the results of a specific test method), ~~e.g. for example,~~ drinking water, solids, biological tissue and air. Laboratories shall follow the procedure in subsection F of this section to demonstrate capability.
2. Thereafter, ~~continuing~~ ongoing demonstration of method performance, such as laboratory control samples, is required.
3. In cases where a laboratory analyzes samples using a test method that has been in use by the laboratory ~~before July 1999~~ for at least one year prior to applying for certification, and there have been no significant changes in instrument type, personnel or test method, the continuing demonstration of method performance and the analyst's documentation of continued proficiency shall be acceptable. The laboratory shall have records on file to demonstrate that an initial demonstration of capability is not required.

4. In all cases, the laboratory shall complete and retain a certification statement and shall make the statement available upon request. The laboratory shall retain all associated supporting data necessary to reproduce the analytical results summarized in the certification statement.

5. The laboratory shall complete a demonstration of capability each time there is a change in instrument type, personnel or test method, including the addition of an analyte to a certified test method.

~~6. In laboratories with specialized work cells (a group consisting of analysts with specifically defined tasks that together perform the test method), the group as a unit shall meet the criteria of this subsection. This demonstration of capability shall be fully documented.~~

F. Procedure for demonstration of capability. The following steps shall be performed for mandated test methods. However, before any results are reported using this method, actual sample spike results may be used to meet this standard; (i.e., at least four consecutive matrix spikes within the last 12 months). For analytes that do not lend themselves to spiking; (e.g., TSS); the demonstration of capability may be performed using quality control samples. The laboratory may document that other approaches to demonstration of capability are adequate. This documentation shall be included in the laboratory's quality manual:

1. A quality control (QC) sample may be obtained from an outside source or may be prepared by the laboratory using alternate source stock standards that are prepared independently from those used in instrument calibration.
2. The analyte or analytes shall be diluted in a volume of clean quality system matrix sufficient to prepare four aliquots at the concentration specified, or if unspecified, to a concentration of 1-4 times the limit of quantitation.
3. At least four aliquots shall be prepared and analyzed according to the test method either concurrently or over a period of days.
4. Using all of the results, calculate the mean recovery in the appropriate reporting units (such as g/L) and the standard deviations of the population sample (n-1) (in the same units) for each parameter of interest. When it is not possible to determine mean and standard deviations, such as for presence or absence of the analyte and logarithmic values, the laboratory shall assess performance against established and documented criteria.
5. Compare the information from subdivision 4 of this subsection to the corresponding acceptance criteria for precision and accuracy in the test method (if applicable) or in laboratory-generated acceptance criteria (if there are not established mandatory criteria). If all parameters meet the acceptance criteria, the analysis of actual samples may begin. If any one of the parameters do not meet the acceptance criteria, the performance is unacceptable for that parameter.

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6. When one or more of the tested parameters fail at least one of the acceptance criteria, the analyst shall proceed according to either subdivision 6 a or 6 b below of this subsection.

a. Locate and correct the source of the problem and repeat the test for all parameters of interest beginning with subdivision 3 of this subsection.

b. Beginning with subdivision 3 of this subsection, repeat the test for all parameters that failed to meet criteria. Repeated failure, however, confirms a general problem with the measurement system. If this occurs, locate and correct the source of the problem and repeat the test for all compounds of interest beginning with subdivision 3 of this subsection.

G. Certification statement. The following certification statement shall be used to document the completion of each demonstration of capability. ~~A copy of the certification statement shall be retained in the personnel records of each affected employee.~~

Demonstration of Capability  
Certification Statement

Date: Page    of   

Laboratory Name:

Laboratory Address:

Analyst(s) Name(s):

Matrix:

(examples: laboratory pure water, soil, air, solid, biological tissue)

Method number, SOP#, Rev#, and Analyte, or Class of Analytes or Measured Parameters

(examples: barium by 200.7, trace metals by 6010 B, benzene by 8021 B, etc.)

We, the undersigned, CERTIFY that:

1. The analysts identified above, using the cited test method(s), which is in use at this facility for the analyses of samples under the Virginia Environmental Laboratory Certification Program, have met the Demonstration of Capability.
2. The test method(s) was performed by the analyst(s) identified on this certification.
3. A copy of the test method(s) and the laboratory-specific SOPs are available for all personnel on-site.
4. The data associated with the demonstration capability are true, accurate, complete and self-explanatory<sup>(1)</sup>.
5. All raw data (including a copy of this certification form) necessary to reconstruct and validate these analyses have been retained at the facility, and that the associated information is well organized and available for review by authorized assessors.

Laboratory Manager's Name and Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

Quality Assurance Officer's Name \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

<sup>(1)</sup>True - consistent with supporting data. Accurate - based on good laboratory practices consistent with sound scientific principles and practices. Complete - includes the results of all supporting performance testing. Self-explanatory - data properly labeled and stored so that the results are clear and require no additional explanation.

H. Sample aliquots. Where sampling (as in obtaining sample aliquots from a submitted sample) is carried out as part of the test method, the laboratory shall use documented procedures and appropriate techniques to obtain representative subsamples.

I. Data verification. Calculations and data transfers shall be subject to appropriate checks. The laboratory shall establish standard operating procedures to ensure that (i) the reported data are free from transcription and calculation errors and (ii) all quality control measures are reviewed and evaluated before data are reported. The laboratory also shall establish standard operating procedures addressing manual calculations including manual integrations.

J. Documentation and labeling of standards and reagents. Documented procedures shall exist for the reception and storage of consumable materials used for the technical operations of the laboratory.

1. The laboratory shall retain records for all standards, reagents, reference materials and media including the manufacturer/vendor, the manufacturer's Certificate of Analysis or purity (if available), the date of receipt, recommended storage conditions, and an expiration date after which the material shall not be used unless its reliability is verified by the laboratory.

2. Original containers (such as provided by the manufacturer or vendor) shall be labeled with an expiration date if this date is provided by the manufacturer or vendor.

3. Records shall be maintained on standard and reference material preparation. These records shall indicate traceability to purchased stocks or neat compounds, reference to the method of preparation, date of preparation, expiration date and preparer's initials.

4. Sufficient identification of containers of prepared reagents and standards shall be provided to ensure proper performance of tests.

K. Computers and electronic data related requirements. Where computers, automated equipment or microprocessors are used for the capture, processing, manipulation, recording, reporting, storage or retrieval of test data, the laboratory shall ensure the following:

1. Computer software developed by the user is documented in sufficient detail and is suitably validated as being adequate for use.

2. Procedures are established and implemented for protecting the integrity of data, such as integrity of data entry or capture, data storage, data transmission and data processing.
3. Computer and automated equipment are maintained to ensure proper functioning and provided with the environmental and operating conditions necessary to maintain the integrity of calibration and test data.
4. Appropriate procedures are established and implemented for the maintenance of security of data including the prevention of unauthorized access to, and the unauthorized amendment of, computer records.

**1VAC30-45-740. Measurement traceability and calibration.**

A. General requirements. All equipment used for environmental tests, including equipment for subsidiary measurements (e.g., for environmental conditions) having a significant effect on the accuracy or validity of the result of the environmental test or sampling shall be calibrated before being put into service and on a continuing basis. The laboratory shall have an established program and procedure for the calibration of its equipment. This includes balances, thermistors, thermometers and control standards. Such a program shall include a system for selecting, using, calibrating, checking, controlling and maintaining measurement standards, reference materials used as measurement standards, and measuring and test equipment used to perform environmental tests.

B. Traceability of calibration.

1. The laboratory shall ensure that the equipment used can provide the uncertainty of measurement needed.
2. The overall program of calibration or verification or both and validation of equipment shall be designed and operated so as to ensure that measurements made by the laboratory are traceable to national standards of measurement.
3. Where traceability of measurements to the International System of Units (SI) is not possible or not relevant, the same requirements for traceability to, for example, certified reference materials, agreed methods ~~and/or~~ or consensus standards, are required. The laboratory shall provide satisfactory evidence of correlation of results, for example by participation in a suitable program of inter-laboratory comparisons, proficiency testing, or independent analysis.

C. Reference standards and reference materials.

1. Reference standards. The laboratory shall have a program and procedure for the calibration of its reference standards. Reference standards of measurement shall be calibrated by a body that can provide traceability as described in subsection B of this section. Such reference standards of measurement held by the laboratory (such as Class S or equivalent weights or traceable thermometers)

shall be used for calibration only and for no other purpose, unless it can be demonstrated that their performance as reference standards would not be invalidated. Where commercially available, this traceability shall be to a national standard of measurement.

2. Reference materials. Reference materials shall, where commercially available, be traceable to SI units of measurement, or to certified reference materials. Where possible, traceability shall be to national or international standards of measurement, or to national or international standard reference materials. Internal reference materials shall be checked as far as is technically and economically practicable.

D. Calibration. Calibration requirements are divided into two parts: (i) requirements for analytical support equipment and (ii) requirements for instrument calibration. In addition, the requirements for instrument calibration are divided into initial instrument calibration and continuing instrument calibration verification.

1. Support equipment. These standards apply to all devices that may not be the actual test instrument, but are necessary to support laboratory operations. These include but are not limited to balances, ovens, refrigerators, freezers, incubators, water baths, temperature measuring devices (including thermometers and thermistors), thermal/pressure sample preparation devices and volumetric dispensing devices (such as Eppendorf®, or automatic dilutor or dispensing devices) if quantitative results are dependent on their accuracy, as in standard preparation and dispensing or dilution into a specified volume.

- a. All support equipment shall be maintained in proper working order. The records of all repair and maintenance activities, including service calls, shall be kept.
- b. All support equipment shall be calibrated or verified at least annually, using NIST traceable references when available, over the entire range of use. The results of such calibration shall be within the specifications required of the application for which this equipment is used. If not, the laboratory shall either (i) remove the equipment from service until repaired or (ii) maintain records of established correction factors to correct all measurements.
- c. Raw data records shall be retained to document equipment performance.
- d. ~~Prior to use on each working day~~ On each day the equipment is used, balances, ovens, refrigerators, freezers, and water baths shall be checked in the expected use range, with NIST traceable references where available. The acceptability for use or continued use shall be according to the needs of the analysis or application for which the equipment is being used.

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e. Mechanical volumetric dispensing devices including burettes (except Class A glassware) shall be checked for accuracy on at least a quarterly use basis. Glass microliter syringes are to be considered in the same manner as Class A glassware, but shall come with a certificate attesting to established accuracy or the accuracy shall be initially demonstrated and documented by the laboratory.

f. For chemical tests, the temperature, cycle time and pressure of each run of autoclaves shall be documented by the use of appropriate chemical indicators or temperature recorders and pressure gauges.

g. For biological tests that employ autoclave sterilization, the following requirements apply:

(1) The performance of each autoclave shall be initially evaluated by establishing its functional properties and performance, for example heat distribution characteristics with respect to typical uses. Autoclaves shall meet specified temperature tolerances. Pressure cookers fitted only with a pressure gauge are not recommended for sterilization of media or decontamination of wastes.

(2) Records of autoclave operations including temperature and time shall be maintained. This shall be done for every cycle. Acceptance and rejection criteria shall be established and used to evaluate the autoclave efficiency and effectiveness.

## 2. Instrument calibration.

a. This standard specifies the essential elements that define the procedures and documentation for initial instrument calibration and continuing instrument calibration verification to ensure that the data shall be of known quality and be appropriate for a given regulation or decision. This standard does not specify detailed procedural steps for calibration, but establishes the essential elements for selection of the appropriate technique or techniques. If more stringent standards or requirements are included in a mandated test method or by regulation, the laboratory shall demonstrate that such requirements are met. If it is not apparent which standard is more stringent, then the requirements of the regulation or mandated test method are to be followed.

b. Initial instrument calibrations. The following items are essential elements of initial instrument calibration:

(1) The laboratory shall include or reference the details of the initial instrument calibration procedures, including calculations, integrations, acceptance criteria and associated statistics in the standard operating procedure for the test method. When initial instrument calibration procedures are referenced in the test method, then the laboratory shall retain the referenced material and make it available for review.

(2) The laboratory shall retain sufficient raw data records to permit reconstruction of the initial instrument

calibration; (e.g., calibration date, test method, instrument, analysis date, each analyte name, analyst's initials or signature, concentration and response, calibration curve or response factor, or unique equation or coefficient used to reduce instrument responses to concentration).

(3) Sample results shall be quantitated from the initial instrument calibration and may not be quantitated from any continuing instrument calibration verification unless otherwise required by regulation, method, or program.

(4) All initial instrument calibrations shall be verified with a standard obtained from a second manufacturer or lot. Traceability shall be to a national standard, when available. This element does not apply to laboratories performing only simple test procedures.

(5) Criteria for the acceptance of an initial instrument calibration shall be established; (e.g., correlation coefficient and relative percent difference). The criteria used shall be 0.995 or greater for the calibration coefficient unless a different criterion is included in the method being used.

(6) Results of samples not bracketed by initial calibration standards (within calibration range) shall be reported as having less certainty; (e.g., defined qualifiers or flags or explained in the case narrative). The lowest calibration standard shall be above the detection limit.

(7) If the initial instrument calibration results are outside established acceptance criteria, corrective actions shall be performed. Data associated with an unacceptable initial instrument calibration shall not be reported.

(8) Calibration standards shall include concentrations at or below the regulatory limit or decision level, if these limits or levels are known by the laboratory, unless these concentrations are below the laboratory's demonstrated detection limits.

(9) If a reference or mandated method does not specify the number of calibration standards, the minimum number is two, not including blanks or a zero standard. The laboratory shall have a standard operating procedure for determining the number of points for establishing the initial instrument calibration.

c. Continuing instrument calibration verification.

(1) When an initial instrument calibration is not performed on the day of analysis, the validity of the initial calibration shall be verified prior to sample analyses by a continuing instrument calibration check with each analytical batch. This provision does not apply to laboratories performing only simple test procedures.

(2) The following items are essential elements of continuing instrument calibration verification:

(a) The laboratory shall include or reference the details of the continuing instrument calibration procedure,

calculations and associated statistics in the standard operating procedure for the test method.

(b) The laboratory shall verify calibration for each compound, element, or other discrete chemical species, except for multicomponent analytes such as Aroclors, Total Petroleum Hydrocarbons, or Toxaphene where a representative chemical related substance or mixture can be used.

(c) The laboratory shall perform a continuing instrument calibration verification as follows:

(i) At the beginning and end of each analytical batch. If an internal standard is used, only one verification needs to be performed at the beginning of the analytical batch;

(ii) Whenever it is expected that the analytical system may be out of calibration or might not meet the verification acceptance criteria;

(iii) If the time period for calibration or the most previous calibration verification has expired; or

(iv) For analytical systems that contain a calibration verification requirement.

(d) Sufficient raw data records shall be retained to permit reconstruction of the continuing instrument calibration verification, (e.g., or test method, instrument, analysis date, each analyte name, concentration and response, calibration curve or response factor, or unique equations or coefficients used to convert instrument responses into concentrations). Continuing calibration verification records shall explicitly connect the continuing verification data to the initial instrument calibration.

(e) Criteria for the acceptance of a continuing instrument calibration verification shall be established, (e.g., percent recovery or relative percent difference).

(f) If the continuing instrument calibration verification results obtained are outside established acceptance criteria, corrective actions shall be performed. If routine corrective action procedures fail to produce a second consecutive (immediate) calibration verification within acceptance criteria, then either the laboratory has to demonstrate acceptable performance after corrective action with two consecutive successful calibration verifications, or a new initial instrument calibration shall be performed. If the laboratory has not verified calibration, sample analyses shall not occur until the analytical system is calibrated or calibration verified. If samples are analyzed using a system on which the calibration has not yet been verified, the results shall be flagged. Data associated with an unacceptable calibration verification may be fully useable under the following special conditions:

(i) When the acceptance criteria for the continuing calibration verification are exceeded high, (i.e., high bias,) and there are associated samples that are nondetects, then those nondetects may be reported.

Otherwise the samples affected by the unacceptable calibration verification shall be reanalyzed after a new calibration curve has been established, evaluated and accepted.

(ii) When the acceptance criteria for the continuing calibration verification are exceeded low, (i.e., low bias,) those sample results may be reported if they exceed a maximum regulatory limit or decision level. Otherwise the samples affected by the unacceptable verification shall be reanalyzed after a new calibration curve has been established, evaluated and accepted.

#### **1VAC30-45-750. Quality assurance.**

A. General. The laboratory shall have quality control procedures for monitoring the validity of environmental tests undertaken. The resulting data shall be recorded in such a way that trends are detectable and, where practicable, statistical techniques shall be applied to the reviewing of the results. This monitoring shall be planned and reviewed and may include, but not be limited to, the following:

1. Regular use of certified reference materials ~~and/or~~ or internal quality control using secondary reference materials or both.
2. Participation in interlaboratory comparison or proficiency testing program.
3. Replicate tests using the same or different methods.
4. Retesting of retained samples.
5. Correlation of results for different characteristics of a sample ~~(for example~~ (e.g., total phosphate should be greater than or equal to orthophosphate).

B. Essential quality control procedures. The general quality control principles in subsections C through F of this section shall apply, where applicable, to all environmental laboratories. The manner in which they are implemented is dependent on the types of tests performed by the laboratory. ~~1VAC30-45-760 through 1VAC30-45-829 specify quality control requirements for specific test types. 1VAC30-45-770 through 1VAC30-45-775, 1VAC30-45-790 through 1VAC30-45-798, and 1VAC30-45-810 through 1VAC30-45-818 specify quality control requirements for chemical testing, microbiological testing, and air testing, respectively. Noncommercial environmental laboratories that analyze environmental samples using other types of testing such as toxicity, radiochemical, or asbestos testing shall meet the quality control standards for the specific method and the specific type of testing in the 2009 TNI Standards for Environmental Laboratories.~~ The standards for any given test type shall assure that the applicable principles are addressed.

C. All laboratories shall have detailed written protocols in place to monitor the following quality controls:

1. Positive and negative controls to monitor tests such as blanks, spikes, reference toxicants.

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2. Tests to define the variability or repeatability of the laboratory results or both such as replicates.
3. Measures to assure the accuracy of the test method including calibration or continuing calibrations or both, use of certified reference materials, proficiency test samples, or other measures.
4. Measures to evaluate test method capability, such as method detection limits and quantitation limits or range of applicability such as linearity.
5. Selection of appropriate formulae to reduce raw data to final results such as regression analysis, comparison to internal and external standard calculations, and statistical analyses.
6. Selection and use of reagents and standards of appropriate quality.
7. Measures to assure the selectivity of the test for its intended purpose.
8. Measures to assure constant and consistent test conditions (both instrumental and environmental) where required by the test method such as temperature, humidity, light, or specific instrument conditions.

## **1VAC30-45-760. Quality control requirements.**

### **A. General.**

1. The quality control protocols specified by the laboratory's ~~method manual~~ SOPs shall be followed (1VAC30-45-730 C). The laboratory shall ensure that either the (i) applicable essential standards outlined in this section through ~~1VAC30-45-829~~ 1VAC30-45-775, 1VAC30-45-791 through 1VAC30-45-798, and 1VAC30-45-811 or (ii) mandated methods or regulations, whichever are more stringent, are incorporated into their method ~~manuals~~ SOPs. When it is not apparent which is more stringent, the quality ~~control~~ controls in the mandated method or regulations ~~is~~ are to be followed.

2. All quality control measures shall be assessed and evaluated on an ongoing basis and quality control acceptance criteria shall be used to determine the validity of the data. The laboratory shall have procedures for the development of acceptance/rejection criteria where no method or regulatory criteria exists.

B. Initial test method evaluation. For all test methods other than ~~toxicity and~~ microbiology, the requirements of subdivisions 1 and 2 of this subsection apply. For ~~toxicity and~~ microbiology testing, the initial test method evaluation requirements are contained in ~~1VAC30-45-780 through 1VAC30-45-788 and 1VAC30-45-790 through 1VAC30-45-798, respectively.~~ For the evaluation of precision and bias (subdivision 3 of this subsection), the requirements of subdivision 3 a of this subsection apply to standard methods. The requirements of subdivision 3 b of this subsection apply to the methods referenced in that subdivision.

#### 1. Limit of detection (LOD).

a. The laboratory shall determine the LOD for the method for each target analyte of concern in the quality system matrices. All sample processing steps of the analytical method shall be included in the determination of the LOD.

b. The validity of the LOD shall be confirmed by qualitative identification of the analyte(s) in a quality control sample in each quality system matrix containing the analyte at no more than two to three times the LOD for single analyte tests and one to four times the LOD for multiple analyte tests. This verification shall be performed on every instrument that is to be used for analysis of samples and reporting of data.

c. An LOD study is not required for any component for which spiking solutions or quality control samples are not available such as temperature, or, when test results are not to be reported to the LOD (versus the limit of quantitation or working range of instrument calibration), according to ~~1VAC30-45-771, 1VAC30-45-805, and 1VAC30-45-814, and 1VAC30-45-826.~~ Where an LOD study is not performed, the laboratory may not report a value below the limit of quantitation.

#### 2. Limit of quantitation (LOQ).

a. The laboratory shall determine the LOQ for each analyte of concern according to a defined, documented procedure.

b. The LOQ study is not required for any component or property for which spiking solutions or quality control samples are not commercially available or otherwise inappropriate (e.g., pH).

c. The validity of the LOQ shall be confirmed by successful analysis of a QC sample containing the analytes of concern in each quality system matrix one to two times the claimed LOQ. A successful analysis is one where the recovery of each analyte is within the established test method acceptance criteria or client data quality objectives for accuracy. This single analysis is not required if the bias and precision of the measurement system is evaluated at the LOQ.

#### 3. Evaluation of precision and bias.

a. Standard methods. The laboratory shall evaluate the precision and bias of a standard method for each analyte of concern for each quality system matrix according to either of the following:

(1) The single-concentration four-replicate recovery study procedures in 1VAC30-45-730 F; or

(2) An alternate procedure documented in the quality manual when the analyte cannot be spiked into the sample matrix and quality control samples are not commercially available.

#### b. Nonstandard methods.

(1) For laboratory-developed test methods or nonstandard test methods that were not in use by the laboratory before July 2003, the laboratory shall have a documented procedure to evaluate precision and bias. The laboratory shall also compare results of the precision and bias measurements with criteria given in the reference method or criteria established by the laboratory.

(2) Precision and bias measurements shall evaluate the method across the analytical calibration range of the method. The laboratory shall also evaluate precision and bias in the relevant quality system matrices and shall process the samples through the entire measurement system for each analyte of interest.

(3) The following are examples of a systematic approach to evaluate precision and bias:

(a) Example 1. Analyze QC samples in triplicate containing the analytes of concern at or near the limit of quantitation, at the upper-range of the calibration (upper 20%) and at a mid-range concentration. Process these samples on different days as three sets of samples through the entire measurement system for each analyte of interest. Each day one QC sample at each concentration is analyzed. A separate method blank shall be subjected to the analytical method along with the QC samples on each of the three days. (Note that the three samples at the LOQ concentration can demonstrate sensitivity as well.) For each analyte, calculate the mean recovery for each day, for each level over days, and for all nine samples. Calculate the relative standard deviation for each of the separate means obtained. Compare the standard deviations for the different days and the standard deviations for the different concentrations. If the different standard deviations are all statistically insignificant (e.g., F-test), then compare the overall mean and standard deviation with the established criteria from above.

(b) Example 2. A validation protocol such as the Tier I, Tier II, and Tier III requirements in U.S. EPA Office of Water's Alternate Test Procedure (ATP) approval process.

4. Evaluation of selectivity. The laboratory shall evaluate selectivity by following the checks established within the method. These checks may include mass spectral tuning, second column confirmation, ICP inter-element interference checks, chromatography retention time windows, sample blanks, spectrochemical absorption or fluorescence profiles, co-precipitation evaluations, and electrode response factors.

#### **1VAC30-45-770. Chemical testing: positive and negative controls.**

##### **A. Negative control – method performance.**

1. Purpose. The method blank is used to assess the preparation batch for possible contamination during the

preparation and processing steps. The method blank shall be processed along with and under the same conditions as the associated samples to include all steps of the analytical procedure. Procedures shall be in place to determine if a method blank is contaminated. Any affected samples associated with a contaminated method blank shall be reprocessed for analysis or the results reported with appropriate data qualifying codes.

2. Frequency. The method blank shall be analyzed at a minimum of one per preparation batch. In those instances for which no separate preparation method is used (example: (e.g., volatiles in water) the batch shall be defined as environmental samples that are analyzed together with the same method and personnel, using the same lots of reagents, not to exceed the analysis of 20 environmental samples.

3. Composition. The method blank shall consist of a quality system matrix that is similar to the associated samples and is known to be free of the analytes of interest.

4. Evaluation criteria and corrective action. While the goal is to have no detectable contaminants, each method blank shall be critically evaluated as to the nature of the interference and the effect on the analysis of each sample within the batch. The source of contamination shall be investigated and measures taken to minimize or eliminate the problem and affected samples reprocessed or data shall be appropriately qualified if:

a. The concentration of a targeted analyte in the blank is at or above the reporting limit as established by the test method or by regulation, and is greater than 1/10 of the amount measured in any sample.

b. The blank contamination otherwise affects the sample results as per the test method requirements or the individual project data quality objectives.

c. When a blank is determined to be contaminated, the cause shall be investigated and measures taken to minimize or eliminate the problem. Samples associated with a contaminated blank shall be evaluated as to the best corrective action for the samples (e.g., reprocessing or data qualifying codes). In all cases the corrective action shall be documented.

##### **B. Positive control – method performance. Laboratory control sample (LCS).**

1. Purpose. The LCS is used to evaluate the performance of the total analytical system, including all preparation and analysis steps. Results of the LCS are compared to established criteria and, if found to be outside of these criteria, indicates that the analytical system is "out of control." Any affected samples associated with an out of control LCS shall be reprocessed for re-analysis or the results reported with appropriate data qualifying codes.

2. Frequency. The LCS shall be analyzed at a minimum of one per preparation batch. Exceptions would be for those

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analytes for which no spiking solutions are available such as total suspended solids, total dissolved solids, total volatile solids, total solids, pH, color, odor, temperature, dissolved oxygen or turbidity. In those instances for which no separate preparation method is used (example: volatiles in water) the batch shall be defined as environmental samples that are analyzed together with the same method and personnel, using the same lots of reagents, not to exceed the analysis of 20 environmental samples.

3. Composition. The LCS is a quality system matrix, known to be free of analytes of interest, spiked with known and verified concentrations of analytes. NOTE: the matrix spike may be used in place of this control as long as the acceptance criteria are as stringent as for the LCS. Alternatively the LCS may consist of a media containing known and verified concentrations of analytes or as Certified Reference Material (CRM). All analyte concentrations shall be within the calibration range of the methods. The following shall be used in choosing components for the spike mixtures:

The components to be spiked shall be as specified by the mandated test method or other regulatory requirement or as requested by the client. In the absence of specified spiking components the laboratory shall spike per the following:

a. For those components that interfere with an accurate assessment such as spiking simultaneously with technical chlordane, toxaphene and PCBs, the spike should be chosen that represents the chemistries and elution patterns of the components to be reported.

b. For those test methods that have extremely long lists of analytes, a representative number may be chosen. The analytes selected should be representative of all analytes reported. The following criteria shall be used for determining the minimum number of analytes to be spiked. However, the laboratory shall insure that all targeted components are included in the spike mixture over a two-year period. For methods that include 1-10 targets, spike all components; for methods that include 11-20 targets, spike at least 40% 10 components or 80%, whichever is greater; and for methods with more than 20 targets, spike at least 16 components.

4. Evaluation criteria and corrective action.

a. The results of the individual batch LCS are calculated in percent recovery or other appropriate statistical technique that allows comparison to established acceptance criteria. The laboratory shall document the calculation.

b. The individual LCS is compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits or utilize client specified assessment criteria.

c. A LCS that is determined to be within the criteria effectively establishes that the analytical system is in control and validates system performance for the samples in the associated batch. Samples analyzed along with a LCS determined to be "out of control" shall be considered suspect and the samples reprocessed and re-analyzed or the data reported with appropriate data qualifying codes.

5. If a large number of analytes are in the LCS, it becomes statistically likely that a few will be outside control limits. This may not indicate that the system is out of control, therefore corrective action may not be necessary. Upper and lower marginal exceedance (ME) limits can be established to determine when corrective action is necessary. A ME is defined as being beyond the LCS control limit (3 standard deviations), but within the ME limits. ME limits are between 3 and 4 standard deviations around the mean.

a. The number of allowable marginal exceedances is based on the number of analytes in the LCS. If more analytes exceed the LCS control limits than is allowed, or if any one analyte exceeds the ME limits, the LCS fails and corrective action is necessary. This marginal exceedance approach is relevant for methods with long lists of analytes. It will not apply to target analyte lists with fewer than 11 analytes.

b. The number of allowable marginal exceedances is as follows:

Number of analytes in LCS	Number of analytes allowed in ME of the LCS control limit
Greater than 90	Five
71-90	Four
51-70	Three
31-50	Two
11-30	One
Fewer than 11	None

c. Marginal exceedances shall be random. If the same analyte exceeds the LCS control limit repeatedly, it is an indication of a systemic problem. The source of the error shall be located and corrective action taken. Laboratories shall have a written procedure to monitor the application of marginal exceedance allowance to the LCS to ensure random behavior.

C. Sample specific controls - general.

1. The laboratory shall document procedures for determining the effect of the sample matrix on method performance. These procedures relate to the analyses of quality system matrix specific Quality Control (QC) samples and are designed as data quality indicators for a

specific sample using the designated test method. These controls alone are not used to judge laboratory performance.

2. Examples of matrix specific QC include: Matrix Spike (MS); Matrix Spike Duplicate (MSD); sample duplicates; and surrogate spikes. The laboratory shall have procedures in place for tracking, managing, and handling matrix specific QC criteria including spiking appropriate components at appropriate concentrations, calculating recoveries and relative percent difference, evaluating and reporting results based on performance of the QC samples.

D. Sample specific controls - matrix spike and matrix spike duplicates.

1. Purpose. Matrix specific QC samples indicate the effect of the sample matrix on the precision and accuracy of the results generated using the selected method. The information from these controls is sample/matrix specific and would not normally be used to determine the validity of the entire batch.

2. Frequency. The frequency of the analysis of matrix specific samples shall be determined as part of a systematic planning process (e.g., Data Quality Objectives) or as specified by the test method.

3. Composition. The components to be spiked shall be as specified by the mandated test method. Any permit specified analytes, as specified by regulation or client requested analytes shall also be included. If there are no specified components, the laboratory shall spike per the following:

a. For those components that interfere with an accurate assessment such as spiking simultaneously with technical chlordane, toxaphene and PCBs, the spike should be chosen that represents the chemistries and elution patterns of the components to be reported.

b. For those test methods that have extremely long lists of analytes, a representative number may be chosen using the following criteria for choosing the number of analytes to be spiked. However, the laboratory shall insure that all targeted components are included in the spike mixture over a two-year period.

(1) For methods that include 1-10 targets, spike all components;

(2) For methods that include 11-20 targets, spike at least ~~10%~~ 10 components or 80%, whichever is greater;

(3) For methods with more than 20 targets, spike at least 16 components.

4. Evaluation criteria and corrective action.

a. The results from matrix spike/matrix spike duplicate are primarily designed to assess the precision and accuracy of analytical results in a given matrix and are expressed as percent recovery (%R), relative percent difference (RPD), or other appropriate statistical

technique that allows comparison to established acceptance criteria. The laboratory shall document the calculation for %R, RPD or other statistical treatment used.

b. The results are compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits. For matrix spike results outside established criteria corrective action shall be documented or the data reported with appropriate data qualifying codes.

E. Sample specific controls - matrix duplicates.

1. Purpose. Matrix duplicates are defined as replicate aliquots of the same sample taken through the entire analytical procedure. The results from this analysis indicate the precision of the results for the specific sample using the selected method. The matrix duplicate provides a usable measure of precision only when target analytes are found in the sample chosen for duplication.

2. Frequency. The frequency of the analysis of matrix duplicates may be determined as part of a systematic planning process (e.g., Data Quality Objectives) or as specified by the mandated test method.

3. Composition. Matrix duplicates are performed on replicate aliquots of actual samples. The composition is usually not known.

4. Evaluation criteria and corrective action.

a. The results from matrix duplicates are primarily designed to assess the precision of analytical results in a given matrix and are expressed as relative percent difference (RPD) or another statistical treatment (e.g., absolute differences). The laboratory shall document the calculation for relative percent difference or other statistical treatments.

b. Results are compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits. For matrix duplicates results outside established criteria corrective action shall be documented or the data reported with appropriate data qualifying codes.

F. Sample specific controls - surrogate spikes.

1. Purpose. Surrogates are used most often in organic chromatography test methods and are chosen to reflect the chemistries of the targeted components of the method. Added prior to sample preparation/extraction, they provide a measure of recovery for every sample matrix.

2. Frequency. Except where the matrix precludes its use or when not commercially available, surrogate compounds shall be added to all samples, standards, and blanks for all appropriate test methods.

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3. Composition. Surrogate compounds are chosen to represent the various chemistries of the target analytes in the method or MQO. They are often specified by the mandated method and are deliberately chosen for their being unlikely to occur as an environmental contaminant. Often this is accomplished by using deuterated analogs of select compounds.

4. Evaluation criteria and corrective action. The results are compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory should determine internal criteria and document the method used to establish the limits. Surrogates outside the acceptance criteria shall be evaluated for the effect indicated for the individual sample results. Data quality objectives or other site-specific requirements may guide the appropriate corrective action. Results reported from analyses with surrogate recoveries outside the acceptance criteria should include appropriate data qualifiers.

## **1VAC30-45-771. Chemical testing: limit of detection and limit of quantitation.**

A. General. All procedures used shall be documented. Documentation shall include the quality system matrix type. All supporting data shall be retained.

B. Limit of detection (LOD). The laboratory shall utilize a test method that provides an LOD that is appropriate and relevant for the intended use of the data. An LOD is not required for a test method when test results are not reported outside of the calibration range. LODs shall be determined by the protocol in the mandated test method or applicable regulation. If the protocol for determining LODs is not specified, the selection of the procedure shall reflect instrument limitations and the intended application of the test method.

1. The LOD shall be initially determined for the compounds of interest in each test method in a quality system matrix in which there are no target analytes or interferences at a concentration that would impact the results. Alternatively the LOD shall be determined in the quality system matrix of interest (see definition of matrix).

2. LODs shall be determined each time there is a change in the test method that affects how the test is performed, or when a change in instrumentation occurs that affects the sensitivity of the analysis.

~~3. The laboratory shall have established procedures to relate LOD with LOQ.~~

4. ~~3.~~ The LOD shall be verified annually for each quality system matrix, method and analyte according to the procedure specified in 1VAC30-45-760 B 1.

C. Limit of quantitation (LOQ).

1. Any established LOQ shall be above the LOD.

2. The LOQ shall be verified annually for each quality system matrix, method and analyte according to the

procedure specified in 1VAC30-45-760 B 2. Alternatively, the annual LOQ verification is not required if the LOD is reevaluated or verified according to subdivision B 4 of this section.

## **1VAC30-45-775. Chemical testing: constant and consistent test conditions.**

A. The laboratory shall assure that the test instruments consistently operate within the specifications required of the application for which the equipment is used.

~~B. Glassware cleaning. Glassware shall be cleaned to meet the sensitivity of the test method.~~

~~C. B.~~ Any cleaning and storage procedures that are not specified by the test method shall be documented in laboratory records and SOPs.

## **1VAC30-45-780. Toxicity testing: general. (Repealed.)**

~~These standards apply to laboratories measuring the toxicity and/or bioaccumulation of contaminants in effluents (aquatic toxicity), receiving waters, sediments, elutriates, leachates and soils. In addition to the essential quality control standards set out in 1VAC30 45 781 through 1VAC30 45 788, some methods may have additional or other requirements based on factors such as the type of quality system matrix evaluated.~~

## **1VAC30-45-781. Toxicity testing: positive and negative controls. (Repealed.)**

~~A. Positive control. Reference toxicant tests demonstrate a laboratory's ability to obtain consistent results with the test method and evaluate the overall health and sensitivity of test organisms over time.~~

~~1. The laboratory shall demonstrate its ability to obtain consistent results with standard reference toxicants (SRT) and complete an initial Demonstration of Capability (DOC) in order to attain accreditation in toxicity testing methods:~~

~~a. An initial DOC shall consist of five or more acceptable SRT tests for each test method, species and endpoint with different batches of organisms. Appropriate negative controls (water, sediment, or soil) shall be tested at the frequency and duration specified in the test method. Initial DOCs shall be prepared in accordance with the requirements of 1VAC30 45 730 F.~~

~~b. Initial DOC is established by maintenance of SRT test results on control charts. A laboratory shall record the control performance and statistical endpoints (such as NOEC or ECp) for each method species and endpoint on control charts. Initial DOC is established where 95% of the test results required in subdivision A 1 a of this section fall within the control limits established in accordance with subdivision A 1 e of this section and meet test acceptability criteria (TAC). The laboratory shall evaluate precision (i.e., coefficient of variation (CV)) or sensitivity (i.e., statistical minimum significant difference (SMSD) measures; see subdivision A 1 d of this section) for these tests against method specific or,~~

lacking the former, laboratory derived criteria to determine validity of the initial DOC.

e. For endpoints that are point estimates (IC<sub>p</sub>, EC<sub>p</sub>), control charts are constructed by plotting the cumulative mean and the control limits that consist of the upper and lower 95% confidence limits ( $\pm 2$  standard deviations). In case of highly variable point estimates that exceed method specific criteria, the control chart limits are adjusted accordingly. For endpoints from hypothesis tests (NOEC, NOAEC), the values are plotted directly and the control limits consist of one concentration interval above and below the concentration representing the central tendency (i.e., the mode).

d. For endpoints that are point estimates, the cumulative mean CV is calculated and for endpoints from hypothesis tests, the SMSD is calculated. These values are maintained on a control chart.

2. Ongoing laboratory performance shall be demonstrated by routine SRT testing for each test method and species and endpoint in accordance with the minimum frequency requirements specified in subdivision A 3 of this section:

a. Intralaboratory precision is determined on an ongoing basis through the use of control charts as established in subdivision A 1 b of this section. The control charts shall be plotted as point estimate values, such as EC<sub>25</sub> for chronic tests and LC<sub>50</sub> for acute tests, or as appropriate hypothesis test values, such as the NOEC or NOAEC, over time within a laboratory.

b. After initial laboratory DOC is determined, the control limits and CV for an individual test method, endpoints and species shall be adjusted as additional test results are obtained. After 20 data points are collected for a test method and species, the control chart is maintained using only the last 20 data points, i.e., each successive mean value and control limit is calculated using only the last 20 values.

e. Control chart limits are expected to be exceeded occasionally regardless of how well a laboratory performs. Acceptance limits for point estimates (IC<sub>p</sub>, EC<sub>p</sub>) that are based on 95% confidence limits should theoretically be exceeded for one in 20 tests. Depending on the dilution factor and test sensitivity, control charts based on hypothesis test values (NOEC, NOAEC) may be expected to be exceeded on a similar frequency. Test results that fall outside of control chart limits at a frequency of 5.0% or less, or that fall just outside control chart limits (especially in the case of highly proficient laboratories that may develop relatively narrow acceptance limits over time), are not rejected de facto. Such data are evaluated in comparison with control chart characteristics including the width of the acceptance limits and the degree of departure of the value from acceptance limits.

d. Consistent with the test methods used, laboratories shall develop acceptance/rejection policies for SRT data that consider the source of test organisms, the direction of the deviation, test dilution factor, test sensitivity (for hypothesis test values), testing frequency, out of control test frequency, relative width of acceptance limits, inter-test CV, and degree of difference between test results and acceptance limits.

e. In the case of reference toxicant data that fails to meet control chart acceptance criteria, the test data are examined for defects, corrective action taken, and the test repeated if necessary, using a different batch of organisms or the data is qualified.

3. The frequency of ongoing laboratory reference toxicant testing shall be as follows unless the method specifically requires less frequent SRT tests (e.g., sediment tests):

a. For test methods conducted at a frequency of monthly or greater, SRT tests shall be conducted at an ongoing frequency of monthly.

b. For test methods and species commonly used in the laboratory, but that are tested at a frequency of less than monthly, SRT tests shall be conducted concurrently with the environmental test.

e. If the test organisms are obtained from an outside source the sensitivity of each batch of organisms received from a supplier shall be determined via a concurrent SRT test unless the supplier can provide control chart data for the last five SRT tests using the same SRT and test conditions. Supplied SRT data may not be older than six months.

d. The DOC for an analyst shall be consistent with 1VAC30-45-220 B but the frequency need not exceed the method specified requirements and subdivision A 3 a and A 3 b of this section.

4. These standards do not currently specify a particular reference toxicant and dilution series. If the permitting authority identifies a reference toxicant or dilution series for a particular test, the laboratory shall follow the specified requirements. All reference toxicant tests conducted for a given test method and species shall use the same reference toxicant, test concentrations, dilution water and data analysis methods. A dilution factor of 0.5x or greater shall be used for both acute and chronic tests.

5. The reference toxicant tests shall be conducted following the same procedures as the environmental toxicity tests for which the precision is being evaluated, unless otherwise specified in the test method (for example, 10 day sediment tests employ 96 h water only reference toxicant tests). The test duration, laboratory dilution water, feeding, organism age, range and density, test volumes, renewal frequency, water quality measurements, and the number of test concentrations, replicates and organisms per

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replicate shall be the same as specified for the environmental toxicity test.

~~B. Negative control: control, brine control, control sediment, control soil or dilution water.~~

~~1. The standards for the use, type and frequency of testing of negative controls are specified by the test methods and by permit or regulation and shall be followed. A negative control is included with each test to evaluate test performance and the health and sensitivity of the specific batch of organisms.~~

~~2. Appropriate additional negative controls shall be included when sample adjustments (for example, addition of thiosulfate for dechlorination) or solvent carriers are used in the test.~~

~~3. Test acceptability criteria (TAC). The test acceptability criteria specified in the test method shall be achieved for both the reference toxicant and the effluent or environmental sample toxicity test. The criteria shall be calculated and shall meet the method specified requirements for performing toxicity tests.~~

## **1VAC30-45-782. Toxicity testing: variability and/or reproducibility. (Repealed.)**

~~Intralaboratory precision shall be determined on an ongoing basis through the use of further reference toxicant tests and related control charts as described in 1VAC30-45-840 A.~~

## **1VAC30-45-783. Toxicity testing: accuracy. (Repealed.)**

~~This principle is not applicable to toxicity testing.~~

## **1VAC30-45-784. Toxicity testing: test sensitivity. (Repealed.)**

~~A. The statistical minimum significant difference (SMSD) shall be calculated according to the formula specified by the test method and reported with the test results.~~

~~B. Point estimates: (LCP, ICP, or ECP) Confidence intervals shall be reported as a measure of the precision around the point estimate value, when the calculation is possible.~~

~~C. The SMSD shall be calculated and reported for only hypothesis test values, such as the NOEC or NOAEC.~~

## **1VAC30-45-785. Toxicity testing: selection of appropriate statistical analysis methods. (Repealed.)**

~~A. If required, methods of data analysis and endpoints are specified by language in the regulation, permit or the test method.~~

~~B. Dose response curves. The data shall be plotted in the form of a curve relating the dose of the chemical or concentration of sample to cumulative percentage of test organisms demonstrating a response such as death. Evaluation criteria shall be established for interpretation of concentration or dose response curves.~~

## **1VAC30-45-786. Toxicity testing: selection and use of reagents and standards. (Repealed.)**

~~A. The grade of all reagents used in toxicity tests is specified in the test method except the reference standard. All reference standards shall be prepared from chemicals that are analytical reagent grade or better. The preparation of all standards and reference toxicants shall be documented.~~

~~B. All standards and reagents associated with chemical measurements, such as dissolved oxygen, pH or specific conductance, shall comply with the standards outlined in 1VAC30-45-740 D 1 d.~~

~~C. Only reagent grade water collected from distillation or deionization units is used to prepare reagents.~~

## **1VAC30-45-787. Toxicity testing: selectivity. (Repealed.)**

~~The permit or regulation specifies the selectivity of the test.~~

## **1VAC30-45-788. Toxicity testing: constant and consistent test conditions. (Repealed.)**

~~A. If closed refrigerator sized incubators are used, culturing and testing of organisms shall be separated to avoid cross contamination.~~

~~B. Laboratory space shall be adequate for the types and numbers of tests performed. The building shall provide adequate cooling, heating and illumination for conducting testing and culturing; hot and cold running water shall be available for cleaning equipment.~~

~~C. Air used for aeration of test solutions, dilution waters and cultures shall be free of oil and fumes.~~

~~D. The laboratory or a contracted outside expert shall positively identify test organisms to species on an annual basis. The taxonomic reference (citation and page(s)) and the names(s) of the taxonomic expert(s) shall be kept on file at the laboratory. When organisms are obtained from an outside source, the supplier shall provide this same information.~~

~~E. Instruments used for routine support measurements of chemical and physical parameters such as pH, DO, conductivity, salinity, alkalinity, hardness, chlorine, ammonia, and weight shall be calibrated, and/or standardized per manufacturer's instructions. As these are support measurements, only the calibration and verification requirements specified at 1VAC30-45-740 D 1 apply. All measurements and calibrations shall be documented.~~

~~F. Test temperature shall be maintained as specified for the test method. Temperature control equipment shall be adequate to maintain the required test temperature(s). The average daily temperature of the test solutions shall be maintained within the method specified range. The minimum frequency of measurement shall be once per 24 hour period. The test temperature for continuous flow toxicity tests shall be recorded and monitored continuously. Where electronic data loggers are used, temperature shall be monitored at a frequency sufficient to capture temporal variations of the environmental control system.~~

G. Reagent grade water, prepared by any combination of distillation, reverse osmosis, ion exchange, activated carbon and particle filtration, shall meet the method specified requirements.

H. The quality of the standard dilution water used for testing or culturing shall be sufficient to allow satisfactory survival, growth and reproduction of the test species as demonstrated by routine reference toxicant tests and negative control performance. Water used for culturing and testing shall be analyzed for toxic metals and organics whenever the minimum acceptability criteria for control survival, growth or reproduction are not met and no other cause, such as contaminated glassware or poor stock, can be identified. It is recognized that the analyte lists of some methods manuals may not include all potential toxicants, are based on estimates of chemical toxicity available at the time of publication and may specify detection limits that are not achievable in all matrices. However, for those analytes not listed, or for which the measured concentration or limit of detection is greater than the method specified limit, the laboratory shall demonstrate that the analyte at the measured concentration or reported limit of detection does not exceed one-tenth of the expected chronic value for the most sensitive species tested and/or cultured. The expected chronic value is based on professional judgment and the best available scientific data. The "USEPA Ambient Water Quality Criteria Documents" and the EPA AQUIRE database provide guidance and data on acceptability and toxicity of individual metals and organic compounds.

I. The quality of the food used for testing or culturing shall be sufficient to allow satisfactory survival, growth and reproduction of the test species as demonstrated by routine reference toxicant tests and negative control performance. The laboratory shall have written procedures for the evaluation of food acceptance.

J. A subset of organisms used in bioaccumulation tests shall be analyzed at the start of the test (baseline) for the target compounds to be measured in the bioaccumulation tests.

K. Test chamber size and test solution volume shall be as specified in the test method. All test chambers used in a test shall be identical.

L. Test organisms shall be fed the quantity and type food or nutrients specified in the test method. They shall also be fed at the intervals specified in the test methods.

M. All organisms in a test shall be from the same source. Where available certified seeds are used for soil tests.

N. All organisms used in tests, or used as broodstock to produce neonate test organisms (for example cladocerans and larval fish), shall appear healthy, show no signs of stress or disease and exhibit acceptable survival (90% or greater) during the 24 hour period immediately preceding use in tests.

O. All materials used for test chambers, culture tanks, tubing, etc., and coming in contact with test samples,

solutions, control water, sediment or soil or food shall be nontoxic and cleaned as described in the test methods. Materials shall not reduce or add to sample toxicity. Appropriate materials for use in toxicity testing and culturing are described in the referenced manuals.

P. Light intensity shall be maintained as specified in the methods manuals. Measurements shall be made and recorded on a yearly basis. Photoperiod shall be maintained as specified in the test methods and shall be documented at least quarterly. For algal and plant tests, the light intensity shall be measured and recorded at the start of each test.

Q. The testing laboratory shall document the health and culturing conditions of all organisms used for testing. Such documentation shall include culture conditions (e.g., salinity, hardness, temperature, pH) and observations of any stress, disease or mortality. When organisms are obtained from an outside source, the laboratory shall obtain written documentation of these water quality parameters and biological observations for each lot of organism received. These observations shall adequately address the 24 hour time period referenced in subsection N of this section. The laboratory shall also record each of these observations and water quality parameters upon the arrival of the organisms at the testing laboratory.

R. Age and the age range of the test organisms shall be as specified in the test method. Supporting information, such as hatch dates and times, times of brood releases and metrics (for example, chironomid head capsule width) shall be documented.

S. The maximum holding time of effluents (elapsed time from sample collection to first use in a test) shall not exceed 36 hours; samples may be used for renewal up to 72 hours after first use except as prescribed by the method and approved by the regulatory agency having authority for program oversight.

T. All samples shall be chilled to 0 to 6°C during or immediately after collection except as prescribed by the method.

U. Organisms used in a given test shall be from the same batch.

V. All tests shall have the minimum number of replicates per treatment as prescribed by the method.

W. The control population of *Ceriodaphnia* in chronic effluent or receiving water tests shall contain no more than 20% males.

X. The culturing of *C. dubia* shall be adequate such that blocking by parentage can be established.

Y. Dissolved oxygen and pH in aquatic tests shall be within acceptable range at test initiation and aeration (minimal) is provided to tests if, and only if, acceptable dissolved oxygen concentrations cannot be otherwise maintained or if specified by the test method.

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~~Z. Test soils or sediments shall be within the geochemical tolerance range of the test organism.~~

~~AA. An individual test may be conditionally acceptable if temperature, dissolved oxygen, pH and other specified conditions fall outside specifications, depending on the degree of the departure and the objectives of the tests (see test conditions and test acceptability criteria specified for each test method).~~

## **1VAC30-45-791. Microbiology testing: sterility checks and blanks, positive and negative controls.**

A. Sterility checks and blanks. The laboratory shall demonstrate that the filtration equipment and filters, sample containers, media and reagents have not been contaminated through improper handling or preparation, inadequate sterilization, or environmental exposure.

1. A sterility blank shall be analyzed for each lot of pre-prepared, ready-to-use medium (including chromofluorogenic reagent) and for each batch of medium prepared in the laboratory. This shall be done prior to first use of the medium.
2. For filtration technique, the laboratory shall conduct one beginning and one ending sterility check for each ~~laboratory sterilized filtration unit used in a~~ filtration series. The filtration series may include single or multiple filtration units, which have been sterilized prior to beginning the series. For presterilized single use funnels a sterility check shall be performed on one funnel per lot. The filtration series is considered ended when more than 30 minutes elapses between successive filtrations. During a filtration series, filter funnels shall be rinsed with three 20-30 ml portions of sterile rinse water after each sample filtration. In addition, laboratories shall insert a sterility blank after every 10 samples or sanitize filtration units by UV light after each sample filtration.
3. For pour plate technique, sterility blanks of the medium shall be made by pouring, at a minimum, one uninoculated plate for each lot of pre-prepared, ready-to-use media and for each batch of medium prepared in the laboratory.
4. Sterility checks on sample containers shall be performed on at least one container for each lot of purchased, presterilized containers with nonselective growth media. For containers prepared and sterilized in the laboratory, a sterility check shall be performed on one container per sterilized batch with nonselective growth media.
5. A sterility blank shall be performed on each batch of dilution water prepared in the laboratory and on each batch of pre-prepared, ready-to-use dilution water with nonselective growth media.
6. At least one filter from each new lot of membrane filters shall be checked for sterility with nonselective growth media.

B. Positive controls.

1. Positive culture controls demonstrate that the medium can support the growth of the target organism(s), and that the medium produces the specified or expected reaction to the target organism(s).
2. Each preprepared, ready-to-use lot of medium (including chromofluorogenic reagent) and each batch of medium prepared in the laboratory shall be tested and demonstrate a known positive response. This shall be done prior to first use of the medium.

C. Negative controls. The provisions of this subsection shall not apply to wastewater treatment plants.

1. Negative culture controls demonstrate that the medium does not support the growth of non-target organisms or does not demonstrate the typical positive reaction of the target ~~organism(s)~~ organism or organisms.
2. Each pre-prepared, ready-to-use lot of selective medium (including chromofluorogenic reagent) and each batch of selective medium prepared in the laboratory shall be analyzed with one or more known negative culture controls, (i.e., nontarget organisms,) as appropriate to the method. This shall be done prior to first use of the medium.

## **1VAC30-45-796. Microbiology testing: quality of standards, reagents, and media.**

A. The laboratory shall ensure that the quality of the reagents and media used is appropriate for the test concerned.

B. Culture media may be prepared from commercial dehydrated powders or may be purchased ready to use. The laboratory may prepare media from basic ingredients when commercial media are not available or when it can be demonstrated that commercial media do not provide adequate results. Media prepared by the laboratory from basic ingredients shall be tested for performance (e.g., for selectivity, sensitivity, sterility, growth promotion, growth inhibition) prior to first use. Detailed testing criteria information shall be defined in either the laboratory's test methods, SOPs, quality manual, or similar documentation.

C. Reagents, commercial dehydrated powders and media shall be used within the shelf-life of the product and shall be documented according to 1VAC30-45-730 J.

D. Distilled water, deionized water or reverse osmosis produced water free from bactericidal and inhibitory substances shall be used in the preparation of media, solutions and buffers. The quality of the water shall be monitored for chlorine residual, specific conductance, and heterotrophic bacteria plate count monthly (when in use), when maintenance is performed on the water treatment system, or at startup after a period of disuse longer than one month.

E. Analysis for metals and the Bacteriological Water Quality Test (to determine presence of toxic agents or growth promoting substances) shall be performed annually. Results of these analyses shall meet the specifications of the required method and records of analyses shall be maintained for three

years. (An exception to performing the Bacteriological Water Quality Test shall be given to laboratories that can supply documentation to show that their water source meets the criteria, as specified by the method, for Type I or Type II reagent water.)

F. Media, solutions and reagents shall be prepared, used and stored according to a documented procedure following the manufacturer's instructions or the test method. Documentation for media prepared in the laboratory shall include date of preparation, preparer's initials, type and amount of media prepared, manufacturer and lot number, final pH of the media, and expiration date. Documentation for media purchased pre-prepared, ready to use shall include manufacturer, lot number, type ~~and amount~~ of media received, date of receipt, expiration date of the media, and pH of the media.

**1VAC30-45-798. Microbiology testing: constant and consistent test conditions.**

A. Laboratory facilities. Floors and work surfaces shall be nonabsorbent and easy to clean and disinfect. Work surfaces shall be adequately sealed. Laboratories shall provide sufficient storage space, and shall be clean and free from dust accumulation. Plants, food, and drink shall be prohibited from the laboratory work area.

B. Laboratory equipment.

1. Temperature measuring devices. Temperature measuring devices such as liquid-in-glass thermometers, thermocouples, and platinum resistance thermometers used in incubators, autoclaves and other equipment shall be the appropriate quality to meet ~~specification(s)~~ specifications in the test method. The graduation of the temperature measuring devices shall be appropriate for the required accuracy of measurement and they shall be calibrated to national or international standards for temperature (see 1VAC30-45-740 C). Calibration shall be done at least annually.

2. Autoclaves.

a. The performance of each autoclave shall be initially evaluated by establishing its functional properties and performance, for example, heat distribution characteristics with respect to typical uses. Autoclaves shall meet specified temperature tolerances. Pressure cookers shall not be used for sterilization of growth media.

b. Demonstration of sterilization temperature shall be provided by use of continuous temperature recording device or by use of a maximum registering thermometer with every cycle. Appropriate biological indicators shall be used once per month to determine effective sterilization. Temperature sensitive tape shall be used with the contents of each autoclave run to indicate that the autoclave contents have been processed.

c. Records of autoclave operations shall be maintained for every cycle. Records shall include date, contents, maximum temperature reached, pressure, time in sterilization mode, total run time (may be recorded as time in and time out) and analyst's initials.

d. Autoclave maintenance shall be performed annually, either internally or by service contract, ~~shall be performed annually~~ and shall include a pressure check and calibration of temperature device. Records of the maintenance shall be maintained in equipment logs. If the laboratory demonstrates regular monitoring of pressure (e.g., for each autoclaved batch) and annual calibration of the maximum registering thermometer, the annual autoclave pressure and temperature device checks shall not be required.

e. The autoclave mechanical timing device shall be checked quarterly against a stopwatch and the actual time elapsed documented.

3. Volumetric equipment. Volumetric equipment shall be calibrated as follows:

a. Equipment with movable parts such as automatic dispensers, dispensers/diluters, and mechanical hand pipettes shall be verified for accuracy quarterly.

b. Equipment such as filter funnels, bottles, nonclass A glassware, and other marked containers shall be calibrated once per lot prior to first use.

c. The volume of the disposable volumetric equipment such as sample bottles and disposable pipettes shall be checked once per lot.

4. UV instruments. UV instruments used for sanitization shall be tested quarterly for effectiveness with an appropriate UV light meter or by plate count agar spread plates. Replace bulbs if output is less than 70% of original for light tests or if count reduction is less than 99% for a plate containing 200 to 300 organisms.

5. Conductivity meters, oxygen meters, pH meters, hygrometers, and other similar measurement instruments shall be calibrated according to the method specified requirements (see 1VAC30-45-740 D 1 d).

6. Incubators, water baths, and ovens.

a. The ~~stability and~~ uniformity of temperature distribution ~~and time required after test sample addition to reestablish equilibrium conditions~~ in incubators and water baths shall be established. Temperature of incubators and water baths shall be documented twice daily, at least four hours apart, on each day of use.

b. Ovens used for sterilization shall be checked for sterilization effectiveness monthly with appropriate biological indicators. Records shall be maintained for each cycle that include date, cycle time, temperature, contents and analyst's initials.

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## 7. Labware (glassware and plasticware).

- a. The laboratory shall have a documented procedure for washing labware, if applicable. Detergents designed for laboratory use shall be used.
- b. Glassware shall be made of borosilicate or other noncorrosive material, free of chips and cracks, and shall have readable measurement marks.
- c. Labware that is washed and reused shall be tested for possible presence of residues that may inhibit or promote growth of microorganisms by performing the Inhibitory Residue Test annually, and each time the lab changes the lot of detergent or washing procedures.
- d. Washed labware shall be tested at least once daily, each day of washing, for possible acid or alkaline residue by testing at least one piece of labware with a suitable pH indicator such as bromothymol blue. Records of tests shall be maintained.

### **1VAC30-45-800. Radiochemical testing: general. (Repealed.)**

~~These standards apply to laboratories undertaking the examination of environmental samples by radiochemical analysis. These procedures for radiochemical analysis may involve some form of chemical separation followed by detection of the radioactive decay of analyte (or indicative daughters) and tracer isotopes where used. For the purpose of these standards, procedures for the determination of radioactive isotopes by mass spectrometry (e.g., ICP-MS or TIMS) or optical (e.g., KPA) techniques are not addressed herein.~~

### **1VAC30-45-801. Radiochemical testing: negative and positive controls. (Repealed.)**

#### ~~A. Negative controls.~~

- ~~1. Method blank shall be performed at a frequency of one per preparation batch. The results of this analysis shall be one of the quality control measures to be used to assess the batch. The method blank result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified method blank acceptance criteria is not met, the specified corrective action and contingencies shall be followed and results reported with appropriate data qualifying codes. The occurrence of a failed method blank acceptance criteria and the actions taken shall be noted in the laboratory report.~~
- ~~2. In the case of gamma spectrometry, generally a nondestructive analysis, a method blank shall be prepared using a calibrated counting geometry similar to that used for the samples. The container of the appropriate geometry can be empty or filled to similar volume to partially simulate gamma attenuation due to a sample matrix.~~
- ~~3. There shall be no subtraction of the required method blank result from the sample results in the associated preparation or analytical batch unless permitted by method or program. This does not preclude the application of any~~

~~correction factor (e.g., instrument background, analyte presence in tracer, reagent impurities, peak overlap, etc.) to all analyzed samples, both program/project submitted and internal quality control samples. However, these correction factors shall not depend on the required method blank result in the associated analytical batch.~~

- ~~4. The method blank sample shall be prepared with similar aliquot size to that of the routine samples for analysis and the method blank result and acceptance criteria shall be calculated in a manner that compensates for sample results based upon differing aliquot size.~~

#### ~~B. Positive controls.~~

~~1. Laboratory control samples shall be performed at a frequency of one per preparation batch. The results of this analysis shall be one of the quality control measures to be used to assess the batch. The laboratory control sample result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified laboratory control sample acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed laboratory control sample acceptance criteria and the actions taken shall be noted in the laboratory report.~~

~~2. Matrix spike shall be performed at a frequency of one per preparation batch for those methods that include a chemical separation process without the use of an internal standard or carrier, and where there is sufficient sample to do so. Although gross alpha, gross beta and tritium measurements do not involve a chemical separation process, matrix spikes shall be performed for these analyses on aqueous samples. The results of this analysis shall be one of the quality control measures to be used to assess the batch. The matrix spike result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified matrix spike acceptance criteria is not met, the specified corrective action and contingencies shall be followed. The occurrence of a failed matrix spike acceptance criteria and the actions taken shall be noted in the laboratory report. The lack of sufficient sample aliquot size to perform a matrix spike shall be noted in the laboratory report.~~

~~3. The activity of the laboratory control sample shall (i) be at least five times the limit of detection and (ii) at a level comparable to that of routine samples when such information is available if the sample activities are expected to exceed five times the limit of detection.~~

~~4. The activity of the matrix spike analytes(s) shall be greater than five times the limit of detection.~~

~~5. The laboratory standards used to prepare the laboratory control sample and matrix spike shall be from a source independent of the laboratory standards used for instrument calibration and shall meet the requirements for reference standards provided in 1VAC30-45-807 A.~~

6. The matrix spike shall be prepared by adding a known activity of target analyte after subsampling if required but before any chemical treatment (e.g., chemical digestion, dissolution, separation, etc.). Where a radiochemical method, other than gamma spectroscopy, has more than one reportable analyte isotope (e.g., plutonium, Pu 238 and Pu 239, using alpha spectrometry), only one of the analyte isotopes need be included in the laboratory control or matrix spike sample at the indicated activity level. However, where more than one analyte isotope is present above the specified limit of detection, each shall be assessed against the specified acceptance criteria.

7. Where gamma spectrometry is used to identify and quantitate more than one analyte isotope, the laboratory control sample shall contain isotopes that represent the low (e.g., americium-241), medium (e.g., cesium-137) and high (e.g., cobalt-60) energy range of the analyzed gamma spectra. As indicated by these examples the isotopes need not exactly bracket the calibrated energy range or the range over which isotopes are identified and quantitated.

8. The laboratory control sample shall be prepared with similar aliquot size to that of the routine samples for analyses.

#### C. Other controls.

1. Tracer. For those methods that utilize a tracer (i.e., internal standard) each sample result shall have an associated tracer recovery calculated and reported. The tracer shall be added to the sample after subsampling if required but before any chemical treatment (e.g., chemical digestion, dissolution, separation, etc.) unless otherwise specified by the method. The tracer recovery for each sample result shall be one of the quality control measures to be used to assess the associated sample result acceptance. The tracer recovery shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified tracer recovery acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed tracer recovery acceptance criteria and the actions taken shall be noted in the laboratory report.

2. Carrier. For those methods that utilize a carrier for recovery determination, each sample shall have an associated carrier recovery calculated and reported. The carrier shall be added to the sample after subsampling if required but before any chemical treatment (e.g., chemical digestion, dissolution, separation, etc.) unless otherwise specified by the method. The carrier recovery for each sample shall be one of the quality control measures to be used to assess the associated sample result acceptance. The carrier recovery shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified carrier recovery acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed

carrier recovery acceptance criteria and the actions taken shall be noted in the laboratory report.

#### ~~1VAC30-45-802. Radiochemical testing: analytical variability/reproducibility. (Repealed.)~~

~~A. Replicate shall be performed at a frequency of one per preparation batch where there is sufficient sample to do so. The results of this analysis shall be one of the quality control measures to be used to assess batch acceptance. The replicate result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified replicate acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed replicate acceptance criteria and the actions taken shall be noted in the laboratory report.~~

~~B. For low level samples (less than approximately three times the limit of detection) the laboratory may analyze duplicate laboratory control samples or a replicate matrix spike (matrix spike and a matrix spike duplicate) to determine reproducibility within a preparation batch.~~

#### ~~1VAC30-45-803. Radiochemical testing: method evaluation. (Repealed.)~~

~~In order to ensure the accuracy of the reported result, the following procedures shall be in place:~~

~~1. Initial demonstration of capability shall be performed initially (prior to the analysis of any samples) and with a significant change in instrument type (e.g., different detection technique), personnel or method.~~

~~2. Proficiency test samples. The laboratory shall use the results of such analysis to evaluate its ability to produce accurate data.~~

#### ~~1VAC30-45-804. Radiochemical testing: radiation measurement instrumentation. (Repealed.)~~

~~A. General. Because of the stability and response nature of modern radiation measurement instrumentation, it is not typically necessary to verify calibrate these systems each day of use. However, verification of calibration is required as outlined in subsection B of this section. This section addresses those practices that are necessary for proper calibration and those requirements of 1VAC30-45-740-D (instrument calibrations) that are not applicable to some types of radiation measurement instrumentation.~~

#### ~~B. Instrument calibration.~~

~~1. Given that activity detection efficiency is independent of sample activity at all but extreme activity levels, the requirements of 1VAC30-45-740-D-2-b(7) are not applicable to radiochemical method calibrations except mass attenuation in gas proportional counting and sample quench in liquid scintillation counting. Radiation measurement instruments are subject to calibration prior to initial use, when the instrument is placed back in service after malfunctioning and the instrument's response has changed as determined by a performance check or when~~

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~~the instrument's response exceeds predetermined acceptance criteria for the instrument quality control.~~

~~2. Instrument calibration shall be performed with reference standards as defined in 1VAC30-45-807 A. The standards shall have the same general characteristics (i.e., geometry, homogeneity, density, etc.) as the associated samples.~~

~~3. The frequency of calibration shall be addressed in the laboratory method manual if not specified in the method. A specific frequency (e.g., monthly) or observations from the associated control or tolerance chart, as the basis for calibration shall be specified.~~

~~C. Continuing instrument calibration verification (performance checks). Performance checks shall be performed using appropriate check sources and monitored with control charts or tolerance charts to ensure that the instrument is operating properly and that the detector response has not significantly changed and, therefore, the instrument calibration has not changed. The same check source used in the preparation of the tolerance chart or control chart at the time of calibration shall be used in the calibration verification of the instrument. The check sources shall provide adequate counting statistics for a relatively short count time and the source should be sealed or encapsulated to prevent loss of activity and contamination of the instrument and laboratory personnel.~~

~~1. For gamma spectroscopy systems, the performance checks for efficiency and energy calibration shall be performed on a day of use basis along with performance checks on peak resolution.~~

~~2. For alpha spectroscopy systems, the performance check for energy calibration shall be performed on a weekly basis and the performance check for counting efficiency shall be performed on at least a monthly basis.~~

~~3. For gas proportional and liquid scintillation counters, the performance check for counting efficiency shall be performed on a day of use basis. For batches of samples that uninterruptedly count for more than a day a performance check can be performed at the beginning and end of the batch as long as this time interval is no greater than one week. Verification of instrument calibration does not directly verify secondary calibrations, e.g., the mass efficiency curve or the quench curve.~~

~~4. For scintillation counters the calibration verification for counting efficiency shall be performed on a day of use basis.~~

~~D. Background measurement. Background measurements shall be made on a regular basis and monitored using control charts or tolerance charts to ensure that a laboratory maintains its capability to meet required data quality objectives. These values may be subtracted from the total measured activity in the determination of the sample activity.~~

~~1. For gamma spectroscopy systems, background measurements shall be performed on at least a monthly basis.~~

~~2. For alpha spectroscopy systems, background measurements shall be performed on at least a monthly basis.~~

~~3. For gas proportional counters, background measurements shall be performed on at least on a weekly basis.~~

~~4. For scintillation counters, background measurements shall be performed each day of use.~~

~~E. Instrument contamination monitoring. The laboratory shall have a written procedure for monitoring radiation measurement instrumentation for radioactive contamination. The procedure shall indicate the frequency of the monitoring and shall indicate criteria, which initiates corrective action.~~

~~**1VAC30-45-805. Radiochemical testing: Minimum detectable activity (MDA)/Minimum detectable concentration (MDC)/Lower level of detection (LLD). (Repealed.)**~~

~~A. MDA/MDC/LLD shall be determined prior to sample analysis and shall be redetermined each time there is a significant change in the test method or instrument type.~~

~~B. The procedures employed shall be documented and consistent with mandated method or regulation.~~

~~**1VAC30-45-806. Radiochemical testing: data reduction. (Repealed.)**~~

~~A. The requirements of 1VAC30-45-730 K apply.~~

~~B. Measurement uncertainties. Each result shall be reported with the associated measurement uncertainty. The procedures for determining the measurement uncertainty shall be documented and be consistent with mandated method and regulation.~~

~~**1VAC30-45-807. Radiochemical testing: quality of standards and reagents. (Repealed.)**~~

~~A. The quality control program shall establish and maintain provisions for radionuclide standards.~~

~~1. Reference standards that are used in a radiochemical laboratory shall be obtained from the National Institute of Standards and Technology (NIST), or suppliers who participate in supplying NIST standards or NIST traceable radionuclides. Any reference standards purchased outside the United States shall be traceable back to each country's national standards laboratory. Commercial suppliers of reference standards shall conform to ANSI N42.22 to assure the quality of their products.~~

~~2. Reference standards shall be accompanied with a certificate of calibration whose content is as described in ANSI N42.22 - 1995, Section 8, Certificates.~~

~~3. Laboratories should consult with the supplier if the laboratory's verification of the activity of the reference traceable standard indicates a noticeable deviation from the~~

certified value. The laboratory shall not use a value other than the decay corrected certified value. The laboratory shall have a written procedure for handling, storing and establishment of expiration dates for reference standards.

B. All reagents used shall be analytical reagent grade or better.

**1VAC30-45-808. Radiochemical testing: constant and consistent test conditions. (Repealed.)**

The laboratory shall maintain a radiological control program that addresses analytical radiological control. The program shall address the procedures for segregating samples with potentially widely varying levels of radioactivity. The radiological control program shall explicitly define how low level and high level samples will be identified, segregated and processed in order to prevent sample cross contamination. The radiological control program shall include the measures taken to monitor and evaluate background activity or contamination on an ongoing basis.

**1VAC30-45-811. Air testing: negative and positive controls.**

A. Negative controls.

1. Method blanks shall be performed at a frequency of at least one per batch of 20 environmental samples or less per sample preparation method. The results of the method blank analysis shall be used to evaluate the contribution of the laboratory provided sampling media and analytical sample preparation procedures to the amount of analyte found in each sample. If the method blank result is greater than the limit of quantitation and contributes greater than 10% of the total amount of analyte found in the sample, the source of the contamination shall be investigated and measures taken to eliminate the source of contamination. If contamination is found, the data shall be qualified in the report.

2. Collection efficiency. Sampling trains consisting of multiple sections (e.g., filters, sorbent tubes, impingers) that are received intact by the laboratory shall be separated into "front" and "back" sections if required by the client. Each section shall be processed and analyzed separately and the analytical results reported separately.

B. Positive controls. Laboratory control sample (LCS) shall be analyzed at a rate of at least one per batch of 20 or fewer samples per sample preparation method for each analyte. If a spiking solution is not available, a calibration solution whose concentration approximates that of the samples shall be included in each batch and with each lot of media. If a calibration solution must be used for the LCS, the client will be notified prior to the start of analysis. The concentration of the LCS shall be relevant to the intended use of the data and either at a regulatory limit or below it.

C. Surrogates shall be used as required by the test method.

D. Matrix spike shall be used as required by the test method.

**1VAC30-45-820. Asbestos testing: general. (Repealed.)**

These standards apply to laboratories undertaking the examination of asbestos samples. These standards are organized by analytical technique, including transmission electron microscopy (TEM) for the analysis of water, wastewater, air, and bulk samples; phase contrast microscopy (PCM) for analysis of workplace air; and polarized light microscopy (PLM) for analysis of bulk samples. These procedures for asbestos analysis involve sample preparation followed by detection of asbestos. If NIST SRMs specified below are unavailable, the laboratory may substitute an equivalent reference material with a certificate of analysis.

**1VAC30-45-821. Asbestos testing: negative controls. (Repealed.)**

A. Transmission electron microscopy.

1. Water and wastewater.

a. Blank determinations shall be made prior to sample collection. When using polyethylene bottles, one bottle from each batch, or a minimum of one from each 24 shall be tested for background level. When using glass bottles, four bottles from each 24 shall be tested. An acceptable bottle blank level is defined as  $\leq 0.01 \text{ MFL} > 10 \mu\text{m}$ . (EPA/600/R-94/134, Method 100.2, Section 8.2)

b. A process blank sample consisting of fiber free water shall be run before the first field sample. The quantity of water shall be  $\geq 10 \text{ mL}$  for a 25 mm diameter filter and  $\geq 50 \text{ mL}$  for a 47 mm diameter filter. (EPA/600/R-94/134, Method 100.2, Section 11.8)

2. Air.

a. A blank filter shall be prepared with each set of samples. A blank filter shall be left uncovered during preparation of the sample set and a wedge from that blank filter shall be prepared alongside wedges from the sample filters. At minimum, the blank filter shall be analyzed for each 20 samples analyzed. (40 CFR Part 763, Appendix A to Subpart E (AHERA), Table 1)

b. Maximum contamination on a single blank filter shall be no more than 53 structures/mm<sup>2</sup>. Maximum average contamination for all blank filters shall be no more than 18 structures/mm<sup>2</sup>. (AHERA, III.F.2)

3. Bulk samples.

a. Contamination checks using asbestos free material, such as the glass fiber blank in SRM 1866 (Page C-3, NIST Handbook 150-3, August 1994) shall be performed at a frequency of one for every 20 samples analyzed. The detection of asbestos at a concentration exceeding 0.1% will require an investigation to detect and remove the source of the asbestos contamination.

b. The laboratory shall maintain a list of nonasbestos fibers that can be confused with asbestos (Section 7.5, Page C-8, NIST Handbook 150-3, August 1994). The list shall include crystallographic and/or chemical properties

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that disqualify each fiber being identified as asbestos (Section 2.5.5.2.1 Identification, Page 54, EPA/600/R-93/116).

e. The laboratory should have a set of reference asbestos materials from which a set of reference diffraction and X ray spectra have been developed.

B. Phase contrast microscopy. At least two field blanks (or 10% of the total samples, whichever is greater) shall be submitted for analysis with each set of samples. Field blanks shall be handled in a manner representative of actual handling of associated samples in the set with a single exception that air shall not be drawn through the blank sample. A blank cassette shall be opened for approximately 30 seconds at the same time other cassettes are opened just prior to analysis. Results from field blank samples shall be used in the calculation to determine final airborne fiber concentration. The identity of blank filters should be unknown to the counter until all counts have been completed. If a field blank yields greater than seven fibers per 100 graticule fields, report possible contamination of the samples.

C. Polarized light microscopy.

1. Friable materials. At least one blank slide shall be prepared daily or with every 50 samples analyzed, whichever is less. This is prepared by mounting a subsample of an isotropic verified non ACM (e.g., fiberglass in SRM 1866) in a drop of immersion oil ( $n_D$  should reflect usage of various  $n_D$ 's) on a clean slide, rubbing preparation tools (forceps, dissecting needles, etc.) in the mount and placing a clean coverslip on the drop. The entire area under the coverslip shall be scanned to detect any asbestos contamination. A similar check shall be made after every 20 uses of each piece of homogenization equipment. An isotropic verified non ACM shall be homogenized in the clean equipment, a slide prepared with the material and the slide scanned for asbestos contamination. (This can be substituted for the blank slide mentioned in this section.)

2. Nonfriable materials. At least one non ACM nonfriable material shall be prepared and analyzed with every 20 samples analyzed. This non ACM shall go through the full preparation and analysis regimen for the type of analysis being performed.

## 1VAC30-45-822. Asbestos testing: test variability/reproducibility. (Repealed.)

A. Transmission electron microscopy. Quality assurance analyses shall be performed regularly covering all time periods, instruments, tasks, and personnel. The selection of samples shall be random and samples of special interest may be included in the selection of samples for quality assurance analyses. When possible, the checks on personnel performance shall be executed without their prior knowledge. A disproportionate number of analyses shall not be performed prior to internal or external audits. It is recommended that a laboratory initially be at 100% quality control (all samples

reanalyzed). The proportion of quality control samples can later be lowered gradually, as control indicates, to a minimum of 10%.

1. Water and wastewater. All analyses shall be performed on relocater grids so that other laboratories can easily repeat analyses on the same grid openings. Quality assurance analyses shall not be postponed during periods of heavy workloads. The total number of QA samples and blanks shall be greater than or equal to 10% of the total sample workload. Precision of analyses is related to concentration, as gleaned from interlaboratory proficiency testing. Relative standard deviations (RSD) for amphibole asbestos decreased from 50% at 0.8 MFL to 25% at 7 MFL in interlaboratory proficiency testing, while RSD for chrysotile was higher, 50% at 6 MFL.

a. Replicate. A second, independent analysis shall be performed on the same grids but on different grid openings than used in the original analysis of a sample. Results shall be within 1.5X of Poisson standard deviation. This shall be performed at a frequency of 1 per 100 samples. (EPA/600/R-94/134, Method 100.2, Table 2)

b. Duplicate. A second aliquot of sample shall be filtered through a second filter, prepared and analyzed in the same manner as the original preparation of that sample. Results shall be within 2.0X of Poisson standard deviation. This shall be performed at a frequency of one per 100 samples. (EPA/600/R-94/134, Method 100.2, Table 2)

c. Verified analyses. A second, independent analysis shall be performed on the same grids and grid openings used in the original analysis of a sample. The two sets of results shall be compared according to Turner and Steel (NISTIR 5351). This shall be performed at a frequency of one per 20 samples. Qualified analysts shall maintain an average of  $\geq 80\%$  true positives,  $\leq 20\%$  false negatives, and  $\leq 10\%$  false positives.

2. Air.

a. All analyses shall be performed on relocater grids so that other laboratories can easily repeat analyses on the same grid openings.

b. The laboratory and TEM analysts shall obtain mean analytical results on NIST SRM 1876b so that trimmed mean values fall within 80% of the lower limit and 110% of the upper limit of the 95% confidence limits as published on the certificate. These limits are derived from the allowable false positives and false negatives given in subdivision A 2 e (3) of this subsection. SRM 1876b shall be analyzed a minimum of once per year by each TEM analyst.

c. The laboratory shall have documentation demonstrating that TEM analysts correctly classify at least 90% of both bundles and single fibrils of asbestos

structures greater than or equal to 1 mm in length in known standard materials traceable to NIST, such as NIST bulk asbestos SRM 1866.

d. Interlaboratory analyses shall be performed to detect laboratory bias. The frequency of interlaboratory verified analysis shall correspond to a minimum of 1 per 200 grid square analyses.

e. If more than one TEM is used for asbestos analysis, intermicroscope analyses shall be performed to detect instrument bias.

(1) Replicate. A second, independent analysis shall be performed in accordance with Section D.6.2.1.1.a. (AHERA, Table III)

(2) Duplicate. A second wedge from a sample filter shall be prepared and analyzed in the same manner as the original preparation of that sample. Results shall be within 2.0X of Poisson standard deviation. This shall be performed at a frequency of 1 per 100 samples. (AHERA, Table III)

(3) Verified analyses. A second, independent analysis shall be performed on the same grids and grid openings in accordance with subdivision A 1 c of this section.

3. Bulk samples. Determination of precision and accuracy should follow guidelines in NISTIR 5951, Guide for Quality Control on the Qualitative and Quantitative Analysis of Bulk Asbestos Samples: Version 1. Because bulk samples with low (< 10%) asbestos content are the most problematic, a laboratory's quality control program should focus on such samples. At least 30% of a laboratory's QC analyses shall be performed on samples containing from 1.0% to 10% asbestos.

a. Intra analyst precision. At least one out of 50 samples shall be reanalyzed by the same analyst. For single analyst laboratories, at least one out of every 10 samples shall be reanalyzed by the same analyst.

b. Inter analyst precision. At least one out of 15 samples shall be reanalyzed by another analyst. Inter-analyst results will require additional reanalysis, possibly including another analyst, to resolve discrepancies when classification (ACM vs. non ACM) errors occur, when asbestos identification errors occur, or when inter analyst precision is found to be unacceptable.

e. Inter-laboratory precision. The laboratory shall participate in round robin testing with at least one other laboratory. Samples shall be sent to this other lab at least four times per year. These samples shall be samples previously analyzed as QC samples. Results of these analyses shall be assessed in accordance with QC requirements. As a minimum, the QC requirements shall address misclassifications (false positives, false negatives) and misidentification of asbestos types.

B. Phase contrast microscopy.

1. Inter laboratory precision. Each laboratory analyzing air samples for compliance determination shall implement an inter-laboratory quality assurance program that as a minimum includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every six months with at least all the other laboratories in its inter-laboratory quality assurance group. Each laboratory shall submit slides typical of its own workload for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology. Results of this QA program shall be posted in each laboratory to keep the microscopists informed.

2. Intra and inter analyst precision. Each analyst shall select and count a prepared slide from a "reference slide library" on each day on which air counts are performed. Reference slides shall be prepared using well behaved samples taken from the laboratory workload. Fiber densities shall cover the entire range routinely analyzed by the laboratory. These slides shall be counted by all analysts to establish an original standard deviation and corresponding limits of acceptability. Results from the daily reference sample analysis shall be compared to the statistically derived acceptance limits using a control chart or a database. It is recommended that the labels on the reference slides be periodically changed so that the analysts do not become familiar with the samples. Intra and inter analyst precision may be estimated from blind recounts on reference samples. Inter analyst precision shall be posted in each laboratory to keep the microscopists informed.

C. Polarized light microscopy. Refer to subdivision A 3 of this section.

**1VAC30-45-823. Asbestos testing: other quality control measures. (Repealed.)**

A. Transmission electron microscopy.

1. Water and wastewater.

a. Filter preparations shall be made from all six asbestos types from NIST SRMs 1866 and 1867. These preparations shall have concentrations between one and 20 structures ( $> 10 \mu\text{m}$ ) per  $0.01 \text{ mm}^2$ . One of these preparations shall be analyzed independently at a frequency of one per 100 samples analyzed. Results shall be evaluated as verified asbestos analysis in accordance with Turner and Steel (NISTIR 5351).

b. NIST SRM 1876b shall be analyzed annually by each analyst. Results shall be evaluated in accordance with limits published for that SRM. This SRM is not strictly appropriate for waterborne asbestos but analysts can demonstrate general TEM asbestos competence by producing results within the published limits of this (the only recognized TEM counting standard) SRM.

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## 2. Air.

a. ~~Filter preparations shall be made from all six asbestos types in accordance with subdivision A 1 a of this section.~~

b. ~~NIST SRM 1876b shall be analyzed annually in accordance with subdivision A 1 b of this section.~~

3. ~~Bulk samples. All analysts shall be able to correctly identify the six regulated asbestos types (chrysotile, amosite, crocidolite, anthophyllite, actinolite, and tremolite). Standards for the six asbestos types listed are available from NIST (SRMs 1866 and 1867). These materials can also be used as identification standards for AEM (Section 3.2.1 Qualitative Analysis, Page 57, EPA/600/R-93/116).~~

## B. Phase contrast microscopy.

1. ~~Test for nonrandom fiber distribution. Blind recounts by the same analyst shall be performed on 10% of the filters counted. A person other than the counter should re-label slides before the second count. A test for type II error (NIOSH 7400, Issue 2, 15 August 1994, Section 13) shall be performed to determine whether a pair of counts by the same analyst on the same slide should be rejected due to nonrandom fiber distribution. If a pair of counts is rejected by this test, the remaining samples in the set shall be recounted and the new counts shall be tested against first counts. All rejected paired counts shall be discarded. It shall not be necessary to use this statistic on blank recounts.~~

2. ~~All individuals performing airborne fiber analysis shall have taken the NIOSH Fiber Counting Course for sampling and evaluating airborne asbestos dust or an equivalent course.~~

3. ~~All laboratories shall participate in a national sample testing scheme such as the Proficiency Analytical Testing (PAT) program or the Asbestos Analysts Registry (AAR) program, both sponsored by the American Industrial Hygiene Association (AIHA), or equivalent.~~

## C. Polarized light microscopy.

1. ~~Friable materials. Because accuracy cannot be determined by reanalysis of routine field samples, at least one out of 100 samples shall be a standard or reference sample that has been routinely resubmitted to determine analyst's precision and accuracy. A set of these samples should be accumulated from proficiency testing samples with predetermined weight compositions or from standards generated with weighed quantities of asbestos and other bulk materials (Perkins and Harvey, 1993; Parekh et al., 1992; Webber et al., 1982). At least half of the reference samples submitted for this QC shall contain between 1.0% and 10% asbestos.~~

2. ~~Nonfriable materials. At least one out of 100 samples shall be a verified quantitative standard that has routinely~~

~~been resubmitted to determine analyst precision and accuracy.~~

## ~~1VAC30-45-824. Asbestos testing: method evaluation. (Repealed.)~~

~~In order to ensure the accuracy of reported results, the following procedures shall be in place:~~

1. ~~Demonstration of capability shall be performed initially (prior to the analysis of any samples) and with a significant change in instrument type, personnel, or method.~~

2. ~~Performance audits. The results of such analyses shall be used by the laboratory to evaluate the ability of the laboratory to produce accurate data.~~

## ~~1VAC30-45-825. Asbestos testing: asbestos calibration. (Repealed.)~~

~~Refer to methods referenced in the following sections for specific equipment requirements.~~

1. ~~Transmission electron microscopy: general. Analytical electron microscopy equipment will not be discussed in this document.~~

2. ~~Transmission electron microscopy: water and wastewater. All calibrations listed below (unless otherwise noted) shall be performed under the same analytical conditions used for routine asbestos analysis and shall be recorded in a notebook and include date and analyst's signature. Frequencies stated below may be reduced to "before next use" if no samples are analyzed after the last calibration period has expired. Likewise, frequencies may have to be increased following non-routine maintenance or unacceptable calibration performance.~~

a. ~~Magnification calibration. Magnification calibration shall be done at the fluorescent screen, with the calibration specimen at the eucentric position, at the magnification used for fiber counting, generally 10,000 and 20,000x. A logbook shall be maintained with the dates of the calibration recorded. Calibrations shall be performed monthly to establish the stability of magnification. Calibration data shall be displayed on control charts that show trends over time. (EPA/600/R-94/134, Method 100.2, Section 10.1)~~

b. ~~Camera constant. The camera length of the TEM in the Selected Area Electron Diffraction (SAED) mode shall be calibrated before SAED patterns of unknown samples are observed. The diffraction specimen shall be at the eucentric position for this calibration. This calibration shall allow accurate (< 10% variation) measurement of layer line spacings on the medium used for routine measurement, i.e., the phosphor screen or camera film. This shall also allow accurate (< 5.0% variation) measurement of zone axis SAED patterns on permanent media, e.g., film. Calibrations shall be performed monthly to establish the stability of the camera constant (EPA/600/R-94/134, Method 100.2, Section 10.2). Where nonasbestiform minerals may be expected (e.g.,~~

winchite, richterite, industrial talc, vermiculite, etc.), an internal camera constant standard such as gold, shall be deposited and measured on each sample to facilitate accurate indexing of zone axis SAED patterns. In such cases, layer line analysis alone shall not be used. Calibration data shall be displayed on control charts that show trends over time.

e. Spot size. The diameter of the smallest beam spot at crossover shall be less than 250 nm as calibrated quarterly. Calibration data shall be displayed on control charts that show trends over time. (EPA/600/R-94/134, Method 100.2, Section 10.3)

d. Beam dose. The beam dose shall be calibrated so that beam damage to chrysotile is minimized, specifically so that an electron diffraction pattern from a single fibril  $\geq 1 \mu\text{m}$  in length from a NIST SRM chrysotile sample is stable in the electron beam dose for at least 15 seconds.

e. EDXA system:

(1) The x ray energy vs. channel number for the EDXA system shall be calibrated to within 20 eV for at least two peaks between 0.7 keV and 10 keV. One peak shall be from the low end (0.7 keV to 2 keV) and the other peak from the high end (7 keV to 10 keV) of this range. The calibration of the x ray energy shall be checked prior to each analysis of samples and recalibrated if out of the specified range.

(2) The ability of the system to resolve the Na Ka line from the Cu L line shall be confirmed quarterly by obtaining a spectrum from the NIST SRM 1866 crocidolite sample on a copper grid.

(3) The k factors for elements found in asbestos (Na, Mg, Al, Si, Ca, and Fe) relative to Si shall be calibrated semiannually, or anytime the detector geometry may be altered. NIST SRM 2063a shall be used for Mg, Si, Ca, Fe, while k factors for Na and Al may be obtained from suitable materials such as albite, kaersutite, or NIST SRM 99a. The k factors shall be determined to a precision (2s) within 10% relative to the mean value obtained for Mg, Al, Si, Ca, and Fe, and within 20% relative to the mean value obtained for Na. The k factor relative to Si for Na shall be between 1.0 and 4.0, for Mg and Fe shall be between 1.0 and 2.0, and for Al and Ca shall be between 1.0 and 1.75. The k factor for Mg relative to Fe shall be 1.5 or less. Calibration data shall be displayed on control charts that show trends over time.

(4) The detector resolution shall be checked quarterly to ensure a full width half maximum resolution of  $< 175 \text{ eV}$  at Mn Ka (5.90 keV). Calibration data shall be displayed on control charts that show trends over time.

(5) The portions of a grid in a specimen holder for which abnormal x ray spectra are generated under routine asbestos analysis conditions shall be determined and these areas shall be avoided in asbestos analysis.

(6) The sensitivity of the detector for collecting x rays from small volumes shall be documented quarterly by collecting resolvable Mg and Si peaks from a unit fibril of NIST SRM 1866 chrysotile.

f. Low temperature asher. The low temperature asher shall be calibrated quarterly by determining a calibration curve for the weight vs. ashing time of collapsed mixed-cellulose ester (MCE) filters. Calibration data shall be displayed on control charts that show trends over time.

g. Grid openings. The magnification of the grid opening measurement system shall be calibrated using an appropriate standard at a frequency of 20 openings/20 grids/lot of 1000 or one opening/sample. The variation in the calibration measurements (2s) is  $< 5.0\%$  of the mean calibration value.

3. Air. All calibrations shall be performed in accordance with subdivision 2 of this section, with the exception of magnification. Magnification calibration shall be done at the fluorescent screen, with the calibration specimen at the eucentric position, at the magnification used for fiber counting, generally 15,000 to 20,000x (AHERA, III.G.1.c). A logbook shall be maintained with the dates of the calibration recorded. Calibrations shall be performed monthly to establish the stability of magnification.

4. Bulk samples. All calibrations shall be performed in accordance with subdivision 3 of this section.

5. Phase contrast microscopy.

a. At least once daily, the analyst shall use the telescope ocular (or Bertrand lens, for some microscopes) supplied by the manufacturer to ensure that the phase rings (annular diaphragm and phase shifting elements) are concentric.

b. The phase shift limit of detection of the microscope shall be checked monthly or after modification or relocation using an HSE/NPL phase contrast test slide for each analyst/microscope combination (refer to NIOSH 7400, Issue 2, 15 August 1994, Section 10b). This procedure assures that the minimum detectable fiber diameter ( $< \text{ca. } 0.25 \mu\text{m}$ ) for this microscope is achieved.

e. Prior to ordering the Walton Beckett graticule, calibration, in accordance with NIOSH 7400, Issue 2, 15 August 1994, Appendix A, shall be performed to obtain a counting area 100 mm in diameter at the image plane. The diameter,  $d_c$  (mm), of the circular counting area and the disc diameter shall be specified when ordering the graticule. The field diameter (D) shall be verified (or checked), to a tolerance of  $100 \mu\text{m} \pm 2 \mu\text{m}$ , with a stage micrometer upon receipt of the graticule from the manufacturer. When changes (zoom adjustment, disassembly, replacement, etc.) occur in the eyepiece-objective reticle combination, field diameter shall be remeasured (or recalibrated) to determine field area ( $\text{mm}^2$ ). Recalibration of field diameter shall also be

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required when there is a change in interpupillary distance (i.e., change in analyst). Acceptable range for field area shall be 0.00754 mm<sup>2</sup> to 0.00817 mm<sup>2</sup>. The actual field area shall be documented and used.

## 6. Polarized light microscopy.

a. Microscope alignment. To accurately measure the required optical properties, a properly aligned polarized light microscope (PLM) shall be utilized. The PLM shall be aligned before each use. (Section 2.2.5.2.3, EPA/600/R-93/116, July 1993)

b. Refractive index liquids. Series of  $n_D = 1.49$  through 1.72 in intervals less than or equal to 0.005. Refractive index liquids for dispersion staining, high dispersion series 1.550, 1.605, 1.680. The accurate measurement of the refractive index (RI) of a substance requires the use of calibrated refractive index liquids. These liquids shall be calibrated at first use and semiannually, or next use, whichever is less frequent, to an accuracy of 0.004, with a temperature accuracy of 2°C using a refractometer or RI-glass beads.

## 1VAC30-45-826. Asbestos testing: analytical sensitivity. (Repealed.)

### A. Transmission electron microscopy.

1. Water and wastewater. An analytical sensitivity of 200,000 fibers per liter (0.2 MFL) is required for each sample analyzed (EPA/600/R-94/134, Method 100.2, Section 1.6). Analytical sensitivity is defined as the waterborne concentration represented by the finding of one asbestos structure in the total area of filter examined. This value will depend on the fraction of the filter sampled and the dilution factor (if applicable).

2. Air. An analytical sensitivity of 0.005 structures/cm<sup>2</sup> is required for each sample analyzed. Analytical sensitivity is defined as the airborne concentration represented by the finding of one asbestos structure in the total area of filter examined. This value will depend on the effective surface area of the filter, the filter area analyzed, and the volume of air sampled (AHERA, Table I).

### 3. Bulk samples.

a. The range is dependent on the type of bulk material being analyzed. The sensitivity may be as low as 0.0001% depending on the extent to which interfering materials can be removed during the preparation of AEM specimens. (Section 2.5.2 Range, Page 51, EPA/600/R-93/116)

b. There should be an error rate of less than 1.0% on the qualitative analysis for samples that contain chrysotile, amosite, and crocidolite. A slightly higher error rate may occur for samples that contain anthophyllite, actinolite, and tremolite, as it can be difficult to distinguish among the three types. (Section 3, Page 10, NIST Handbook 150-3, August 1994)

B. Phase contrast microscopy. The normal quantitative working range of the test method is 0.04 to 0.5 fiber/cm<sup>2</sup> for a 1000 L air sample. An ideal counting range on the filter shall be 100 to 1300 fibers/mm<sup>2</sup>. The limit of detection (LOD) is estimated to be 5.5 fibers per 100 fields or 7 fibers/mm<sup>2</sup>. The LOD in fiber/cc will depend on sample volume and quantity of interfering dust but shall be <0.01 fiber/cm<sup>2</sup> for atmospheres free of interferences. (NIOSH 7400, Issue 2, 15 August 1994)

C. Polarized light microscopy. The laboratory shall utilize a test method that provides a limit of detection that is appropriate and relevant for the intended use of the data. Limit of detection shall be determined by the protocol in the test method or applicable regulation.

## 1VAC30-45-827. Asbestos testing: data reduction. (Repealed.)

### A. Transmission electron microscopy.

#### 1. Water and wastewater.

a. The concentration of asbestos in a given sample shall be calculated in accordance with EPA/600/R-94/134, Method 100.2, Section 12.1. Refer to 1VAC30-45-730 K for additional data reduction requirements.

b. Measurement uncertainties. The laboratory shall calculate and report the upper and lower 95% confidence limits on the mean concentration of asbestos fibers found in the sample (EPA/600/R-94/134, Method 100.2, Section 12.2.2).

#### 2. Air.

a. The concentration of asbestos in a given sample shall be calculated in accordance with the method utilized, e.g., AHERA. Refer to 1VAC30-45-730 K for additional data reduction requirements.

b. Measurement uncertainties. The laboratory shall calculate and report the upper and lower 95% confidence limits on the mean concentration of asbestos fibers found in the sample.

#### 3. Bulk samples.

a. The concentration of asbestos in a given sample shall be calculated in accordance with the method utilized (e.g., EPA/600/R-93/116, July 1993). Refer to 1VAC30-45-730 K for additional data reduction requirements.

b. Measurement uncertainties. Proficiency testing for floor tiles analyzed by TEM following careful gravimetric reduction (New York ELAP Certification Manual Item 198.4) has revealed an interlaboratory standard deviation of approximately 20% for residues containing 70% or more asbestos. Standard deviations range from 20% to 60% for residues with lower asbestos content.

### B. Phase contrast microscopy.

1. Airborne fiber concentration in a given sample shall be calculated in accordance with NIOSH 7400, Issue 2, 15

August 1994, Sections 20 and 21. Refer to 1VAC30-45-730 K for additional data reduction requirements.

2. ~~Measurement uncertainties. The laboratory shall calculate and report the intra laboratory and inter-laboratory relative standard deviation with each set of results. (NIOSH 7400, Issue 2, 15 August 1994)~~

3. ~~Fiber counts above 1300 fibers/mm<sup>2</sup> and fiber counts from samples with >50% of the filter area covered with particulate should be reported as "uncountable" or "probably biased." Other fiber counts outside the 100-1300 fibers/mm<sup>2</sup> range should be reported as having "greater than optimal variability" and as being "probably biased."~~

~~C. Polarized light microscopy.~~

1. ~~The concentration of asbestos in a given sample shall be calculated in accordance with the method utilized (e.g., EPA/600/R-93/116, July 1993). Refer to 1VAC30-45-730 K for additional data reduction requirements.~~

2. ~~Method uncertainties. The individual laboratory shall determine precision and accuracy for the percent range involved. If point counting and/or visual estimates are used, a table of reasonable expanded errors (refer to EPA/600/R-93/116, July 1993, Table 2-1) should be generated for different concentrations of asbestos.~~

**1VAC30-45-828. Asbestos testing: quality of standards and reagents. (Repealed.)**

~~A. Transmission electron microscopy.~~

1. ~~The quality control program shall establish and maintain provisions for asbestos standards.~~

a. ~~Reference standards that are used in an asbestos laboratory shall be obtained from the National Institute of Standards and Technology (NIST), EPA, or suppliers who participate in supplying NIST standards or NIST traceable asbestos. Any reference standards purchased outside the United States shall be traceable back to each country's national standards laboratory. Commercial suppliers of reference standards shall conform to ANSI N42.22 to assure the quality of their products.~~

b. ~~Reference standards shall be accompanied with a certificate of calibration whose content is as described in ANSI N42.22 1995, Section 8, Certificates.~~

2. ~~All reagents used shall be analytical reagent grade or better.~~

3. ~~The laboratory shall have mineral fibers or data from mineral fibers that will allow differentiating asbestos from at least the following "look-alikes": fibrous talc, sepiolite, wollastonite, attapulgite (palygorskite), halloysite, vermiculite scrolls, antigorite, lizardite, pyroxenes, hornblende, richterite, winchite, or any other asbestiform minerals that are suspected as being present in the sample.~~

~~B. Phase contrast microscopy. Standards of known concentration have not been developed for this testing method. Routine workload samples that have been~~

~~statistically validated and national proficiency testing samples such as PAT and AAR samples available from the AIHA may be utilized as reference samples (refer to 1VAC30-45-822 B 2) to standardize the optical system and analyst. All other testing reagents and devices (HSE/NPL test slide and Walton-Beckett Graticule) shall conform to the specifications of the method (refer to NIOSH 7400, Issue 2, 15 August 1994).~~

~~C. Polarized light microscopy. Refer to 1VAC30-45-828 A.~~

**1VAC30-45-829. Asbestos testing: constant and consistent test conditions. (Repealed.)**

~~The laboratory shall establish and adhere to written procedures to minimize the possibility of cross-contamination between samples.~~

**1VAC30-45-850. Sample handling, sample acceptance policy, and sample receipt.**

While the laboratory may not have control of field sampling activities, the following are essential to ensure the validity of the laboratory's data.

1. Sample tracking. The laboratory shall have a documented system for uniquely identifying the items to be tested to ensure that there can be no confusion regarding the identity of such items at any time. This system shall include identification for all samples, subsamples and subsequent extracts or digestates or both. The use of container shape, size or other physical characteristic, such as amber glass or purple top, is not an acceptable means of identifying the sample. System laboratories shall use a permanent chronological record such as a logbook or electronic database to document receipt of all containers. This sample receipt log shall record the following at a minimum: name of facility where sample was taken, date and time of laboratory receipt, unique laboratory ID code, and signature or initials of the person making the entries.

2. Sample acceptance policy. The laboratory shall have a written sample acceptance policy that clearly outlines the circumstances under which samples shall be accepted or rejected. The policy shall ensure that only properly obtained samples with appropriate sampling records (see 1VAC30-45-640 B) are analyzed and that the samples are handled properly. This sample acceptance policy shall be made available to sample collection personnel. The policy shall include elements such as appropriate documentation of the sample's identification, use of appropriate sample containers, adherence to specified holding times, adequate sample volume to perform necessary tests, and procedures to be used when samples show signs of damage, contamination or inadequate preservation.

3. Sample receipt protocols.

a. Upon receipt, the condition of the sample, including any abnormalities or departures from standard condition as prescribed in the relevant test method, shall be recorded. All items specified by the sample acceptance policy shall be checked.

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b. All samples that require thermal preservation shall be considered acceptable if the arrival temperature is either within ~~2-degrees-Celsius-°C~~ of the required temperature or the method specified range. For samples with a specified temperature of ~~4-degrees-Celsius-°C~~, samples with a temperature of ranging from just above freezing temperature of water to ~~6-degrees-Celsius-°C~~ shall be acceptable. Samples that are hand delivered to the laboratory immediately after collection or on the same day that are collected may not meet ~~this these~~ criteria. In these cases, the samples shall be considered acceptable if there is evidence that the chilling process has begun such as arrival on ice. Thermal preservation is not required in the field if the laboratory receives the sample and either begins the analysis or refrigerates the sample within 15 minutes of collection.

c. The laboratory shall implement procedures for checking chemical preservation using readily available techniques, such as pH or free chlorine prior to or during sample preparation or analysis.

d. The results of all checks required by the sample acceptance policy and relevant test method shall be recorded.

#### 4. Storage conditions.

a. The laboratory shall have documented procedures and appropriate facilities to avoid deterioration, contamination or damage to the sample during storage, handling, preparation, and testing. Any relevant instructions provided with the item shall be followed. Where items have to be stored or conditioned under specific environmental conditions, these conditions shall be maintained, monitored and recorded.

b. Samples shall be stored according to the conditions specified by preservation protocols:

(1) Samples that require thermal preservation shall be stored under refrigeration that is within ~~2-degrees-Celsius-°C~~ of the specified preservation temperature unless method specific criteria exist. For samples with a specified storage temperature of ~~4-degrees-Celsius-°C~~, storage at a temperature above the freezing point of water to ~~6-degrees-Celsius-°C~~ shall be acceptable.

(2) Samples shall be stored away from all standards, reagents, food and other potentially contaminating sources. Samples shall be stored in such a manner to prevent cross contamination.

c. Sample fractions, extracts, leachates and other sample preparation products shall be stored according to subdivision 4 a of this section or according to specifications in the test method.

d. Where a sample or portion of the sample is to be held secure ~~(for example (e.g.,~~ for reasons of record, safety or value, or to enable check calibrations or tests to be performed later), the laboratory shall have storage and

security arrangements that protect the condition and integrity of the secured items or portions concerned.

5. Sample disposal. The laboratory shall have standard operating procedures for the disposal of samples, digestates, leachates and extracts or other sample preparation products.

FORMS (1VAC30-45)

~~Application for Certification of Environmental Laboratories DGS 21-156 (eff. 1/09)~~

Application for Certification under 1VAC30-45 must be obtained from program staff at Lab\_Cert@dgs.virginia.gov

DOCUMENTS INCORPORATED BY REFERENCE (1VAC30-45)

The Standards for Environmental Laboratories and Accreditation Bodies, 2009, The NELAC Institute (TNI), P.O. Box 2439, Weatherford, TX 76086; [www.nelac-institute.org](http://www.nelac-institute.org);

[Volume 1: Management and Technical Requirements for Laboratories Performing Environmental Analysis \(EL-V1-2009\)](#)

[Volume 2: General Requirements for Accreditation Bodies Accrediting Environmental Laboratories \(EL-V2-2009\)](#)

VA.R. Doc. No. R12-3334; Filed August 10, 2015, 10:01 a.m.

### Final Regulation

Title of Regulation: **1VAC30-46. Accreditation for Commercial Environmental Laboratories (amending 1VAC30-46-10, 1VAC30-46-30 through 1VAC30-46-150, 1VAC30-46-200, 1VAC30-46-210; adding 1VAC30-46-15, 1VAC30-46-95, 1VAC30-46-220).**

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

Effective Date: November 1, 2015.

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

#### Summary:

*The amendments (i) replace the 2003 National Environmental Laboratory Accreditation Conference (NELAC) Standards used to accredit commercial environmental laboratories with the 2009 The NELAC Institute (TNI) Standards; (ii) restructure and increase fees; (iii) revise the process used to accredit laboratories, eliminating requirements relating to the initial accreditation period and streamlining the process to renew accreditation; (iv) add a provision on suspension of accreditation; and (v) eliminate obsolete language and amend text for clarity.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I  
General Provisions

**1VAC30-46-10. Purpose.**

Section 2.2-1105 of the Code of Virginia directs the Division of Consolidated Laboratory Services to establish a program to certify environmental laboratories that perform tests, analyses, measurements or monitoring required pursuant to the Commonwealth's air, waste and water laws and regulations. This chapter sets out the required standards and the process by which owners of commercial environmental laboratories may obtain certification for their laboratories. Certification is referred to as accreditation in this chapter. ~~Commercial environmental laboratories are accredited under the standards of the National Environmental Laboratory Accreditation Conference (NELAC) as approved in 2003. In addition, this chapter sets out the process that NELAP accredited environmental laboratories must use to receive accreditation in Virginia. 1VAC30-45 covers noncommercial environmental laboratories.~~

**1VAC30-46-15. Standards for accreditation transition.**

A. Commercial environmental laboratories are accredited under the standards of the National Environmental Laboratory Accreditation Conference (NELAC), now The NELAC Institute (TNI).

B. DCLS shall accredit commercial environmental laboratories under the 2003 NELAC Standards [ through June 30, 2014, as specified by the provisions of this chapter that became effective on January 1, 2009, for the first 10 months following November 1, 2015 ].

C. DCLS shall accredit commercial environmental laboratories under the 2009 TNI Standards [ beginning on July 1, 2014, as specified by the provisions of this chapter effective on November 1, 2015, beginning on the first day of the 11th month following November 1, 2015 ].

**1VAC30-46-30. Applicability.**

A. General applicability. This chapter applies to the following:

1. Any owner of a commercial environmental laboratory.
2. Any owner of an environmental laboratory holding NELAP TNI accreditation from a primary accrediting authority accreditation body who wishes to apply for reciprocal secondary accreditation under 1VAC30-46-140.

**B. DGS-DCLS.**

~~1. NELAP accredited laboratory. DGS-DCLS shall meet the requirements of this chapter through review and accreditation by a NELAP accredited federal or state accrediting authority. This process shall be completed before January 1, 2012.~~

~~2. Primary accrediting authority. DGS-DCLS shall meet the requirements of the NELAC standards to become the primary accrediting authority for the Commonwealth of Virginia. This review and approval by a NELAP~~

~~accrediting team shall be completed no later than January 1, 2010.~~

B. Acquiring primary TNI accreditation through this chapter.

1. A commercial environmental laboratory located in Virginia shall obtain primary TNI accreditation in Virginia as long as the fields of accreditation for which the laboratory seeks accreditation are offered by DCLS.

2. DCLS shall not provide primary TNI accreditation for environmental laboratories located in other states that offer TNI accreditation.

C. Voluntary accreditation. Any owner of ~~an~~ a noncommercial environmental laboratory may apply for accreditation under this chapter.

~~D. Environmental laboratories required to obtain drinking water certification under 1VAC30-40. Any owner of an environmental laboratory~~ Drinking water laboratory certification. An owner of a laboratory who must meet the requirements of 1VAC30-40 pertaining to drinking water laboratory certification and either 1VAC30-45 or this chapter may meet those requirements by obtaining accreditation under this chapter.

**1VAC30-46-40. Definitions.**

~~A. The definitions contained in the 2003 National Environmental Laboratory Accreditation Conference (NELAC) standards, Chapter 1, Appendix A Glossary, the 2009 TNI Standards are incorporated by reference into this section. Some of the these definitions from this glossary are included in this section because the terms are used throughout this chapter. Where a term is defined in this section, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. Unless specifically defined in this section, the terms used in this chapter shall have the meanings commonly ascribed to them by recognized authorities.~~

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

"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.

"Accreditation" means the process by which an agency or organization evaluates and recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory. "Accreditation" is the term used as a substitute for the term "certification" under this chapter.

[ "Accreditation body" or "AB" means the authoritative body that performs accreditation. ]

"Accrediting authority" [ "Accreditation body" of "AB" means the territorial, state, or federal agency having responsibility and accountability for environmental laboratory accreditation and which grants accreditation. ]

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~~"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.~~

"Algae" means simple single-celled, colonial, or multicelled, mostly aquatic plants, containing chlorophyll and lacking roots, stems and leaves that are either suspended in water (phytoplankton) or attached to rocks and other substrates (periphyton).

"Analyte" means the substance or physical property to be determined in samples examined.

"Analytical method" means a technical procedure for providing analysis of a sample, defined by a body such as the Environmental Protection Agency or the American Society for Testing and Materials, that may not include the sample preparation method.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of an organization and its systems or both to defined criteria (i.e., the standards and requirements of laboratory accreditation).

~~"Assessor" means the person who performs on site assessments of laboratories' capability and capacity for meeting the requirements under this chapter by examining the records and other physical evidence for each one of the tests for which accreditation has been requested assigned by DCLS to perform, alone or as part of an assessment team, an assessment of an environmental laboratory.~~

"Authority" means, in the context of a governmental body or local government, an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

"Benthic macroinvertebrates" means bottom dwelling animals without backbones that live at least part of their life cycles within or upon available substrates within a body of water.

"Commercial environmental laboratory" means an environmental laboratory where environmental analysis is performed for another person.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

~~"DGS-DCLS"~~ "DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Environmental analysis" or "environmental analyses" means any test, analysis, measurement, or monitoring used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§ 10.1-1300 et seq., § 10.1-1400 et seq., and § 62.1-44.2 et seq., respectively, of the Code of Virginia). For the purposes of these regulations, any test, analysis, measurement, or monitoring required pursuant to the regulations promulgated under these three laws, or by any permit or order issued under the authority of any of these laws

or regulations is "used for the purposes" of these laws. The term shall not include the following:

1. Sampling of water, solid and chemical materials, biological tissue, or air and emissions.
2. Field testing and measurement of water, solid and chemical materials, biological tissue, or air and emissions, except when performed in an environmental laboratory rather than at the site where the sample was taken.
3. Taxonomic identification of samples for which there is no national accreditation standard such as algae, benthic macroinvertebrates, macrophytes, vertebrates and zooplankton.
4. Protocols used pursuant to § 10.1-104.2 of the Code of Virginia to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purposes of nutrient management.
5. Geochemical and permeability testing for solid waste compliance.
6. Materials specification for air quality compliance when product certifications specify the data required by an air permit such as fuel type, Btu content, sulfur content, or volatile organic chemical (VOC) content.

"Environmental laboratory" or "laboratory" means a facility or a defined area within a facility where environmental analysis is performed. A structure built solely to shelter field personnel and equipment from inclement weather shall not be considered an environmental laboratory.

"Establishment date" means the date set for the accreditation program under this chapter and the certification program under 1VAC30-45 to be established.

"Establishment of accreditation program" or "established program" means that ~~DGS-DCLS~~ DCLS has completed the initial accreditation of environmental laboratories covered by this chapter and the initial certification of environmental laboratories covered by 1VAC30-45.

"Facility" means something that is built or installed to serve a particular function.

"Field of accreditation" means ~~an approach to accrediting laboratories by those~~ matrix, technology/method, and analyte/analyte group analyte combinations for which DCLS offers accreditation.

"Field of accreditation matrix" means the following when accrediting a laboratory:

1. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.
2. Nonpotable water. Any aqueous sample excluded from the definition of drinking water matrix. Includes surface water, groundwater, effluents, water treatment chemicals, and TCLP or other extracts.
3. Solid and chemical materials. Includes soils, sediments, sludges, products and byproducts of an industrial process that results in a matrix not previously defined.

4. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin, i.e., by species.

5. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Field of proficiency testing" or "FoPT" means ~~an approach to offer proficiency testing by analytes for which a laboratory is required to successfully analyze a PT sample in order to obtain or maintain accreditation, collectively defined as:~~ matrix, technology/method, and ~~analyte/analyte group~~ analyte.

"Field testing and measurement" means any of the following:

1. Any test for parameters under 40 CFR Part 136 for which the holding time indicated for the sample requires immediate analysis; or
2. Any test defined as a field test in federal regulation.

The following is a limited list of currently recognized field tests or measures that is not intended to be inclusive: continuous emissions monitoring; on-line monitoring; flow monitoring; tests for pH, residual chlorine, temperature and dissolved oxygen; and field analysis for soil gas.

"Finding" means ~~a conclusion reached during an on-site assessment that identifies a condition having a significant effect on an item or activity. An assessment finding is normally a deficiency and is normally accompanied by specific examples of the observed condition~~ an assessment conclusion referenced to a laboratory accreditation standard [ incorporated by reference or contained in this chapter ] and supported by objective evidence that identifies a deviation from a laboratory accreditation standard requirement.

"Governmental body" means any department, agency, bureau, authority, or district of the United States government, of the government of the Commonwealth of Virginia, or of any local government within the Commonwealth of Virginia.

"Holding time" ~~(or maximum allowable holding time)~~ means the maximum time that ~~a sample may be held prior to analysis and still be considered valid or not compromised~~ can elapse between two specified activities.

~~"Initial accreditation period" means the period during which DGS DCLS is accepting and processing applications for the first time under this chapter as specified in 1VAC30-46-70.~~

"Legal entity" means an entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations.

"Local government" means a municipality (city or town), county, sanitation district, or authority.

"Macrophytes" means any aquatic or terrestrial plant species that can be identified and observed with the eye, unaided by magnification.

"Matrix" means the ~~component or~~ substrate ~~that contains the~~ analyte of interest of a test sample.

~~"National accreditation database" means the publicly accessible database listing the accreditation status of all laboratories participating in NELAP.~~

"National Environmental Laboratory Accreditation Conference (NELAC)" means a voluntary organization of state and federal environmental officials and interest groups with the primary purpose to establish mutually acceptable standards for accrediting environmental laboratories. ~~A subset of NELAP.~~

~~"National Environmental Laboratory Accreditation Program (NELAP)" means the overall National Environmental Laboratory Accreditation Program of which NELAC is a part.~~

"Noncommercial environmental laboratory" means either of the following:

1. An environmental laboratory where environmental analysis is performed solely for the owner of the laboratory.
2. An environmental laboratory where the only performance of environmental analysis for another person is one of the following:
  - a. Environmental analysis performed by an environmental laboratory owned by a local government for an owner of a small wastewater treatment system treating domestic sewage at a flow rate of less than or equal to 1,000 gallons per day.
  - b. Environmental analysis performed by an environmental laboratory operated by a corporation as part of a general contract issued by a local government to operate and maintain a wastewater treatment system or a waterworks.
  - c. Environmental analysis performed by an environmental laboratory owned by a corporation as part of the prequalification process or to confirm the identity or characteristics of material supplied by a potential or existing customer or generator as required by a hazardous waste management permit under 9VAC20-60.
  - d. Environmental analysis performed by an environmental laboratory owned by a Publicly Owned Treatment Works (POTW) for an industrial source of wastewater under a permit issued by the POTW to the industrial source as part of the requirements of a pretreatment program under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31.
  - e. Environmental analysis performed by an environmental laboratory owned by a county authority for any municipality within the county's geographic

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jurisdiction when the environmental analysis pertains solely to the purpose for which the authority was created.

f. Environmental analysis performed by an environmental laboratory owned by an authority or a sanitation district for any participating local government of the authority or sanitation district when the environmental analysis pertains solely to the purpose for which the authority or sanitation district was created.

"Owner" means any person who owns, operates, leases or controls an environmental laboratory.

"Person" means an individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

"Physical," for the purposes of fee test categories, means the tests to determine the physical properties of a sample. Tests for solids, turbidity and color are examples of physical tests.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31 including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a POTW; or any reporting requirements imposed by the owner of a POTW or by the regulations of the State Water Control Board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

~~"Primary accrediting authority accreditation body" or "primary AB" means the agency or department designated at the territory, state or federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation to a specific laboratory for a specific field of accreditation accreditation body responsible for assessing a laboratory's total quality system, on-site assessment, and PT performance tracking for fields of accreditation.~~

~~"Proficiency test or testing (PT)" "Proficiency test," "proficiency testing," or "PT" means evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.~~

"Proficiency test (PT) sample" or "PT sample" means a sample, the composition of which is unknown to ~~both the analyst and the laboratory,~~ and is provided to test whether the ~~analyst or laboratory or both~~ laboratory can produce analytical results within specified acceptance criteria.

"Proficiency testing (PT) program" or "PT program" means the aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

"Publicly Owned Treatment Works" or "POTW" (POTW) means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices

and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Quality assurance" or "QA" means an integrated system of management activities involving planning, quality control, quality implementation, assessment, reporting, and quality improvement to ensure that a product process, item, or service meets defined standards of quality with a stated level of confidence is of the type and quality needed and expected by the client.

"Quality assurance officer" means the person who has responsibility for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the technical ~~director~~ manager.

"Quality control" or "QC" means the (i) overall system of technical activities ~~whose purpose is to measure and control the quality of a product or service so that it meets the needs of users~~ that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established by the customer; (ii) operational techniques and activities that are used to fulfill requirements for quality; and (iii) system of activities and checks used to ensure that measurement systems are maintained within prescribed limits, providing protection against "out of control" conditions and ensuring that the results are of acceptable quality.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of an agency, organization, or laboratory, to ensure the quality of its product and the utility of its product to its users.

"Quality system" means a structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items), and services. The quality system provides the framework for planning, implementing, and assessing work performed by the organization and for carrying out required quality assurance and quality control activities.

"Quality system matrix," for purposes of batch and quality control requirements, means the following:

- ~~1. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.~~

~~2. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.~~

~~3. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source such as the Great Salt Lake.~~

~~4. Non aqueous liquid. Any organic liquid with less than 15% settleable solids.~~

~~5. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.~~

~~6. Solids. Includes soils, sediments, sludges and other matrices with more than 15% settleable solids.~~

~~7. Chemical waste. A product or byproduct of an industrial process that results in a matrix not previously defined.~~

~~8. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.~~

1. Air and emissions. Whole gas or vapor samples, including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter, or other device.

2. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.

3. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.

4. Chemical waste. A product or byproduct of an industrial process that results in a matrix not previously defined.

5. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

6. Non-aqueous liquid. Any organic liquid with less than 15% settleable solids.

7. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source such as the Great Salt Lake.

8. Solids. Includes soils, sediments, sludges, and other matrices with more than 15% settleable solids.

~~"Recognition" means the mutual agreement of two or more accrediting authorities to accept each other's findings regarding the ability of environmental laboratories to meet NELAC standards.~~

"Responsible official" means one of the following, as appropriate:

1. If the laboratory is owned or operated by a private corporation, "responsible official" means (i) a president, secretary, treasurer, or a vice-president of the corporation

in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated in accordance with corporate procedures.

2. If the laboratory is owned or operated by a partnership, association, or a sole proprietor, "responsible official" means a general partner, officer of the association, or the proprietor, respectively.

3. If the laboratory is owned or operated by a governmental body, "responsible official" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the governmental laboratory.

4. Any person designated as the responsible official by an individual described in subdivision 1, 2 or 3 of this definition provided the designation is in writing, the designation specifies an individual or position with responsibility for the overall operation of the laboratory, and the designation is submitted to ~~DGS DCLS~~ DCLS.

"Sampling" means the act of collection for the purpose of analysis.

"Sanitation district" means a sanitation district created under the provisions of Chapters 3 (§ 21-141 et seq.) through 5 (§ 21-291 et seq.) of Title 21 of the Code of Virginia.

"Secondary accreditation body" or "secondary AB" means the accreditation body that grants TNI accreditation to laboratories based on their accreditation by a TNI-recognized primary accreditation body.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

~~"Standard operating procedure" or "SOP" (SOP)" means a written document which details the method of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted that details the method for an operation, analysis, or action with thoroughly prescribed techniques and steps. An SOP is officially approved as the method for performing certain routine or repetitive tasks.~~

"TCLP" or "toxicity characteristic leachate procedure" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Technical ~~director~~ manager (however named)" means the person who has overall responsibility for the technical

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operation of the environmental laboratory and who exercises actual day-to-day supervision of laboratory operation for the appropriate fields of testing and reporting of results. The title of this person may include but is not limited to laboratory director, technical ~~director~~ manager, laboratory supervisor, or laboratory manager.

"Technology" means a specific arrangement of analytical instruments, detection systems, or preparation techniques, or any combination of these elements.

"Test" means a technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Air Pollution Control Law" means any method of analysis required by the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia); by the regulations promulgated under this law (9VAC5), including any method of analysis listed either in the definition of "reference method" in 9VAC5-10-20, or listed or adopted by reference in 9VAC5; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Waste Management Act" means any method of analysis required by the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia); by the regulations promulgated under this law (9VAC20), including any method of analysis listed or adopted by reference in 9VAC20; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Water Control Law" means any method of analysis required by the Virginia Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia); by the regulations promulgated under this law (9VAC25), including any method of analysis listed or adopted by reference in 9VAC25; or by any permit or order issued under and in accordance with this law and these regulations.

"Test method" means an adoption of a scientific technique for performing a specific measurement, as documented in a laboratory standard operating procedure or as published by a recognized authority.

"The NELAC Institute (TNI)" or "TNI" means the organization whose standards environmental laboratories must meet to be accredited in Virginia.

"TNI standards" means the 2009 Standards for Environmental Laboratories and Accreditation Bodies approved by TNI.

~~"U.S. Environmental Protection Agency (U.S. EPA or EPA)" means the federal government agency with responsibility for protecting, safeguarding and improving the~~

~~natural environment (i.e., air, water and land) upon which human life depends.~~

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia ~~which that~~ is titled "Air Pollution Control Board."

"Virginia Environmental Laboratory Accreditation Program" or "VELAP" means the program DCLS operates to accredit environmental laboratories under this chapter.

"Wastewater" means liquid and water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping.

"Zooplankton" means microscopic animals that float freely with voluntary movement in a body of water.

## **1VAC30-46-50. Scope of accreditation.**

A. Commercial environmental laboratories shall be accredited based on the general laboratory standards set out in Part II (1VAC30-46-200 et seq.) of this chapter and on the specific test methods or analysis, monitoring or measurement required by Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) or Virginia Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the regulations promulgated under these laws, and by permits and orders issued under and in accordance with these laws and regulations.

B. ~~DGS-DCLS~~ DCLS shall review alternative test methods and procedures for accreditation when these are proposed by the applicant laboratory. The provisions of 1VAC30-46-70 E and 1VAC30-46-90 B govern alternative test methods and procedures.

C. Accreditation shall be granted for one or more fields of accreditation, including the matrix, the technology and methods used by the commercial environmental laboratory, and the individual analytes ~~or analyte groups~~ determined by the particular method.

## **1VAC30-46-60. General: accreditation requirements.**

A. Components of accreditation. The components of accreditation include review of personnel qualifications, on-site assessment, proficiency testing and quality assurance and quality control standards. The criteria for these components, specified in Part II (1VAC30-46-200 et seq.) of this chapter, shall be fulfilled for accreditation.

B. Individual laboratory sites and mobile laboratories.

1. Individual laboratory sites are subject to the same application process, assessments, and other requirements as environmental laboratories. Any remote laboratory sites

are considered separate sites and subject to separate on-site assessments.

2. Laboratories located at the same physical location shall be considered an individual laboratory site if these laboratories are owned by the same person, and have the same technical ~~director~~ manager and quality system.

~~3. Laboratories located at separate, noncontiguous physical locations may request to be considered as an individual laboratory site if these laboratories are owned by the same person and have the same laboratory manager and quality system.~~

4. ~~3.~~ A mobile laboratory, which is configured with equipment to perform environmental analyses, whether associated with a fixed-based laboratory or not, is considered an environmental laboratory and shall require separate accreditation. This accreditation shall remain with the mobile laboratory and be site independent. Moving the configured mobile laboratory to a different site shall not require a new or separate accreditation. Before performing analyses at each new site, the laboratory shall ensure that instruments and equipment have been checked for performance and have been calibrated.

**1VAC30-46-70. Process to apply and obtain accreditation.**

A. Duty to apply. All owners of (i) commercial environmental laboratories and (ii) ~~NELAP accredited~~ TNI-accredited commercial environmental laboratories applying for ~~reciprocal~~ secondary accreditation shall apply for accreditation as specified by the provisions of this section. Applications for accreditation must be obtained from DCLS program staff by email at Lab\_Cert@dgs.virginia.gov.

**B. Timely initial applications.**

1. ~~Owners of commercial environmental laboratories applying for accreditation under this chapter for the first time shall submit an application to DGS DCLS no later than July 1, 2009.~~

2. ~~Owners of commercial environmental laboratories that come into existence after January 1, 2009, shall submit an initial application to DGS DCLS no later than 180 calendar days prior to initiating the provision of environmental laboratory services.~~

3. ~~Owners of NELAP accredited environmental laboratories.~~

a. ~~During the initial accreditation period, NELAP-accredited environmental laboratories shall submit an application to DGS DCLS no later than July 1, 2009.~~

b. ~~After the program is established, NELAP-accredited environmental laboratories shall submit an application to DGS DCLS no later than 180 calendar days prior to initiating the provision of environmental laboratory services in Virginia.~~

**C. Timely renewal applications.**

~~1. Every two years from the date of initial accreditation, laboratories accredited under this chapter shall submit an application for renewal of accreditation as required by subsection F of this section, including the fees required by 1VAC30-46-150. During this biannual renewal DGS DCLS shall perform an on-site assessment in addition to a review of the laboratory's application package.~~

2. Every other year, DGS DCLS shall renew accreditation for the accredited laboratory provided the laboratory does all of the following:

a. ~~Maintains compliance with this chapter.~~

b. ~~Attests to this compliance by signing the Certificate of Compliance provided under subdivision F 3 of this section.~~

c. ~~Reports acceptable proficiency test values for the Fields of Accreditation for which the laboratory held accreditation during the previous year.~~

~~The laboratory shall submit the application information required by subdivisions F 1 (except for the quality manual) and F 3 of this section.~~

**3. Renewal application due dates.**

a. ~~The owner of either an (i) accredited commercial environmental laboratory or (ii) environmental laboratory holding reciprocal accreditation shall submit an application for renewal of accreditation under subdivision C 1 of this section at least 90 calendar days prior to expiration of accreditation.~~

b. ~~The owner of either an (i) accredited commercial environmental laboratory or (ii) environmental laboratory holding reciprocal accreditation shall submit an application for renewal of accreditation under subdivision C 2 of this section at least 30 calendar days prior to expiration of accreditation.~~

B. Initial applications. Owners of commercial environmental laboratories applying for accreditation under this chapter for the first time shall submit an application to DCLS as specified under subsection F of this section.

C. Renewal and reassessment.

1. DCLS shall renew accreditation annually for the accredited laboratory provided the laboratory does the following:

a. Maintains compliance with this chapter.

b. Attests to this compliance by signing the certificate of compliance provided under subdivision F 3 of this section.

c. Reports acceptable proficiency test values as required by 1VAC30-46-210 B.

d. Pays the fee required by 1VAC30-46-150.

2. DCLS shall reassess the accredited environmental laboratory during an on-site assessment as required by 1VAC30-46-220.

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D. Responsibilities of the owner and operator when the laboratory is owned by one person and operated by another person.

1. When an environmental laboratory is owned by one person but is operated by another person, the operator may submit the application for the owner.
2. If the operator fails to submit the application, the owner is not relieved of his responsibility to apply for accreditation.
3. While ~~DGS DCLS~~ DCLS may notify environmental laboratories of the date their applications are due, failure of ~~DGS DCLS~~ DCLS to notify does not relieve the owner of his obligation to apply under this chapter.

E. Submission of applications for modifications to accreditation. An owner of an accredited environmental laboratory shall follow the process set out in 1VAC30-46-90 B ~~to add a new matrix technology/method, an analyte or, analyte group, modify a test method or institute use of a method or technology not in the laboratory's standard operating procedures, including alternative test methods or procedures to modify the laboratory's scope of accreditation.~~

F. Contents of application.

1. Applications shall include but not be limited to the following information and documents:
  - a. Legal name of laboratory;
  - b. Name of owner of laboratory;
  - c. Name of operator of laboratory, if different than owner;
  - d. Street address and description of location of laboratory;
  - e. Mailing address of laboratory, if different from street address;
  - f. Address of owner, if different from laboratory address;
  - g. Name, address, telephone number, facsimile number and e-mail, as applicable, of responsible official;
  - h. Name, address, telephone number, facsimile number and e-mail, as applicable, of technical ~~director~~ manager;
  - i. Name, address, telephone number, facsimile number and e-mail, as applicable, of designated quality assurance officer;
  - j. Name, ~~title~~ and telephone number of laboratory contact person;
  - k. Laboratory type (e.g., commercial, public wastewater system, mobile);
  - l. Laboratory hours of operation;
  - m. Fields of accreditation for which the laboratory is seeking accreditation;
  - n. ~~Methods employed, including analytes;~~
  - ~~o. The results of the three most recent proficiency test studies~~ two successful unique TNI-compliant PT studies

for each accreditation field of proficiency testing as required by 1VAC30-46-210 B (for primary accreditation only);

~~p. o.~~ Quality assurance manual (for primary accreditation only);

~~q. Lab identification number (for renewal only)~~ p. Copy of the primary certificate of accreditation for secondary accreditation applications; and

~~r. q.~~ For mobile laboratories, a unique vehicle identification number, such as a manufacturer's vehicle identification number (VIN #), serial number, or license number.

2. Fee. The application shall include payment of the fee as specified in 1VAC30-46-150.

3. Certification of compliance.

a. The application shall include a "Certification of Compliance" statement signed and dated by (i) the quality assurance officer, and a (ii) the responsible official or the technical ~~director~~ manager, or both.

b. The certification of compliance shall state: "The applicant understands and acknowledges that the laboratory is required to be continually in compliance with the Virginia environmental laboratory accreditation program regulation (1VAC30 Chapter 46) and is subject to the provisions of 1VAC30-46-100 in the event of noncompliance. Specifically the applicant:

(1) Shall commit to fulfill continually the requirements for accreditation set by DCLS for the areas where accreditation is sought or granted.

(2) When requested, shall afford such accommodation and cooperation as is necessary to enable DCLS to verify fulfillment of requirements for accreditation. This applies to all premises where laboratory services take place.

(3) Shall provide access to information, documents, and records as necessary for the assessment and maintenance of the accreditation.

(4) Shall provide access to those documents that provide insight into the level of independence and impartiality of the laboratory from its related bodies, where applicable.

(5) Shall arrange the witnessing of laboratory services when requested by DCLS.

(6) Shall claim accreditation only with respect to the scope for which it has been granted accreditation.

(7) Shall pay fees as shall be determined by the accreditation body.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the laboratory or those persons directly responsible for gathering and

evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. Submitting false information or data shall result in denial or withdrawal of accreditation. I further certify that I am authorized to sign this application."

G. Completeness determination.

1. ~~DGS DCLS~~ DCLS shall determine whether an application is complete and notify the laboratory of the result of such determination. ~~During the initial accreditation period, DGS DCLS~~ DCLS shall provide this notice within 90 calendar days of its receipt of the ~~initial application. Following the initial accreditation period, DGS DCLS shall provide this notice as follows:~~

- ~~a. Within 60 calendar days of DGS DCLS' receipt of a laboratory's initial application.~~
- ~~b. Within 30 calendar days of DGS DCLS' receipt of a laboratory's renewal application under subdivision C 1 of this section.~~
- ~~c. Within 15 calendar days of DGS DCLS' receipt of a laboratory's renewal application under subdivision C 2 of this section.~~

2. An ~~initial application or an application for renewal under subdivision C 1 of this section~~ shall be determined complete if it contains all the information required pursuant to subsection F of this section and is sufficient to evaluate the laboratory prior to the on-site assessment. ~~DGS DCLS shall consider an application for renewal under subdivision C 2 of this section to be complete if it contains the information required under subdivision C 2 of this section.~~ Designating an application complete does not preclude ~~DGS DCLS~~ DCLS from requesting or accepting additional information.

3. If ~~DGS DCLS~~ DCLS determines that an application is incomplete, ~~DGS DCLS's~~ the DCLS notification of such determination shall explain why the application is incomplete and specify the additional information needed to make the application complete.

4. ~~Except during the initial accreditation period, if~~ If DCLS makes no determination is made ~~within 60~~ within 90 calendar days of ~~DGS DCLS's~~ its receipt of either (i) the application or (ii) additional information, in the case of an application determined to be incomplete, the application shall be determined to be complete. ~~During the initial accreditation period, the time period shall be 90 calendar days.~~

5. If the laboratory has not submitted the required additional information within 90 days of receiving a notice from ~~DGS DCLS~~ DCLS requesting additional information, ~~DGS DCLS~~ DCLS may ~~return the incomplete application and~~ inform the laboratory that the application cannot be processed. The laboratory may then submit a new application.

H. Grant of interim accreditation pending final determination on application.

1. ~~DGS DCLS~~ DCLS shall grant interim accreditation status to laboratories applying initially ~~or for renewal under subdivision C 1 of this section~~ under the following conditions:

- a. The laboratory's application is determined to be complete;
- b. The laboratory has satisfied all the requirements for accreditation, including all requests for additional information, with the exception of on-site assessment; and
- c. ~~DGS DCLS~~ DCLS is unable to schedule the on-site assessment within ~~90~~ 120 days of its determination that the application is complete (~~for initial applications~~) ~~or before the laboratory's accreditation expires (for renewal applications under subdivision C 1 of this section).~~

2. ~~DGS DCLS shall grant interim accreditation status to a laboratory renewing its accreditation under subdivision C 2 of this section during its review of the renewal application if the owner has submitted a complete application as required under subdivision C 2 of this section.~~

3. 2. A laboratory with interim accreditation status shall have the same rights and status as a laboratory that has been granted accreditation by ~~DGS DCLS~~ DCLS.

4. 3. Interim accreditation status shall not exceed 12 months.

I. On-site assessment.

1. ~~An on-site assessment shall be performed and the follow-up and reporting procedures for such assessments shall be completed in accordance with Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-220 prior to issuance of a final determination on accreditation.

2. ~~Alternative on-site assessment option. If DGS DCLS is unable to schedule an on-site assessment under the conditions of subdivision H 1 c of this section, the owner of the applicant laboratory may use third-party on-site assessors instead of DGS DCLS on-site assessors under the following conditions:~~

- ~~a. The third-party on-site assessors are on a DGS DCLS-approved list of NELAC-trained on-site assessors; and~~
- ~~b. The owner of the applicant laboratory agrees to pay the third-party on-site assessors.~~

J. Final determination on accreditation.

1. Upon completion of the accreditation review process and corrective action, if any, ~~DGS DCLS~~ DCLS shall grant accreditation in accordance with subsection K of this section or deny accreditation in accordance with subsection L of this section.

2. ~~Except during the initial accreditation period, DGS DCLS shall complete action on a laboratory's application~~

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~~within nine months from the time a completed application is received from the laboratory.~~

~~3. During the initial accreditation period, DGS DCLS shall notify applicants of their interim accreditation status under subsection H of this section only after all applications have been reviewed and are determined to be complete.~~

~~4. During the final approval process of the initial accreditation period, DGS DCLS shall notify applicants of their final accreditation status only after all timely and complete applications have been reviewed, all on-site assessments have been completed, and accreditation status has been determined for all applicant laboratories.~~

~~5. During the final approval process, DGS DCLS shall release on-site assessment reports to applicants at the time that applicants are notified of their final accreditation status.~~

## K. Grant of accreditation.

1. When a laboratory meets the requirements specified for receiving accreditation, ~~DGS DCLS~~ DCLS shall issue a certificate to the laboratory. The certificate shall be sent to the technical ~~director~~ manager, and the responsible official shall be notified.

2. The director of ~~DGS DCLS~~ DCLS or his designee shall sign the certificate. ~~The certificate shall be transmitted as a sealed and dated document.~~

3. The certificate shall include the following information:

- a. Name of owner of laboratory;
- b. Name of operator of laboratory, if different from owner;
- c. Name of responsible official;
- d. Address and location of laboratory;
- e. Laboratory identification number;
- f. Fields of accreditation (matrix, technology/method and ~~analyte/analyte group~~) analyte) for which accreditation is granted;
- g. Any addenda or attachments; and
- h. Issuance date and expiration date.

4. ~~National Environmental Laboratory Accreditation Program (NELAP) TNI-accreditation~~ status.

- a. Laboratories accredited under this chapter are accredited under the standards of ~~the National Environmental Laboratory Accreditation Conference~~ TNI.
- b. The certificate of accreditation shall contain the NELAP TNI insignia.
- c. Accredited laboratories shall comply with the provisions of 1VAC30-46-130 with regard to the use of these certificates and their status as ~~NELAP accredited~~ TNI-accredited laboratories.

5. The laboratory shall post the most recent certificate of accreditation and any addenda to the certificate issued by ~~DGS DCLS~~ DCLS in a prominent place in the laboratory facility.

6. Accreditation shall expire one year after the date on which accreditation is granted.

## L. Denial of accreditation.

1. ~~DGS DCLS~~ DCLS shall deny accreditation to an environmental laboratory in total if the laboratory is found to be falsifying any data or providing false information to support accreditation.

2. Denial of accreditation in total or in part.

a. ~~DGS DCLS~~ DCLS may deny accreditation to an environmental laboratory in total or in part if the laboratory fails to do any of the following:

- (1) Pay the required fees;
- (2) Employ laboratory staff to meet the personnel qualifications as required by ~~Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-210 A;
- (3) Successfully analyze and report proficiency testing samples as required by ~~Part II of this chapter~~ 1VAC30-46-210 B;
- (4) Submit a corrective action ~~report~~ plan in accordance with ~~Part II of this chapter~~ 1VAC30-46-220 in response to a deficiency report from the on-site assessment team within the required 30 calendar days;
- (5) Implement the corrective actions detailed in the corrective action ~~report~~ plan within the time frame specified by ~~DGS DCLS~~ DCLS;
- (6) Pass required on-site assessment as specified in ~~Part II of this chapter~~ 1VAC30-46-220; or
- (7) Implement a quality system as defined in ~~Part II of this chapter~~ 1VAC30-46-210 C.

b. ~~DGS DCLS~~ DCLS may deny accreditation to an environmental laboratory in total or in part if the laboratory's application is not determined to be complete within 90 days following notification of incompleteness because the laboratory is delinquent in submitting information required by ~~DGS DCLS~~ DCLS in accordance with this chapter.

c. ~~DGS DCLS~~ DCLS may deny accreditation to an environmental laboratory in total or in part if the ~~DGS DCLS~~ DCLS on-site assessment team is unable to carry out the on-site assessment pursuant to ~~1VAC30-46-210 B~~ 1VAC30-46-220 because a representative of the environmental laboratory denied the team entry during the laboratory's normal business hours that it specified in the laboratory application.

3. ~~DGS DCLS~~ DCLS shall follow the process specified in 1VAC30-46-110 when denying accreditation to an environmental laboratory.

M. Reapplication following denial of accreditation.

~~1. Upon denial of accreditation, the laboratory shall wait six months before reapplying for accreditation.~~

2. ~~DGS-DCLS~~ DCLS shall not waive application fees for a laboratory reapplying for accreditation.

**1VAC30-46-80. Maintaining accreditation.**

A. Accreditation remains in effect until withdrawn by ~~DGS-DCLS~~ DCLS, withdrawn voluntarily at the written request of the accredited laboratory, or expiration of the accreditation period. To maintain accreditation, the accredited laboratory shall comply with the elements listed in this section and in 1VAC30-46-90.

B. Quality systems. A laboratory seeking to maintain accreditation under this regulation shall assure consistency and promote the use of quality assurance and quality control procedures. ~~Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-210 C specifies the quality assurance and quality control requirements that shall be met to maintain accreditation. The laboratory shall establish and maintain a quality system based on ~~the~~ these required elements ~~contained in Part II.~~

C. Proficiency tests. Laboratories seeking to maintain accreditation under this regulation shall perform proficiency tests as required under ~~Part II (1VAC30-46-200 et seq.) of this chapter~~ 1VAC30-46-210 B.

D. Recordkeeping and retention. All laboratory records associated with accreditation parameters shall be kept as provided by the requirements for records under Part II (1VAC30-46-200 et seq.) of this chapter. These records shall be maintained for a minimum of five years unless designated for a longer period by another regulation or authority. All such records shall be available to ~~DGS-DCLS~~ DCLS upon request.

**1VAC30-46-90. Notifications and changes to accreditation elements and status.**

A. Changes to key accreditation criteria. The accredited laboratory shall notify ~~DGS-DCLS~~ DCLS in writing of any changes in key accreditation criteria within 30 calendar days of the change. Key accreditation criteria are laboratory ownership (including legal, commercial, or organizational status), location, resources and premises, key personnel (including top management), ~~and~~ major instrumentation, and quality system policies.

B. Changes to scope of accreditation.

1. ~~DGS-DCLS~~ DCLS may approve a laboratory's application to add a new matrix, technology, analyte, or test method to a laboratory's scope of accreditation or otherwise modify the laboratory's scope of accreditation by performing a data review.

2. To apply, the owner of the accredited laboratory shall submit the following to ~~DGS-DCLS~~ DCLS:

a. A ~~letter~~ written request signed by the owner that briefly summarizes the addition to be made to the laboratory's scope of accreditation.

b. Pertinent information demonstrating the laboratory's capability to perform the additional matrix, technology/method, or ~~analyte/analyte group~~ analyte, such as proficiency testing performance and quality control performance.

c. A written standard operating procedure covering the new matrix, technology/method, ~~or analyte/analyte group~~ analyte.

3. ~~DGS-DCLS~~ DCLS may approve a laboratory's application for modification to its scope of accreditation by performing a review of the application materials submitted, without an on-site assessment. The addition of a new technology or test method requiring the use of specific equipment may require an on-site assessment. Other reviews of performance and documentation may be carried out by ~~DGS-DCLS~~ DCLS, depending on the modification for which the laboratory applies.

4. Within 90 calendar days of the receipt of the application from the accredited environmental laboratory, ~~DGS-DCLS~~ DCLS shall review and determine whether the proposed modification may be approved.

5. If the proposed modification to the laboratory's scope of accreditation is approved, ~~DGS-DCLS~~ DCLS shall amend the laboratory's certificate of accreditation.

6. DCLS shall not send the amended certificate of accreditation to the laboratory until DCLS receives the payment of the fee required under 1VAC30-46-150 E 1.

C. Change of ownership or location of laboratory.

1. The accredited laboratory shall submit a written notification to ~~DGS-DCLS~~ DCLS of the change of ownership or location of the laboratory within 30 calendar days of the change. This requirement ~~applies only to fixed-based and not pertaining to change of location does not apply to~~ mobile laboratories.

2. Accreditation may be transferred when the legal status or ownership of a accredited laboratory changes as long as the transfer does not affect the laboratory's personnel, equipment, or organization.

3. If the laboratory's personnel, equipment, or organization are affected by the change of legal status or ownership, ~~DGS-DCLS~~ DCLS may require reaccreditation or reapplication in any or all of the categories for which the laboratory is accredited.

4. ~~DGS-DCLS~~ DCLS may require an on-site assessment depending on the nature of the change of legal status or ownership. ~~DGS-DCLS~~ DCLS shall determine the elements of any on-site assessment required.

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~~5. When there is a change in ownership, the new owner of the accredited laboratory shall assure historical traceability of the laboratory accreditation numbers.~~

~~6. 5. When there is a change in ownership, the new owner of the accredited laboratory shall keep for a minimum of five years all records and analyses performed by the previous owner under his scope of accreditation for a period of five years pertaining to accreditation. These records and analyses are subject to inspection by DGS-DCLS DCLS during this five-year period. This provision applies regardless of change of ownership, accountability or liability.~~

D. Voluntary withdrawal. Any environmental laboratory owner who wishes to withdraw the laboratory from its accreditation status or from being accredited, in total or in part, shall submit written notification to ~~DGS-DCLS~~ no later than 30 calendar days before the end of the laboratory's accreditation term DCLS. Within 30 calendar days, ~~DGS-DCLS~~ DCLS shall provide the laboratory with a written notice of withdrawal.

## **1VAC30-46-95. Suspension of accreditation.**

A. Before withdrawing accreditation, DCLS may suspend accreditation from an environmental laboratory in total or in part to allow the laboratory time to correct the reason for which DCLS may withdraw accreditation. Suspension is limited to the reasons listed in subsection B of this section.

B. DCLS may suspend accreditation from an environmental laboratory in part or in total when the laboratory has failed to do any of the following:

1. Participate in the proficiency testing program as required by 1VAC30-46-210 B.

2. Complete proficiency testing studies and maintain a history of at least two successful proficiency testing studies for each accredited field of testing out of the three most recent proficiency testing studies as defined in 1VAC30-46-210 B.

3. Maintain a quality system as defined in 1VAC30-46-210 C.

4. Employ staff that meets the personnel qualifications of 1VAC30-46-210 A.

5. Notify DCLS of any changes in key accreditation criteria as set forth in 1VAC30-46-90.

C. Process to suspend accreditation.

1. When DCLS determines that cause exists to suspend a laboratory, the agency shall send notification to the responsible official and the technical manager stating the agency's determination that the laboratory has failed to meet the 1VAC30-46 standards for one or more of the reasons listed in subsection B of this section. DCLS shall send the notification by certified mail.

2. In its notice, DCLS shall request the laboratory to notify DCLS in writing if the laboratory believes the agency is incorrect in its determination.

3. The notification shall state that the laboratory is required to take corrective action whenever a failure occurs and to document the corrective action. The notification shall require the laboratory to provide DCLS with documentation of the corrective action taken with regard to its failure to meet a standard under this chapter.

4. The notification shall state what the laboratory is required to do to restore its accreditation status and the time allowed to do so.

5. The environmental laboratory may proceed to correct the deficiencies for which DCLS has suspended the laboratory's accreditation.

6. Alternatively the laboratory may state in writing that DCLS is incorrect in its determination regarding suspension, giving specific reasons why the laboratory believes DCLS should not suspend accreditation.

7. With the exception of subdivision B 4 of this section, DCLS may allow the laboratory up to 60 days to correct the problem for which it may have its accreditation suspended.

8. DCLS shall set a date for suspension that follows the period provided under subdivision [ ~~B~~ ] 7 of this [ ~~section~~ subsection ] to restore accreditation.

9. If the laboratory does not correct its deficiencies within the time period allowed, DCLS shall suspend a laboratory in part or in total.

10. DCLS shall notify the laboratory by letter of its suspension status. DCLS shall send the notification by certified mail. DCLS shall also notify the pertinent Virginia state agency of the laboratory's suspension status.

11. The laboratory may provide information demonstrating why suspension is not warranted in accordance with the standard referenced in the initial DCLS notification. If such information is not provided prior to the suspension date, the laboratory accepts the DCLS decision to suspend.

12. The laboratory has the right to due process as set forth in 1VAC30-46-110.

D. Responsibilities of the environmental laboratory and DCLS when accreditation has been suspended.

1. The term of suspension shall be limited to six months or the period of accreditation whichever is longer.

2. The environmental laboratory shall not continue to analyze samples or report analysis for the fields of accreditation for which DCLS has suspended accreditation.

3. The environmental laboratory shall retain accreditation for the fields of accreditation, methods, and analytes where it continues to meet the requirements of this chapter.

4. The laboratory's suspended accreditation status shall change to accredited when the laboratory demonstrates to

DCLS that the laboratory has corrected the deficiency or deficiencies for which its accreditation was suspended.

5. An environmental laboratory with suspended accreditation shall not have to reapply for accreditation if the cause or causes for suspension are corrected within the term of suspension.

6. If the laboratory fails to correct the causes of suspension within the term of suspension, DCLS shall withdraw the laboratory's accreditation in total or in part.

**1VAC30-46-100. Withdrawal of accreditation.**

A. ~~DGS-DCLS~~ DCLS shall withdraw accreditation from an environmental laboratory in total if the laboratory is found to be falsifying any data or providing false information to support ~~certification~~ accreditation.

B. ~~DGS-DCLS~~ DCLS may withdraw accreditation from an environmental laboratory in part or in total when the laboratory has failed to do any of the following:

1. Participate in the proficiency testing program as required by ~~1VAC30-46-210 C~~ 1VAC30-46-210 B.

2. Complete proficiency testing studies and maintain a history of at least two successful proficiency testing studies for each affected accredited field of testing out of the three most recent proficiency testing studies as defined in ~~1VAC30-46-210 C~~ 1VAC30-46-210 B.

3. Maintain a quality system as defined in ~~1VAC30-46-210 D~~ 1VAC30-46-210 C.

4. Employ staff that ~~meet~~ meets the personnel qualifications of 1VAC30-46-210 A.

5. Submit an acceptable corrective action ~~report~~ plan after two opportunities as specified in ~~1VAC30-46-210 B~~ 1VAC30-46-220.

6. Implement corrective action specified in the laboratory's corrective action ~~report~~ plan as set out under ~~1VAC30-46-210 B~~ 1VAC30-46-220.

7. Notify ~~DGS-DCLS~~ DCLS of any changes in key accreditation criteria as set forth in 1VAC30-46-90.

8. Use correct and authorized references to the laboratory's accreditation status or that of ~~DGS-DCLS~~ DCLS in the laboratory's documentation and advertising as set forth in 1VAC30-46-130.

9. Allow a DCLS assessment team entry during normal business hours to conduct an on-site assessment required by 1VAC30-46-220.

10. Pay required fees specified in 1VAC30-46-150.

C. ~~DGS-DCLS~~ DCLS shall follow the process specified in 1VAC30-46-110 when withdrawing accreditation from an environmental laboratory.

D. Responsibilities of the environmental laboratory and ~~DGS-DCLS~~ DCLS when accreditation has been withdrawn.

1. Laboratories that lose their accreditation in full shall return their certificate to ~~DGS-DCLS~~ DCLS.

2. If a laboratory loses accreditation in part, ~~an addendum to the certificate shall be issued by DGS-DCLS~~ DCLS shall issue a revised certificate to the laboratory.

3. The laboratory shall discontinue the use of all materials that contain either a reference to the environmental laboratory's past accreditation status or that display the ~~NELAC/NELAP TNI~~ logo. These materials may include catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical ~~results reports~~, or other materials.

4. The environmental laboratory shall not continue to analyze samples or report analyses for the fields of accreditation for which DCLS has withdrawn accreditation.

E. After correcting the reason or cause for the withdrawal of accreditation under 1VAC30-46-100 A or B, the laboratory owner may reapply for accreditation under 1VAC30-46-70 B and E.

**1VAC30-46-110. Procedures to deny or withdraw accreditation, ~~to withdraw accreditation~~, and appeal procedures.**

A. Notification.

1. If ~~DGS-DCLS~~ believes it has grounds DCLS determines that cause exists to deny accreditation to or withdraw accreditation from an environmental laboratory, ~~DGS-DCLS~~ DCLS shall notify the environmental laboratory in writing of its intent to hold an informal fact finding under § 2.2-4019 of the Code of Virginia in order to make a decision on the denial of accreditation or withdrawal of accreditation determination. ~~DGS-DCLS~~ DCLS shall send this notification by certified mail to the responsible official and provide a copy to the technical ~~director~~ manager of the environmental laboratory. The notice of informal fact finding shall provide a detailed explanation of the basis for the notice.

2. For denial of accreditation, the notice shall state that the laboratory has failed to meet the standards in 1VAC30-46 and shall specify one or more of the reasons for denial of accreditation under 1VAC30-46-70 L, providing a detailed explanation of the basis for the denial of accreditation.

3. For withdrawal of accreditation, the notice shall state that the laboratory has failed to meet the standards in 1VAC30-46 and shall specify one or more of the reasons for withdrawal of accreditation under 1VAC30-46-100 A or B, providing a detailed explanation of the basis for the withdrawal of accreditation.

4. In its notice, DCLS shall request the laboratory to notify DCLS in writing if the laboratory believes the agency is incorrect in its determination.

5. If the laboratory believes DCLS to be incorrect in its determination, the laboratory shall provide DCLS with a detailed written demonstration of why DCLS should not deny or withdraw accreditation.

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~~B. Following the informal fact finding held pursuant to § 2.2 4019 of the Code of Virginia, the director shall render a decision regarding accreditation, and shall send this notification by certified mail to the responsible official and provide a copy to the technical director of the environmental laboratory. If the director's decision is adverse to the environmental laboratory, the responsible official may appeal this decision in accordance with § 2.2 4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.~~

~~C. The provisions of this section do not preclude informal discussions between DGS DCLS and any environmental laboratory that has been notified of a possible denial or withdrawal of accreditation. These informal discussions to resolve the concerns that prompted the notice shall be held prior to the informal fact finding proceeding.~~

~~B. An environmental laboratory may appeal a final decision by DCLS to deny or withdraw accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

~~D. C. The accreditation status of an environmental laboratory appealing withdrawal of accreditation shall not change pending the final decision of the appeals filed under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Part 2A of the Rules of the Supreme Court of Virginia.~~

## **1VAC30-46-120. National accreditation database. Information about accredited environmental laboratories.**

~~DGS DCLS shall provide to NELAP the following information about environmental laboratories accredited under this chapter: (i) technical director's name; (ii) ownership and location of laboratory and any changes; (iii) key accreditation criteria and any changes; (iv) interim, as well as final, accreditation status; and (v) on site assessment reports. DCLS shall make available to the public information identifying the environmental laboratories that it has accredited under this chapter.~~

## **1VAC30-46-130. Use of accreditation status by environmental laboratories accredited under this chapter.**

A. The owner of an environmental laboratory accredited under this chapter shall not misrepresent the laboratory's fields of accreditation or its accreditation status on any document. This includes laboratory reports, catalogs, advertising, business solicitations, proposals, quotations or other materials.

B. Environmental laboratories accredited under this chapter shall comply with all of the following:

1. Post or display their most recent accreditation certificate or their fields of accreditation in a prominent place in the laboratory facility.
2. Make accurate statements concerning their fields of accreditation and accreditation status.

3. Accompany ~~DGS DCLS's~~ DCLS's name or the NELAC/NELAP TNI logo or both with at least the phrase "NELAP accredited" "TNI-accredited" and the laboratory's identification number or other identifier when ~~DGS DCLS's~~ DCLS's name is used on general literature such as catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other materials.

4. Not use their accreditation certificate, their accreditation status or the NELAC/NELAP TNI logo to imply endorsement by ~~DGS DCLS~~ DCLS.

C. The owners of laboratories accredited under this chapter who choose to (i) use ~~DGS DCLS's~~ DCLS's name; (ii) make reference to its NELAP TNI accreditation status; or (iii) use the NELAC/NELAP TNI logo in any catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other materials, shall comply with both of the following:

1. Distinguish between proposed testing for which the laboratory is accredited and the proposed testing for which the laboratory is not accredited.
2. Include the laboratory's identification number or other identifier.

## **1VAC30-46-140. Reciprocal Secondary accreditation.**

A. ~~DGS DCLS, when recognized by NELAP as a primary accrediting authority, DCLS may grant reciprocal secondary accreditation to an environmental laboratory that holds a current accreditation from another NELAP-recognized TNI-recognized primary accrediting authority accreditation body.~~

B. The owner of a NELAP accredited TNI-accredited environmental laboratory that seeks accreditation under this chapter shall apply as specified in 1VAC30-46-70 with the exception of 1VAC30-46-70 F 1 n and o.

C. The owner of the applicant laboratory shall pay the fee required by 1VAC30-46-150.

D. ~~DGS DCLS~~ DCLS shall not require a NELAP accredited TNI-accredited environmental laboratory that seeks accreditation under this section to meet any additional proficiency testing, quality assurance, or on-site assessment requirements for the fields of accreditation for which the laboratory holds primary NELAP TNI accreditation.

E. ~~DGS DCLS~~ DCLS shall consider only the current certificate of accreditation issued by the NELAP-recognized TNI-recognized primary ~~accrediting authority accreditation~~ body.

F. ~~DGS DCLS shall do the following: 1. Grant reciprocal DCLS shall grant secondary accreditation for only the fields of accreditation offered under this chapter for which the laboratory holds current primary NELAP TNI accreditation.~~

~~2. Except during the initial accreditation period, grant reciprocal accreditation and issue certificates to an applicant laboratory within 30 calendar days of receipt of the laboratory's application.~~

G. Potential nonconformance issues.

1. ~~If DGS DCLS notes any potential nonconformance with the NELAC standards by a laboratory during the initial application process for reciprocal accreditation or for a laboratory that already has been granted NELAP accreditation through reciprocal accreditation, DGS DCLS shall immediately notify, in writing, the applicable NELAP recognized primary accrediting authority and the laboratory. The notification shall cite the applicable sections within the NELAC standards for which nonconformance by the laboratory has been noted.~~
2. ~~If the alleged nonconformance is noted during the initial application process for reciprocal accreditation, final action on the application for reciprocal accreditation shall not be taken until the alleged nonconformance issue has been resolved.~~
3. ~~If the alleged nonconformance is noted after reciprocal accreditation has been granted, the laboratory shall maintain its current accreditation status until the alleged nonconformance issue has been resolved.~~
4. ~~If DGS DCLS does not believe the primary accrediting authority has taken timely and appropriate action on the potential nonconformance, DGS DCLS shall notify the NELAP director of its concerns.~~

1VAC30-46-150. Fees.

A. General.

1. ~~Fees shall be submitted~~ Environmental laboratories shall pay a fee with all applications, including reapplications, for accreditation and all renewal applications for accreditation under 1VAC30-46-70 C 1. Applications shall not be designated as complete until the fee is received by DGS DCLS. DCLS shall not designate an application as complete until it receives payment of the fee.
2. ~~Fees shall be nonrefundable.~~ Each accredited environmental laboratory shall pay an annual fee to maintain its accreditation. DCLS shall send an invoice to the accredited environmental laboratory.
3. An environmental laboratory applying for ~~reciprocal secondary accreditation under this chapter~~ 1VAC30-46-140 shall pay the same fee as other laboratories subject to this chapter.
4. Fees shall be nonrefundable.

B. Fee computation.

1. ~~The fee shall be the total of the base fee and the test category fees.~~
2. ~~The test category fees cover categories for the test methods to be accredited as specified in the laboratory's application.~~
3. ~~If the total of the base fee and the test category fees is more than the maximum fee, the laboratory shall pay the maximum fee.~~
1. Fees shall be applied on an annual basis.

2. Environmental laboratories shall pay the total of the base fee and the test category fees set out in subsections C and D of this section ~~[ for the first twelve months following (insert the effective date of this chapter) ]~~.

~~[ 3. Environmental laboratories shall pay the total of the base fee and the test category fees required by subsections C and D of this section as adjusted by the method set out in subsection E of this section beginning the second 12 months following (insert the effective date of this chapter) and for each of the 12 month periods that follow. ]~~

C. Base fee. ~~The base fee shall be \$1,700.~~

1. DCLS determines the base fee for a laboratory by taking into account both the total number of methods and the total number of field of accreditation matrices for which the laboratory would be accredited.
2. DCLS shall charge the base fees set out in Table 1. The base fee for a laboratory is located by first finding the row for the total number of methods to be accredited and then finding the box on that row located in the column headed by the total number of matrices to be accredited. For example, DCLS charges a base fee of \$1300 to a laboratory performing a total of eight methods for one matrix.

TABLE 1: BASE FEES				
Number of Methods	One Matrix	Two Matrices	Three Matrices	Four or more Matrices
1 - 9	\$1300	\$1430	\$1575	\$1730
10 - 29	\$1400	\$1575	\$1750	\$1950
30 - 99	\$1550	\$1825	\$2150	\$2550
100 - 149	\$1650	\$1980	\$2375	\$2850
150+	\$1800	\$2250	\$2825	\$3525

D. ~~Maximum fee. The maximum fee shall be \$5,200.~~

E. ~~D.~~ Test category fees.

1. The test category fees cover the types of testing for which a laboratory may be accredited as specified in the laboratory's application or as accredited at the time of annual billing.
1. ~~2.~~ Fees shall be charged for each category of tests to be accredited.
3. Fees shall be charged for the total number of field of accreditation matrices to be accredited under the specific test category. For example, if a laboratory is performing inorganic chemistry for both nonpotable water and solid and chemical matrices, the fee for this test category would be found in the column for two matrices.
2. ~~4.~~ The fee for each category includes one or more analytical methods unless otherwise specified. ~~With the exception of the test categories labeled oxygen demand and~~

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physical, test categories related to test methods for water are defined by 40 CFR 136.3.

5. Test category fees. DCLS shall charge the test category fees set out in Table 2. The test category fees for a laboratory are located by first finding the row with the total number of test methods for the test category to be accredited. The fee to be charged for the test category will be found on that row in the column headed by the total number of matrices to be accredited. A laboratory performing four test methods for bacteriology in both nonpotable and drinking water (two matrices) would be charged a test category fee of \$330.

3. Fees.

TEST CATEGORY	FEE
Oxygen demand (BOD or COD)	\$375
Bacteriology	\$375
Inorganic chemistry, fewer than four methods	\$375
Inorganic chemistry, four or more methods	\$750
Chemistry metals, one — two methods	\$450
Chemistry metals, more than two methods	\$1,000
Organic chemistry, fewer than four methods	\$600
Organic chemistry, four or more methods	\$1,200
Aquatic toxicity, acute methods only	\$400
Aquatic toxicity, acute and chronic methods	\$700
Radiochemical	\$1,000
Physical	\$375

TABLE 2: TEST CATEGORY FEES

Test Category	Fees by Number of Matrices		
	One	Two	Three or More
<u>Aquatic toxicity, acute methods only</u>	\$400	N/A	N/A
<u>Aquatic toxicity, acute and chronic methods</u>	\$600	N/A	N/A
<u>Oxygen demand</u>	\$225	\$335	\$435
<u>Bacteriology, 1 - 3 total methods</u>	\$175	\$265	\$345

<u>Bacteriology, 4 or more total methods</u>	\$220	\$330	\$430
<u>Physical, 1 - 5 total methods</u>	\$175	\$265	\$345
<u>Physical, 6 - 10 total methods</u>	\$220	\$330	\$430
<u>Physical, 11 or more total methods</u>	\$275	\$415	\$540
<u>Inorganic chemistry, 1 - 10 total methods</u>	\$250	\$375	\$490
<u>Inorganic chemistry, 11 - 20 total methods</u>	\$315	\$475	\$620
<u>Inorganic chemistry, 21 - 49 total methods</u>	\$394	\$590	\$767
<u>Inorganic chemistry, 50 or more total methods</u>	\$492	\$740	\$962
<u>Chemistry metals, 1 - 5 total methods</u>	\$325	\$490	\$637
<u>Chemistry metals, 6 - 20 total methods</u>	\$410	\$615	\$800
<u>Chemistry metals, 21 or more total methods</u>	\$512	\$770	\$1000
<u>Organic chemistry, 1 - 5 total methods</u>	\$400	\$600	\$780
<u>Organic chemistry, 6 - 20 total methods</u>	\$500	\$750	\$975
<u>Organic chemistry, 21 - 40 total methods</u>	\$625	\$940	\$1222
<u>Organic chemistry, 41 or more total methods</u>	\$780	\$1170	\$1520
<u>Radiochemical, 1 - 10 total methods</u>	\$600	\$900	\$1170
<u>Radiochemical, 11 or more total methods</u>	\$725	\$1090	\$1420
<u>Asbestos</u>	\$725	\$1090	\$1420

6. Fee examples. Three examples are provided.

a. Example 1:

<u>Base Fee</u>	<u>One matrix and four test methods</u>	\$1300
<u>Test Category Fees</u>		
<u>One Matrix</u>		
<u>Nonpotable Water</u>	<u>Bacteriology (2 methods)</u>	\$175

<u>Nonpotable Water</u>	<u>Oxygen demand (1 method)</u>	<u>\$225</u>
<u>Nonpotable Water</u>	<u>Physical (1 method)</u>	<u>\$175</u>
<u>TOTAL</u>		<u>\$1875</u>

b. Example 2:

<u>Base Fee</u>	<u>One matrix and 15 test methods</u>	<u>\$1400</u>
<u>Test Category Fees</u>		
<u>One Matrix</u>		
<u>Nonpotable Water</u>	<u>Bacteriology (2 methods)</u>	<u>\$175</u>
<u>Nonpotable Water</u>	<u>Inorganic chemistry (9 methods)</u>	<u>\$250</u>
<u>Nonpotable Water</u>	<u>Metals (2 methods)</u>	<u>\$325</u>
<u>Nonpotable Water</u>	<u>Oxygen demand (1 method)</u>	<u>\$225</u>
<u>Nonpotable Water</u>	<u>Physical (1 method)</u>	<u>\$175</u>
<u>TOTAL</u>		<u>\$2550</u>

c. Example 3:

<u>Base Fee</u>	<u>Two matrices and 27 test methods</u>	<u>\$1575</u>
<u>Test Category Fees</u>		
<u>One Matrix</u>		
<u>Nonpotable Water</u>	<u>Bacteriology (4 methods)</u>	<u>\$220</u>
<u>Nonpotable Water</u>	<u>Oxygen demand (1 method)</u>	<u>\$225</u>
<u>Solid and Chemical Materials</u>	<u>Metals (1 method)</u>	<u>\$325</u>
<u>Two Matrices</u>		
<u>Nonpotable Water and Solid and Chemical Materials</u>	<u>Inorganic chemistry (13 methods)</u>	<u>\$475</u>
<u>Nonpotable Water and Solid and Chemical Materials</u>	<u>Physical (7 methods)</u>	<u>\$330</u>
<u>TOTAL</u>		<u>\$3150</u>

[ ~~E.~~ Calculation of fees — fees beginning (the thirteenth month following the effective date of this chapter):

~~1. DCLS shall revise the base fee and test category fee tables after the first twelve months following the effective date of this chapter and every twelve month period thereafter.~~

~~2. DCLS shall increase or decrease the fees set out in the base fee and the test category fee tables using the Consumer Price Index Urban (CPI U) percentage change, average average for the previous calendar year. (The CPI-U for all urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. Examples of the CPI U average average are 0.04, +1.6, and +3.2 percent for 2009, 2010, and 2011, respectively. DCLS would determine the fees in the tables for 2012, for example, by increasing each fee by 3.2 percent, the CPI U average average percentage change for 2011.)~~

~~3. DCLS shall revise each previous year's tables so that the revisions will be cumulative, reflecting the changes in the CPI U over time.~~

~~4. DCLS shall round the revised fees to the nearest dollar.~~

~~5. DCLS shall publish the revised base fee and test category fee tables annually on its VELAP website.~~

F. ~~E.] Additional fees. Additional fees shall be charged to laboratories applying for the following: (i) modification to scope of accreditation under 1VAC30-46-90 B, (ii) transfer of ownership under 1VAC30-46-90 C, (iii) request that multiple, noncontiguous laboratory sites be considered as one site under 1VAC30-46-60 B-3, or (iv) (iii) petition for a variance under 1VAC30-46-160.~~

1. For any accredited environmental laboratory that applies to modify its scope of accreditation as specified under 1VAC30-46-90 B, ~~DGS-DCLS~~ DCLS shall assess a fee determined by the method in subsection [ ~~G~~ F ] of this section.

2. Under 1VAC30-46-90 C, ~~DGS-DCLS~~ DCLS may charge a transfer fee to a certified laboratory that transfers ownership. A fee shall be charged if ~~DGS-DCLS~~ DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the transfer of ownership. ~~DGS-DCLS~~ DCLS shall assess a fee determined by the method in subsection [ ~~G~~ F ] of this section. ~~If DGS-DCLS determines that a fee should be charged, the fee shall be a minimum of \$100 and a maximum of \$1,000.~~ If, under 1VAC30-46-90 C, ~~DGS-DCLS~~ DCLS determines that the change of ownership or location of laboratory requires reaccreditation of or reapplication by the laboratory, the laboratory shall pay the application fee required under this section.

3. Under 1VAC30-46-60 B-3, ~~the owner of multiple non-contiguous laboratories may request that DGS DCLS consider these laboratories to be one site. If, as a result of~~

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Part II  
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~~the request being granted, DGS DCLS needs to perform multiple on-site assessments, DGS DCLS shall charge a fee for the additional on-site assessments. The fee shall be the sum of reasonable travel costs and labor charges for the additional on-site assessments. The labor charges will be determined following the method in subsection G of this section.~~

4. ~~3.~~ Under 1VAC30-46-160, any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. ~~DGS DCLS~~ DCLS shall charge a fee for the time needed to review the petition, including any on-site assessment required. The fee shall be determined by the method specified in subsection ~~[ G F ]~~ of this section.

~~[ G. F. ]~~ Fee Additional fees determination.

1. The fee shall be the sum of the total hourly charges for all reviewers plus any on-site review costs incurred.

2. An hourly charge per reviewer shall be determined by (i) obtaining a yearly cost by multiplying the reviewer's annual salary by 1.35 (accounts for overhead such as taxes and insurance) and then (ii) dividing the yearly cost by 1,642 (number of annual hours established by Fiscal Services, DGS, for billing purposes).

3. The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.

4. If an on-site review is required, travel time and on-site review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

~~[ H. G. ]~~ Out-of-state laboratories ~~—travel costs~~ applying for primary accreditation.

1. The owner of an environmental laboratory located in another state who applies for primary accreditation under this chapter shall ~~also~~ pay a ~~fee equal to the surcharge of \$5000 plus the labor costs of the on-site assessment and reasonable travel costs associated with conducting an on-site assessment at the laboratory. Reasonable travel costs include transportation, lodging, per diem, and telephone and duplication charges. These charges shall be in addition to the fees charged under subdivision A 1 and subsections B through D of this section.~~

2. Once the laboratory is accredited, DCLS shall charge the annual fee specified in subdivision A 2 and subsections B through D of this section, the labor costs for the on-site assessment, and reasonable travel costs associated with conducting the on-site assessment.

~~[ I. H. ]~~ ~~DGS DCLS~~ DCLS shall derive the travel costs charged under subsections ~~G and H~~ F and G of this section from the Commonwealth of Virginia reimbursement allowances and rates for lodging, per diem, and mileage.

## 1VAC30-46-200. Incorporation of NELAC standards by reference of TNI standards.

~~A. The 2003 National Environmental Laboratory Accreditation Conference (NELAC) standards approved June 5, 2003, as specified in 1VAC30 46 210 are incorporated by reference into this chapter.~~

~~B. Laboratories applying for accreditation and accredited under this chapter shall comply with the 2003 NELAC standards incorporated by reference into 1VAC30 46 210.~~

~~C. The requirements of Chapter 4 of the 2003 NELAC standards, Accreditation Process, are incorporated by reference into this chapter unless the requirements are (i) already addressed in this chapter, (ii) superseded by Virginia law, or (iii) incorporated by reference into 1VAC30 46 210.~~

A. The following TNI standards are incorporated by reference into this chapter: The Standards for Environmental Laboratories and Accreditation Bodies, 2009 (The NELAC Institute (TNI)), Volume 1: Management and Technical Requirements for Laboratories Performing Environmental Analysis, and Volume 2: General Requirements for Accreditation Bodies Accrediting Environmental Laboratories, except for section 6.6 of Module 3 concerning confidential business information.

B. Environmental laboratories applying for accreditation and accredited under this chapter shall comply with the TNI standards incorporated by reference into subsection A of this section. For convenience these standards are specified by accreditation component in 1VAC30-46-210 and 1VAC30-46-220.

C. The TNI standards are organized by volume and module.

1. Volume 1 - Management and Technical Requirements for Laboratories Performing Environmental Analysis includes the following modules:

- a. Proficiency Testing.
- b. Quality Systems General Requirements.
- c. Quality Systems for Asbestos Testing.
- d. Quality Systems for Chemical Testing.
- e. Quality Systems for Microbiological Testing.
- f. Quality Systems for Radiochemical Testing.
- g. Quality Systems for Toxicity Testing.

2. Volume 2 - General Requirements for Accreditation Bodies Accrediting Environmental Laboratories includes the following modules:

- a. General Requirements.
- b. Proficiency Testing.
- c. On-Site Assessment.

**IVAC30-46-210. Standards for accreditation.**

~~A. Standards for personnel qualifications. The standards for personnel qualifications are the following provisions of the National Environmental Laboratory Accreditation Conference (NELAC) standards as incorporated by reference into this part: Chapter 4, Accreditation Process, specifically, Components of Accreditation and Personnel Qualifications (4.1.1) and Chapter 5, Quality Systems, specifically, Technical Requirements Personnel (5.5.2).~~

~~B. Standards for on site assessment. The standards for on site assessment are the following provisions of the NELAC standards as incorporated by reference into this part:~~

~~1. Chapter 3, On site Assessment with one exception. Subsection 3.4.5, Confidential Business Information (CBI) Considerations, shall not be incorporated by reference into this part.~~

~~2. Chapter 4, Accreditation Process, specifically, On site Assessments and Corrective Action Reports in Response to On site Assessment (4.1.2 and 4.1.3).~~

~~C. Standards for proficiency testing. The standards for proficiency testing are the following provisions of the NELAC standards as incorporated by reference into this part:~~

~~1. Chapter 2, Proficiency Testing, specifically, Introduction, Scope, and Applicability; Major PT Groups and Their Responsibilities; Laboratory Enrollment in Proficiency Testing Programs; Requirements for Laboratory Testing of PT Study Samples; and PT Criteria for Laboratory Accreditation (2.1, 2.2, 2.4 through 2.7).~~

~~2. Chapter 4, Accreditation Process, specifically, Proficiency Testing Samples (4.1.4).~~

~~D. Standards for quality systems.~~

~~1. The standards for quality systems are the following provisions of the NELAC standards as incorporated by reference into this part: (i) Chapter 4, specifically, Accountability for Analytical Standards and (ii) Chapter 5, Quality Systems.~~

~~2. Quality systems scope. Chapter 5 of the NELAC standards sets out the scope of quality systems requirements. These provisions provide an overview to major aspects of the accreditation process and are set out below for emphasis:~~

~~a. Chapter 5 includes all quality assurance policies and quality control procedures that shall be delineated in a quality manual and followed to ensure and document the quality of the analytical data. Laboratories seeking accreditation shall assure implementation of all quality assurance policies and the essential applicable quality control procedures specified in this chapter. The quality assurance policies, which establish essential quality control procedures, are applicable to environmental laboratories regardless of size and complexity.~~

~~b. The intent of Chapter 5 is to provide sufficient detail concerning quality management requirements so that DGS DCLS can evaluate environmental laboratories consistently and uniformly.~~

~~e. Chapter 5 sets out the general requirements that a laboratory has to successfully demonstrate to be recognized as competent to carry out specific environmental tests.~~

~~d. If more stringent standards or requirements are included in a mandated test method or by regulation, the laboratory shall demonstrate that such requirements are met. If it is not clear which standards or requirements are more stringent, the standard or requirement from the method or regulation is to be followed.~~

A. Standards for personnel. The standards for personnel are found in Section 5.2 of Volume 1, Module 2 of the TNI standards.

B. Standards for proficiency testing.

1. The standards for proficiency testing are found in (i) Module 1 and (ii) section 4.11 of Module 2 of Volume 1 of the TNI standards.

2. Additional requirements from Volume 2, Module 2 of the TNI standards.

a. A laboratory shall perform two proficiency test studies each calendar year for each FoPT. These proficiency testing studies shall be performed at least five months apart and no longer than seven months apart within the calendar year.

b. The following proficiency testing studies shall not apply when meeting the requirements of subdivision 2 a of this subsection:

(1) Studies used for corrective action to reestablish successful history in order to maintain accreditation; and

(2) Studies used to reinstate accreditation after DCLS suspends accreditation.

c. DCLS shall consider a laboratory's analytical result for a FoPT not acceptable for the following reasons:

(1) When the laboratory does not report the results within the time frames specified in Volume 1, Module 1 of the TNI standards.

(2) When the laboratory makes any reporting error or omission that results in a nonspecific match between the analytical result for the FoPT and any criterion that identifies the laboratory or the field of accreditation for which the PT sample was analyzed for the purpose of initial or continued accreditation.

d. If DCLS requests a corrective action plan from a laboratory, the laboratory shall provide the plan within 30 calendar days of the request.

e. A laboratory may withdraw from a study for any FoPT on or before the close date of the study. Withdrawing from a study shall not exempt the laboratory from

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meeting the semiannual analysis requirements necessary for continued accreditation.

## C. Standards for quality systems.

1. General requirements for all environmental laboratories are found in Volume 1, Module 2 of the TNI standards.

2. Requirements for the specific types of testing that may be performed by an individual environmental laboratory are found in Volume 1, Modules 3 through 7 of the TNI standards.

3. Drinking water laboratories obtaining certification under this chapter shall meet the reporting requirements set out in [ ~~1VAC30-40~~ 1VAC30-41 ] for compliance with 12VAC5-590-530 and 12VAC5-590-540.

## **1VAC30-46-220. On-site assessment.**

A. The standards for on-site assessment are found in Volume 2, Module 3 of the TNI standards. The requirements specific to environmental laboratories are set out in this section.

B. DCLS shall conduct a comprehensive on-site assessment of an environmental laboratory prior to granting final primary accreditation to the laboratory.

### C. Frequency of on-site assessment.

1. DCLS shall reassess each accredited laboratory every two years starting from the date of the previous assessment plus or minus six months.

### 2. Other on-site assessments.

a. If DCLS identified a deficiency on a previous on-site assessment, the agency may conduct a follow-up on-site assessment.

b. DCLS may conduct an on-site assessment under the following circumstances:

(1) A laboratory applies to modify its scope of accreditation;

(2) A transfer of ownership occurs that affects personnel, equipment, or the laboratory facilities; or

(3) A laboratory applies for an exemption or a variance.

c. Any other change occurring in a laboratory's operations that might reasonably be expected to alter or impair analytical capability and quality may trigger an on-site assessment.

D. Announced and unannounced on-site assessments. DCLS, at its discretion, may conduct either announced or unannounced on-site assessments. Advance notice of an assessment shall not be necessary.

### E. Preparation for the on-site assessment.

1. Prior to the actual site visit, DCLS may request in writing from a laboratory those records required to be maintained by this chapter.

2. DCLS may opt not to proceed with an on-site assessment based on nonconformities found during document and record review.

## F. Areas to be assessed.

1. DCLS shall assess the laboratory against the standards incorporated by reference and specified in 1VAC30-46-200 and 1VAC30-46-210.

2. The laboratory shall ensure that its quality manual, analytical methods, quality control data, proficiency test data, laboratory SOPs, and all records needed to verify compliance with the standards specified in 1VAC30-46-200 and 1VAC30-46-210 are available for review during the on-site assessment.

## G. National security considerations.

1. Assessments at facilities owned or operated by federal agencies or contractors may require security clearances, appropriate badging, or a security briefing before the assessment begins.

2. The laboratory shall notify DCLS in writing of any information that is controlled for national security reasons and cannot be released to the public.

## H. Arrival, admittance, and opening conference.

1. Arrival. DCLS and the laboratory shall agree to the date and schedule for announced on-site assessments.

2. Admittance of assessment personnel. A laboratory's refusal to admit the assessment personnel for an on-site assessment shall result in an automatic failure of the laboratory to receive accreditation or loss of an existing accreditation by the laboratory, unless there are extenuating circumstances that are accepted and documented by DCLS.

3. Health and safety. Under no circumstance, and especially as a precondition to gain access to a laboratory, shall assessment personnel be required or even allowed to sign any waiver of responsibility on the part of the laboratory for injuries incurred during an assessment.

4. Opening conference. An opening conference shall be conducted and shall address the following topics:

a. The purpose of the assessment;

b. The identification of assessment personnel;

c. The test methods that will be examined;

d. Any pertinent records and procedures to be examined during the assessment and the names of the individuals in the laboratory responsible for providing assessment personnel with such records;

e. The roles and responsibilities of laboratory staff and managers;

f. Any special safety procedures that the laboratory may think necessary for the protection of assessment personnel;

g. The standards and criteria that will be used in judging the adequacy of the laboratory operation;

h. Confirmation of the tentative time for the exit conference; and

i. Discussion of any questions the laboratory may have about the assessment process.

I. On-site laboratory records review and collection.

1. Records shall be reviewed by assessment personnel for accuracy, completeness, and the use of proper methodology for each analyte and test method to be evaluated.

2. Records required to be maintained pursuant to this chapter shall be examined as part of an assessment for accreditation.

J. Observations of and interviews with laboratory personnel.

1. As an element of the assessment process, the assessment team shall evaluate an analysis regimen by requesting that the analyst normally conducting the procedure give a step-by-step description of exactly what is done and what equipment and supplies are needed to complete the regimen. Any deficiencies shall be noted and discussed with the analyst. In addition, the deficiencies shall be discussed in the closing conference.

2. Assessment personnel may conduct interviews with appropriate laboratory personnel.

3. Calculations, data transfers, calibration procedures, quality control and quality assurance practices, adherence to test methods, and report preparation shall be assessed for the complete scope of accreditation with appropriate laboratory analysts.

K. Closing conference.

1. Assessment personnel shall meet with representatives of the laboratory following the assessment for a closing conference.

2. During the closing conference, assessment personnel shall inform the laboratory of the preliminary findings and the basis for such findings. The laboratory shall have an opportunity to provide further explanation or clarification relevant to the preliminary findings. If the laboratory objects to the preliminary findings during the closing conference, all objections shall be documented by the assessment personnel and included in the final report to DCLS.

3. Additional problem areas may be identified in the final report.

L. Follow-up and reporting procedures.

1. DCLS shall provide an on-site assessment report to the laboratory documenting any deficiencies found by DCLS within 30 calendar days of the last day of the on-site assessment.

2. When deficiencies are identified in the assessment report, the laboratory shall have 30 calendar days from the date of its receipt of the on-site assessment report to provide a corrective action plan to DCLS.

3. The laboratory's corrective action plan shall include the following:

a. Any objections that the laboratory has with regard to the on-site assessment report;

b. The action that the laboratory proposes to correct each deficiency identified in the assessment report;

c. The time period required to accomplish the corrective action; and

d. Documentation of corrective action that the laboratory has already completed at the time the corrective action plan is submitted.

4. If the corrective action plan, or a portion of the plan, is determined to be unacceptable to remedy the deficiency, DCLS shall provide written notification to the responsible official and technical manager of the laboratory, including a detailed explanation of the basis for such determination. Following receipt of such notification, the laboratory shall have an additional 30 calendar days to submit a revised corrective action plan acceptable to DCLS.

5. DCLS may withdraw accreditation from a laboratory under 1VAC30-46-100 B 5 if DCLS finds the second revised corrective action plan to be unacceptable.

6. The laboratory shall submit documentation to DCLS that the corrective action set out in its plan has been completed within the time period specified in the plan.

7. DCLS, under 1VAC30-46-100 B 6, may withdraw accreditation from a laboratory if the laboratory fails to implement the corrective actions set out in its corrective action plan.

8. DCLS shall grant final accreditation as specified in 1VAC30-46-70 K upon successful completion of any required corrective action following the on-site assessment.

FORMS (1VAC30-46)

Application for Certification of Environmental Laboratories, DGS 21-156 (eff. 1/09).

Application for Accreditation under 1VAC30-46 - must be obtained from program staff at [Lab\\_Cert@dgs.virginia.gov](mailto:Lab_Cert@dgs.virginia.gov)

[ [Laboratory Management Qualifications, DGS 21-179 \(eff. 2/09\)](#)

[Applicant Laboratory Certification of Compliance, DGS-21-180 \(eff. 8/12\)](#)

~~[VELAP Request for Change of Scope Request Authorization, DGS 21-185 \(eff. 7/13\)](#)~~

~~[Corrective Action \(CA\) Form, DGS 35-192 \(rev. 4/13\)](#)~~

~~[On site Assessment Corrective Action Plan \(CAP\) Form, DGS 35-196 \(eff. 5/13\)](#)~~

~~[Sample On-site Assessment Corrective Action Plan \(CAP\) Form, DGS 35-196 \(eff. 5/13\)](#)~~

~~[Fee Payment Form for Virginia Laboratory Certification Programs, DGS 35-232 \(rev. 1/11\)](#)~~

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[Documentation Requested by VELAP Prior to Laboratory On-site Assessment, DGS 35-233 \(rev. 3/13\)](#)

[Demonstration of Capability Certification Statement, DGS-35-234 \(eff. 4/10\)](#) ]

DOCUMENTS INCORPORATED BY REFERENCE (1VAC30-46)

2003 National Environmental Laboratory Accreditation Conference (NELAC) Standards, EPA/600/R-04/003, Approved at Ninth NELAC Annual Meeting, June 5, 2003.

The Standards for Environmental Laboratories and Accreditation Bodies, 2009, The NELAC Institute (TNI), P.O. Box 2439, Weatherford, TX 76086; [www.nelac-institute.org](http://www.nelac-institute.org);

[Volume 1: Management and Technical Requirements for Laboratories Performing Environmental Analysis \(EL-V1-2009\)](#)

[Volume 2: General Requirements for Accreditation Bodies Accrediting Environmental Laboratories \(EL-V2-2009\)](#)

VA.R. Doc. No. R12-3067; Filed August 12, 2015, 1:19 p.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** **4VAC20-280. Pertaining to Speckled Trout and Red Drum (amending 4VAC20-280-60).**

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

**Effective Date:** September 1, 2015.

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

**Summary:**

*The amendment removes the Class 1 misdemeanor penalty for any person fishing recreationally with any gear type in possession of more than three red drum to conform to Chapter 108 of the 2014 Acts of Assembly, which repealed § 28.2-304 of the Code of Virginia.*

#### 4VAC20-280-60. Penalty.

~~A. Pursuant to § 28.2-304 of the Code of Virginia, any person violating any provision of 4VAC20-280-40 C of this chapter shall be guilty of a Class 1 misdemeanor.~~

~~B. Pursuant to § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter other than 4VAC20-280-40 C shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter, other than 4VAC20-280-40 C, committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

VA.R. Doc. No. R16-4484; Filed August 27, 2015, 9:47 a.m.

#### Final Regulation

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

**Title of Regulation:** **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-15, 4VAC20-720-20, 4VAC20-720-40, 4VAC20-720-60 through 4VAC20-720-80).**

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

**Effective Date:** September 1, 2015.

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

**Summary:**

*The amendments (i) include effort controls on sale and resale of specific oyster licenses, with exceptions, and restriction on agents for public oyster gear licensees; (ii) change coordinates and correct a direction in oyster harvest area descriptions; (iii) update open oyster harvest seasons and areas; (iv) set Friday as an additional unlawful day to take, catch, or possess oysters from public grounds; (v) provide a vessel limit of 24 bushels only to the oyster areas designated as hand scrape gear areas listed in 4VAC20-720-40 B 8 through B 14 and a no-vessel limit for harvesters in hand tong gear areas listed in 4VAC20-720-40 B 2 through B 7 and B 15; and (vi) establish a 12-bushel vessel limit in the hand tong gear area listed in 4VAC20-720-40 B 1.*

#### 4VAC20-720-15. Control date, effort control, and agents.

A. The commission hereby establishes July 1, 2014, as the control date for management of all public oyster fisheries in Virginia. Participation by any individual in any public oyster fishery after the control date will not be considered in the calculation or distribution of oyster fishing rights should entry limitations be established. Any individual entering the public oyster fishery after the control date will forfeit any right to

future participation in the public oyster fishery should further entry limitations be established by the commission.

B. The sale of oyster hand scrape and oyster dredge licenses to individuals who have not previously held these licenses shall be suspended until the commission reinstates the sale of those licenses. The sale of oyster patent tong licenses to individuals who had not purchased that license during the period from July 1, 2013, through August 25, 2015, shall be suspended until the commission reinstates the sale of those licenses.

C. For any lawful open public oyster harvest season, commercial licenses for oyster hand scrape and oyster dredge shall only be sold to those registered commercial fishermen who have been determined by the commission to be eligible to purchase either of these licenses as of December 1, 2015, for license year 2016, except as described in subsection D of this section.

D. It shall be unlawful for any registered commercial fisherman who paid an oyster resource user fee for using one or more gear types from July 1, 2013, through June 30, 2015, but during that same time period reported less than 20 days of harvest by oyster hand scrape or oyster dredge to purchase either of those gear licenses after November 30, 2015.

E. Any registered commercial fisherman with an oyster harvest status, as described in subsection D of this section, may appeal his license ineligibility to the commission if that person can document that a medical hardship, active military duty, or a substantial error in his mandatory harvest reporting records prevented him from reporting at least 20 days of oyster harvest from using oyster dredge or oyster hand scrape gear.

F. Beginning January 1, 2016, valid oyster hand scrape and oyster dredge for commercial licenses may be transferred to an immediate family member of the licensee. In cases of death or incapacitation of a licensee, these same licenses may be transferred to a registered commercial fisherman who paid a current oyster resource user fee for one or more gear types. A registered commercial fisherman who holds a current oyster resource user fee for one or more gear types and is a current oyster hand scrape or oyster dredge licensee may transfer that oyster hand scrape or oyster dredge license. All such transfers shall be documented by the commission and shall be subject to the approval of the commission.

G. No person shall serve as an agent for any public oyster gear licensee.

**4VAC20-720-20. Definitions.**

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Coan River Area" means that area of the Coan River inside of Public Grounds 77 and 78 of Northumberland County.

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N., Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37° 59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76° 27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line

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of the barrier islands of Milford Haven, connecting headland to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Area" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pierhead at Fleets Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico Lighthouse; thence due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due east west to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line, crossing the entrance to Towels Creek at the offshore ends of the jetties and continuing to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than

22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which consist of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"James River Area" means those public grounds of the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH", Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT", at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3449949' N., Longitude 76° 32.7689936' W.; thence northeasterly to a VMRC Marker "NMT", Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico

River near Bridge Creek, beginning at a point approximately 150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude 37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76° 16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Milford Haven" means that area of Milford Haven inside of Public Ground 7 of Mathews County, beginning at a point approximately 1,380 feet east of Point Breeze, said point being Corner 1, located at Latitude 37° 28.3500000' N., Longitude 76° 16.5000000' W.; thence northeasterly to Corner 2, Latitude 37° 28.3700000' N., Longitude 76° 16.4700000' W.; thence southeasterly to Corner 3, Latitude 37° 28.3500000' N., Longitude 76° 16.4200000' W.; thence southwesterly to Corner 4, Latitude 37° 28.3200000' N., Longitude 76° 16.4500000' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

"Mobjack Bay Area" means those areas of Mobjack Bay consisting of Public Ground 25 of Gloucester County (Tow Stake) and that portion of Public Ground 2 of Mathews County known as Pultz Bar described as:

Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000' W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes

Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025' W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38° 08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an un-named cove at the narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38°

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07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public Grounds 9 and 10 of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N., Longitude 75° 42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75° 42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266'

W.; thence northeasterly to Corner 19, Latitude 37° 56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W.; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745' W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PT SMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PT SMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound

Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northern-most point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northern-most point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37° 40.0400000' N., Longitude 76° 32.2530000' W.; thence west-

northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° 36.8200000' N., Longitude 76° 16.9460000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwesterly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude 76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N., Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° ~~34.5390000'~~ 34.5310000' N., Longitude 76° ~~49.0220000'~~ 19.1430000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded

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downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwesterly to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76° 21.1000000' W.; thence southwesterly to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwesterly to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N., Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwesterly to VMRC reef marker "Ferry Bar – South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude

76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

"Thomas Rock Area" means all public grounds and unassigned grounds, in that area of the James River, with an eastern boundary being the upstream side of the James River Bridge (U.S. Route 17), and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point, a point on the shore, in line with VMRC Markers "STH" and "SMT", located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH", Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT", at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3449949' N., Longitude 76° 32.7689936' W.; thence northeasterly to a VMRC Marker "NMT", Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.;

thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.

"Unassigned ground" means all those grounds defined by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwesterly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwesterly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9, Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County and those areas of the South Yeocomico River inside Public Grounds 102, 104, and 107 of Northumberland County.

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude 38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner

1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38° 00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76° 32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB", Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

**4VAC20-720-40. Open oyster harvest season and areas.**

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during

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the lawful seasons and from the lawful areas as described in the following subdivisions of this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: ~~October 1, 2014 2015,~~ through April 30, ~~2015 2016.~~
2. ~~James River Area and the Thomas Rock Area (James River): November 1, 2014, through January 31, 2015~~ Milford Haven: December 1, 2015, through February 29, 2016.
3. ~~York River Rotation Area 1: January 1, 2015, through February 28, 2015~~ Rappahannock River Area 9: November 1, 2015, through December 31, 2015.
4. ~~Milford Haven: December 1, 2014, through February 28, 2015~~ Little Wicomico River: October 1, 2015, through December 31, 2015.
5. ~~Deep Rock Area: December 1, 2014, through February 28, 2015~~ Coan River: October 1, 2015, through December 31, 2015.
6. ~~Rappahannock River Rotation Area 1: October 1, 2014, through November 30, 2014~~ Yeocomico River: October 1, 2015, through December 31, 2015.
7. ~~Rappahannock River Rotation Area 6: November 1, 2014, through December 31, 2014~~ Nomini Creek: October 1, 2015, through December 31, 2015.
8. ~~Rappahannock River Area 7: December 1, 2014, through January 31, 2015~~ Mobjack Bay Area: January 1, 2016, through January 31, 2016.
9. ~~Rappahannock River Area 8: January 1, 2015, through February 28, 2015~~ Rotation Area 5: October 1, 2015, through November 30, 2015.
10. ~~Rappahannock River Area 9: November 1, 2014, through December 31, 2014~~ Rotation Area 3: November 1, 2015, through December 31, 2015.
11. Great Wicomico River Area: December 1, ~~2014 2015,~~ through January 31, ~~2015 2016.~~
12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, ~~2014 2015,~~ through January 31, ~~2015 2016.~~
13. ~~Little Wicomico River: October 1, 2014, through December 31, 2014~~ James River Area and the Thomas Rock Area (James River): November 1 2015, through December 31, 2015, and March 1, 2016, through March 31, 2016.
14. ~~Coan River: October 1, 2014, through December 31, 2014~~ Pocomoke and Tangier Sounds Rotation Area 1: December 1, 2015, through February 29, 2016.
15. ~~Yeocomico River: October 1, 2014, through December 31, 2014~~ Deep Rock Area: December 1, 2015, through February 29, 2016.
16. ~~Nomini Creek: October 1, 2014, through December 31, 2014~~ Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2015, through March 31, 2016.

~~17. Pocomoke and Tangier Sounds Rotation Area 2: December 1, 2014, through February 28, 2015.~~

~~18. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2014, through March 31, 2015.~~

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in the following subdivisions of this subsection.

1. James River Seed Area: October 1, ~~2014 2015,~~ through May 31, ~~2015 2016.~~

2. Deep Water Shoal State Replenishment Seed Area: October 1, ~~2014 2015,~~ through May 31, ~~2015 2016.~~

#### **4VAC20-720-60. Day and time limit.**

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. ~~From October 1, 2015, through December 31, 2015, it shall be unlawful to take, catch, or possess oysters on any Friday from the public oyster grounds or unassigned grounds described in 4VAC20-720-40 B 9 through B 14.~~

C. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through ~~47~~ B 15 and 4VAC20-720-40 C. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

#### **4VAC20-720-70. Gear restrictions.**

A. It shall be unlawful for any person to harvest oysters in the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area~~s~~, the Rappahannock River Area 9~~s~~, Milford Haven, Little Wicomico River, Coan River, Nomini Creek and Yeocomico River, except by hand tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters from the seaside of the Eastern Shore area by any gear, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation ~~Areas 1 and 6~~ Areas 3 and 5, the Rappahannock River ~~Areas 7 and 8,~~ James River Area, Thomas Rock Area, Upper Chesapeake Bay Blackberry Hangs Area, ~~York River Rotation Area 1~~ Mobjack Bay Area, and Great Wicomico River Area, except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation ~~Area 2~~ Area 1, except by an oyster dredge.

F. It shall be unlawful to harvest oysters from the Deep Rock Area, except by an oyster patent tong.

**4VAC20-720-75. Gear license.**

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, ~~York River~~ Mobjack Bay Area, and Great Wicomico River, unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish with an oyster dredge from the public oyster grounds in the Pocomoke and Tangier Sounds Rotation ~~Area 2~~ Area 1, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish with a patent tong from the public oyster grounds in the Deep Rock Area, unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish with a hand tong from the public oyster grounds, as described in 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

E. It shall be unlawful for any person to harvest shellfish by hand from the public oyster grounds on the Seaside of the Eastern Shore, as described in 4VAC20-720-40 B 16, unless that person has first obtained a valid oyster by hand license.

**4VAC20-720-80. Quotas and harvest limits.**

~~A. The lawful daily harvest and possession limit of clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 17 shall be eight bushels per registered commercial fisherman licensee who has paid the oyster resource user fee. It shall be unlawful for any registered commercial fisherman licensee to harvest or possess more than eight bushels per day. The lawful daily vessel limit of clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 17 shall be determined as the number of registered commercial fisherman licensees who have paid the oyster resource user fee on board the vessel multiplied by eight bushels with a maximum daily landing and possession limit of 24 bushels of clean cull oysters per vessel. It shall be unlawful to possess on board any vessel or to land more than the lawful daily vessel limit of clean cull oysters described in this subsection.~~

A. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a

valid gear license required by harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess more than eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 24 bushels clean cull oysters harvested from the areas described in 4VAC20-720-40 B 8 through 14.

B. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required by harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess more than eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 7 and 15, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and who have paid the oyster resource user fee multiplied by eight.

C. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 1, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and who have paid the oyster resource user fee multiplied by 12. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and hold a valid gear license required by harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess more than 12 bushels per day.

~~B. D.~~ In the Pocomoke and Tangier Sounds Rotation Area 2 1, no blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

VA.R. Doc. No. R16-4483; Filed August 27, 2015, 9:46 a.m.

**Final Regulation**

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

Title of Regulation: **4VAC20-1300. Living Shoreline Group 1 General Permit for Certain Living Shoreline Treatments Involving Tidal Wetlands (adding 4VAC20-1300-10 through 4VAC20-1300-50).**

Statutory Authority: § 28.2-104.1 of the Code of Virginia.

Effective Date: September 1, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

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## Summary:

*This regulation establishes a general permit that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines. The regulation provides for the permitting processes for living shoreline treatments by establishing procedures and qualifications for the general permit and sets forth specific criteria and permit conditions.*

### CHAPTER 1300

### LIVING SHORELINE GROUP 1 GENERAL PERMIT FOR CERTAIN LIVING SHORELINE TREATMENTS INVOLVING TIDAL WETLANDS

#### **4VAC20-1300-10. Purpose.**

The purpose of this general permit is to provide a streamlined permitting process as an incentive to encourage property owners to utilize a living shoreline approach as appropriate, manage shoreline erosion, and promote the planting and growth of tidal wetland vegetation to restore or enhance ecosystem services. The techniques and conditions contained in this general permit are designed to limit the applicability of the permit to situations where the projects are most likely to be successful, and so as to limit the potential for adverse impacts on the environment and adjoining or nearby properties.

Approval under this general permit constitutes the commission or local wetlands board authorization required in accordance with § 28.2-1306 of the Code of Virginia. This general permit shall not conflict with or obviate the need to comply with any other federal, state, or local permitting requirement or authorization governing the proposed activity.

#### **4VAC20-1300-20. Definitions.**

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

"Chairman" means the chairman of a local wetlands board or his designee.

"Commission" or "VMRC" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources or his designee.

"Fiber log" means biodegradable fibrous material often composed of coconut fiber that is formed into rolls of various lengths and thicknesses used for erosion control and as a growing medium.

"Fiber mat" means a biodegradable fibrous material woven mat often composed of coconut fiber that is formed into mats of various sizes and thicknesses used for erosion control and as a growing medium.

"Grazing protection" means temporary structures consisting of wooden stakes, string lines, netting, and metal cages intended to protect planted wetland vegetation and introduced ribbed mussels from predation.

"Joint Permit Application" means the current Joint Permit Application utilized by the U.S. Army Corps of Engineers, Virginia Marine Resources Commission, Department of Environmental Quality, and local wetlands boards to evaluate projects involving submerged lands, wetlands, and coastal primary sand dunes and beaches for permit review, and any abbreviated application developed specifically for this general permit.

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits; protects, restores, or enhances shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

"Ribbed mussels" means the Atlantic ribbed mussel (*Geukensia demissa*).

"Shell bags" means net bags of various sizes filled with oyster or clam shells used for erosion control and as a substrate for other organisms.

"Tidal wetlands" or "wetlands" means the jurisdictional area meeting the definition contained in § 28.2-1302 of the Code of Virginia.

"Wetlands board" or "board" means a local wetlands board created pursuant to § 28.2-1303 of the Code of Virginia.

"Wetlands vegetation" means the vegetative species listed in § 28.2-1302 of the Code of Virginia.

#### **4VAC20-1300-30. Applicability and procedures.**

A. This general permit shall authorize the placement of certain specified sand fill, fiber logs, fiber mats, shell bags, and temporary grazing protection in tidal wetlands, landward of mean low water, to improve the growing conditions for wetland vegetation. The establishment of oysters and ribbed mussels may be incorporated into the project design.

B. To qualify for this general permit the applicant must submit to VMRC a complete Joint Permit Application or special abbreviated application and any supplemental information deemed necessary by the commission or the applicable wetlands board chairman to fully evaluate the proposal. The commissioner will oversee administration of the provisions of the general permit.

VMRC will forward the application to the Norfolk District of the Corps of Engineers, the appropriate local wetlands board, and the Department of Environmental Quality.

C. The wetlands board and VMRC will review the application concurrently to determine whether:

1. The application is sufficiently complete to allow evaluation.
2. The project satisfactorily meets the general permit criteria.
3. The general permit process should be utilized.

If both the wetlands board chairman and the commission determine the proposal affirmatively satisfies all three

requirements specified in subdivisions 1, 2, and 3 of this subsection, the commissioner shall issue the general permit. No public interest review or notification of adjoining property owners shall be required and there shall be no application processing fee or permit fee. In the event that no comment or request for additional information is received from a wetlands board chairman or designee within 21 days of being provided the application, it shall be assumed the wetlands board has no objection to the issuance of the general permit, and the commissioner may issue the permit.

Should either the wetlands board chairman or the commission determine that the proposal does not satisfy all three requirements specified in subdivisions 1, 2, and 3 of this subsection, the general permit process shall not be utilized; however, the application may be supplemented with additional information deemed necessary to qualify for the general permit, or the proposal could be reviewed in accordance with the standard provisions of the wetlands zoning ordinance contained in Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia. Issuance of the general permit does not obviate the requirement for the permittee to comply with all other applicable local, state, and federal laws and regulations, including those laws and regulations administered by the U.S. Army Corps of Engineers, the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia), erosion and sediment control ordinances, stormwater management programs, and the Virginia Water Protection Permit programs.

#### **4VAC20-1300-40. Specific criteria.**

A. The maximum fetch at the project site shall not exceed 1/2 mile in any shore angle direction. Coarse sand should be utilized for any required fill. At a minimum the sand shall contain less than 10% very fine material (passing a #100 sieve). The sand shall not be placed in a manner that raises the elevation of any existing wetland area above the elevation of jurisdictional tidal wetlands (1.5 times the mean tide range above mean low water).

B. Appropriate wetland vegetation shall be planted in all wetland areas on which sand is placed where the resulting substrate elevation is appropriate to support the growth of wetlands vegetation. If deemed necessary to improve wetland habitat or resiliency, existing wetlands vegetation may be filled provided the project does not result in a net loss in aerial coverage of wetlands vegetation. Appropriate wetlands vegetation includes only those species listed in the tidal wetlands ordinance (§ 28.2-1302 of the Code of Virginia) that are anticipated to survive at the project site elevation and normal salinity regime. The common reed, *Phragmites* sp., shall not typically be considered appropriate wetlands vegetation for planting purposes.

C. Fiber logs, fiber mats, and shell bags may be utilized within the jurisdictional tidal wetland area to create a sill or to otherwise support the growth of wetlands vegetation,

provided they are not placed on existing vegetation and are not stacked to a height that exceeds mean high water. The bags, mats, and fiber logs shall be maintained and promptly removed should they become displaced or unexpectedly damaged. If available, appropriate biodegradable materials are encouraged. The replacement of failed fiber logs, mats, or shell bags in the same location shall be allowed without the need to receive additional authorization. Additional sand may be placed to replace any lost sand or to adjust for substrate settlement, provided the elevation of the originally proposed grade is not exceeded.

D. Temporary grazing protection may be utilized to protect wetlands vegetation and ribbed mussels until they become established. The protective structures shall be removed once the vegetation or mussels are established. Such grazing protection is encouraged and should be considered in the project design. Any requested grazing protection shall be specified in the permit application.

E. The permittee agrees to notify the commission upon completion of the project and to provide a brief monitoring report at the end of the first full growing season following planting and after the second year of establishment. The monitoring shall be undertaken between June and September of each year and shall include at a minimum the permit number, representative photos of the site, and a brief statement concerning the success of the project. Additional documentation is encouraged to allow improved evaluation of the techniques utilized.

F. Any vegetated wetlands established under this general permit shall not be cut or harvested. Areas shall be replanted as necessary to ensure there is at least no net loss of wetland vegetation within the project area during the term of the permit. If necessary to promote the establishment of wetlands vegetation, additional sand may be placed to restore the originally proposed elevation grade.

G. Any measures taken to eradicate invasive species at the project site associated with the living shoreline activity, including *Phragmites* sp., shall be noted in the permit application or conducted in accordance with a plan evaluated and approved by the appropriate wetlands board or locality. Such plans shall include measures to revegetate the area with appropriate native wetlands vegetation.

H. All activities undertaken in accordance with the general permit are subject to the enforcement and penalty provisions contained in Article 4 (§ 28.2-1316 et seq.) of Chapter 13 of Title 28.2 of the Code of Virginia. Failure to comply with any criteria or condition of the general permit may constitute a violation of the permit.

#### **4VAC20-1300-50. Permit conditions.**

A. This permit grants no authority to the permittee to encroach on property rights, including riparian rights, of others.

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B. The duly authorized agents of the commission and the applicable local government shall have the right to enter upon the premises at reasonable times for the purposes of inspecting the work authorized by the permit and to evaluate compliance with the terms and conditions of the permit. Although the general permit is issued by the commissioner, the applicable local wetlands board retains jurisdiction and may enforce violations and any nonconformance with the permit occurring within tidal wetlands.

C. The permittee shall comply with all applicable federal, state, and local laws, ordinances, and rules and regulations concerning the project, specifically including those related to the Corps of Engineers, water quality standards, erosion and sedimentation control, the Chesapeake Bay Preservation Act, the Stormwater Management Act, and the Virginia Water Protection Permit Program. The granting of this permit shall not relieve the permittee of the responsibility of obtaining any and all other permits or authorization for this project.

D. The permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fowling and the catching of and taking of oysters and other shellfish in and from the waters not included within the terms of the permit.

E. The permittee shall, to the greatest extent practicable, minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.

F. The permit may be revoked at any time by the commission upon the failure of the permittee to comply with the terms and conditions hereof or at the will of the General Assembly of Virginia.

G. All structures authorized by this permit that are not maintained in good repair or that are displaced to areas not authorized shall be completely removed within 30 days after notification by the commission or its designated representatives.

H. The permittee agrees to indemnify and save harmless the Commonwealth of Virginia and any applicable locality from any liability arising from the establishment, operation, or maintenance of said project.

I. This general permit shall be retained by the permittee for the life of the project as evidence of authorization.

J. The project authorized by this general permit shall be completed within two years of the issuance of the permit. Upon proper request by the permittee, the permit may be extended to allow completion of the work.

**NOTICE:** The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form to access it through a hyperlink. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (4VAC20-1300)

[Tidewater Joint Permit Application \(JPA\) for Projects Involving Tidal Waters, Tidal Wetlands, and/or Dunes and Beaches in Virginia \(rev. 3/2014\)](#)

VA.R. Doc. No. R16-4482; Filed August 10, 2015, 11:00 a.m.



## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Proposed Regulation

**Titles of Regulations: 8VAC20-22. Licensure Regulations for School Personnel (repealing 8VAC20-22-10 through 8VAC20-22-760).**

**8VAC20-23. Licensure Regulations for School Personnel (adding 8VAC20-23-10 through 8VAC20-23-800).**

**Statutory Authority:** §§ 22.1-298.1 and 22.1-299 of the Code of Virginia.

**Public Hearing Information:**

October 22, 2015 - 11 a.m. - 22nd Floor Conference Room; James Monroe Building, 101 North 14th Street, Richmond, VA 23219. The public hearing will begin immediately following adjournment of the Board of Education business meeting.

**Public Comment Deadline:** November 6, 2015.

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

**Basis:** The Board of Education has the statutory authority to prescribe licensure requirements. Section 22.1-298.1 of the Code of Virginia, states, in part, the following: "...The Board of Education shall prescribe, by regulation, the requirements for the licensure of teachers and other school personnel required to hold a license...."

Article VIII, Section 4 of the Constitution of Virginia states that "The general supervision of the public school system shall be vested in a Board of Education...."

Sections 22.1-16, 22.1-298.1, 22.1-299, and 22.1-305.2 provide authority for the Board of Education to promulgate Licensure Regulations for School Personnel.

**Purpose:** A comprehensive review and subsequent revisions of the Licensure Regulations for School Personnel will align the regulations with recent actions of the General Assembly, current best practices in education, and with current educational research. The regulations will be aligned to the revised Virginia Standards of Learning and the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers. Revisions to the Licensure Regulations for School Personnel will assist in ensuring that Virginia maintains high

standards of professional competence for teachers and professional school personnel. In addition, these regulations establish policies and standards for the qualifications of instructional personnel, further ensuring educational quality for Virginia public school students is current and up to date. Ensuring high standards for professional competence and the qualifications of instructional personnel will provide for educational quality for public school students, which is necessary for the welfare of citizens. In revising these regulations, the Board of Education sets forth requirements for the revocation, cancellation, suspension, denial, and reinstatement of licenses.

**Substance:** The Board of Education has the statutory authority to prescribe licensure requirements. Section 22.1-298.1 of the Code of Virginia, states, in part, the following: "The Board of Education shall prescribe, by regulation, the requirements for the licensure of teachers and other school personnel required to hold a license...."

The Advisory Board on Teacher Education and Licensure received the proposed revisions to the Licensure Regulations for School Personnel on April 22, 2013. The advisory board unanimously recommended that the Board of Education accept the proposed revisions to the regulations in the proposed stage of the regulatory process under the Administrative Process Act.

Sections proposed to have substantive changes include the following sections:

- 8VAC20-22-10. Definitions. The amendments revise the definitions section of this chapter to align with proposed revisions throughout the Licensure Regulations for School Personnel.
- 8VAC20-22-40. Conditions for licensure. The amendments include the requirement that individuals seeking initial licensure provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, as prescribed in Chapters 498 and 530 of the 2013 Acts of Assembly. Text was added to clarify the endorsement requirements for the teacher of record.
- 8VAC20-22-50. Types of licenses; dating licenses. The amendments would revise this section to include the following:
  - Issue a Provisional License for two years (with the exception of the Provisional Career Switcher License). Individuals may apply for a third year on the Provisional License by submitting documentation indicating that all licensure assessments prescribed by the Virginia Board of Education have been taken.
  - Issue the International Educator License for a five-year, instead of a three-year, exchange program.
  - Discontinue the Local Eligibility License by action of the 2013 General Assembly.

- Add the Online Teacher License as a five-year, renewable license valid only for teaching online courses.
- Add the Teach for America License, established as a two-year provisional license by action of the 2013 General Assembly.
  - 8VAC20-22-90. Alternate routes to licensure. The amendments increase the requirements from three semester hours to nine semester hours of specified coursework prior to issuance of a Provisional (Special Education) License to individuals without a five-year Virginia teaching license.
  - 8VAC20-22-110. Requirements for renewing a license. The amendments would revise this section to include the following:
    - Add the requirement, as prescribed by Chapter 726 of the 2013 Acts of Assembly, that any individual licensed and endorsed to teach middle school civics or economics or high school government or history who is seeking renewal of such license is required to demonstrate knowledge of Virginia history or state and local government by completing a module or professional development course specifically related to Virginia history or state and local government.
    - Add the requirement that individuals renewing a license, effective July 1, 2013, provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, as prescribed in Chapters 498 and 530 of the 2013 Acts of Assembly.
    - Change text to allow the division superintendent or the principal to approve renewal activities and exceptions. Remove the text "for one cycle of the renewal process" to allow an exception to the content course requirements for individuals without a graduate degree beyond one renewal cycle.
    - 8VAC20-22-130. Professional studies requirements. The amendments include changing professional study coursework titles and course content and adding an additional course requirement, "Assessment of and for Learning"; three semester hours.
    - 8VAC20-22-140 – 8VAC20-22-670 (endorsement areas) The amendments would revise the following endorsement areas:
      - Early childhood for three-year-olds and four-year-olds (add-on endorsement) - Allow individuals who hold the early childhood special education endorsement to add this endorsement.
      - Early/primary education preK-3 - Increase the coursework requirements in mathematics and science and provide an option for specified requirements and testing.
      - Elementary education preK-6 - Increase the coursework requirements in mathematics and science and provide an option for specified requirements and testing.

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- Middle education 6-8 - Increase the coursework requirements in mathematics.
- Career and technical education - industrial cooperative training (add-on endorsement). Discontinue the endorsement.
- Engineering - Create a new endorsement.
- Special education - general curriculum K-6 (add-on endorsement); Special education - general curriculum middle grades 6-8 (add-on endorsement); Special education - general curriculum secondary grades 6-12 (add-on endorsement) Establish new add-on endorsements.
- Administration and supervision preK-12 - Revise the alternate route to add an option of a combination of graduate-level coursework and a research-based program approved by the Department of Education and add "Principal of Distinction" to the name of the Level II endorsement, mathematics specialist for elementary education, and mathematics specialist for middle education.
- Establish separate endorsements specific to the population of students being served. Currently the endorsement is combined, mathematics specialist for elementary and middle education.
- Special education - speech language pathologist preK-12 - Discontinue issuing an initial license with an endorsement in speech/language pathology. Individuals will seek a license from the Virginia Board of Examiners for Audiology and Speech Pathology.
- 8VAC20-22-720 – 8VAC20-22-800 (Part VII-Revocation, Cancellation, Suspension, Denial, and Reinstatement of Teaching Licenses) - Amendments proposed.

**Issues:** The primary advantages of revising the Licensure Regulations for School Personnel are to align the regulations with recent actions of the General Assembly, with current best practices in education, and with current educational research. The regulations will be aligned to the revised Virginia Standards of Learning and the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers. Revisions to the Licensure Regulations for School Personnel will assist in ensuring that Virginia maintains high standards of professional competence for teachers and professional school personnel.

In addition, the regulations establish policies and standards for the qualifications of instructional personnel, further ensuring educational quality for Virginia public school students. In revising these regulations, the Board of Education sets forth requirements for the revocation, cancellation, suspension, denial, and reinstatement of licenses.

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

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education proposes to repeal the current regulation (8 VAC 20-22) and replace it with a new regulation (8 VAC 20-23). In doing so, the Board proposes numerous amendments to the rules including:

- Requiring that individuals seeking initial licensure provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, as prescribed in Chapter 498 of the 2013 Acts of Assembly.
- Adding the requirement that individuals renewing a license, effective July 1, 2013, provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, as prescribed in Chapter 498 of the 2013 Acts of Assembly.
- Issuing a Provisional License for two years (with the exception of the Provisional Career Switcher License). Individuals may apply for a third year on the Provisional License by submitting documentation indicating that all licensure assessments prescribed by the Virginia Board of Education have been taken.
- Issuing the International Educator License for a five-year, instead of a three-year exchange program.
- Discontinuing the Local Eligibility License pursuant to Chapter 588 of the 2013 Acts of Assembly.
- Adding the Online Teacher License as a five-year, renewable license valid only for teaching online courses.
- Adding the Teach for America License, established as a two-year provisional license, pursuant to Chapter 440 of the 2013 Virginia Acts of Assembly.
- Increase the requirements from three semester hours to nine semester hours of specified coursework prior to issuance of a Provisional (Special Education) License to individuals without a five-year Virginia teaching license.
- Adding the requirement, as prescribed by Chapter 726 of the 2013 Acts of Assembly, that any individual licensed and endorsed to teach a) middle school civics or economics or b) high school government or history who is seeking renewal of such license is required to demonstrate knowledge of Virginia history or state and local government by completing a module or professional development course specifically related to Virginia history or state and local government.
- Changing text to allow the division superintendent or the principal to approve renewal activities and exceptions. Removed the text for one cycle of the renewal process to allow an exception to the content course requirements for individuals without a graduate degree beyond one renewal cycle.

- Changing professional study coursework titles and course content. An additional course requirement, Assessment of and for Learning (3 semester hours), is proposed.
- Allowing individuals who hold the early childhood special education endorsement to add the endorsement early childhood for three- and four-year-olds endorsement.
- For the early/primary education preK-3 endorsement, increasing the coursework requirements in mathematics and science and providing an option for specified requirements and testing.
- For the elementary education preK-6 endorsement, increasing the coursework requirements in mathematics and science and providing an option for specified requirements and testing.
- For the middle education 6-8 endorsement, increasing the coursework requirements in mathematics.
- Discontinuing the career and technical education industrial cooperative training endorsement.<sup>1</sup>
- Creating a new engineering endorsement.
- Establishing the following new add-on endorsements: Special education general curriculum K-6 (add-on endorsement), Special education general curriculum middle grades 6-8 (add-on endorsement), and Special education general curriculum secondary grades 6-12 (add-on endorsement).
- For administration and supervision preK-12, revising the alternate route to add an option of a combination of graduate-level coursework and a research-based program approved by the Department of Education. Adding Principal of Distinction to the name of the Level II endorsement.
- Establishing separate mathematics specialist for elementary education and mathematics specialist for middle education endorsements specific to the population of students being served. Currently the endorsement is combined, Mathematics specialist for elementary and middle education.
- Discontinuing initial licenses with an endorsement in speech/language pathology. Individuals will seek a license from the Virginia Board of Examiners for Audiology and Speech Pathology.<sup>2</sup>

Result of Analysis. The benefits likely exceed the costs for some changes. For other amendments, whether the benefits exceed the costs depend on the policy views of the observer.

Estimated Economic Impact.

First Aid, CPR, and AED Training:

The legislatively mandated proposal to require that individuals seeking initial teacher licensure and teachers seeking license renewal provide evidence of training or certification in emergency first aid, cardiopulmonary

resuscitation, and the use of automated external defibrillators will introduce significant benefits and costs. Having all (or nearly all) teachers in the Commonwealth trained in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators will increase the likelihood that someone with potentially lifesaving skills will be on hand during medical emergencies in the classroom. To the extent that the future teachers absorb and retain the knowledge they gain in this training, the long-run benefits may be quite significant.

For onsite training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, the American Red Cross charges \$250 plus \$72 per person being trained if there at least 20 people being trained.<sup>3</sup> So for example, if a school district arranged to have the Red Cross come in and train 50 teachers the fees would total \$3,850. If teachers take courses on their own and go to a location already offering the course, the cost is \$90. If done all in person, the Red Cross training would take 5.5 hours. Alternatively, the teachers could do 2 hours of online training ahead of time. In that case the in-person training would last 1.5 hours. The fees would be the same in either case, but the amount of staff time that potentially could have been used for other subjects differs.

Teach for America:

Currently individuals who go through the Teach for America training program are not permitted to teach in Virginia (unless they fulfill other requirements for provisional licensure). Pursuant to Chapter 440 of the 2013 Virginia Acts of Assembly, the Board proposes to add the Teach for America License, established as a two-year provisional license. The addition of this license will likely lead to Teach for America trained individuals teaching in Virginia. High-quality peer-reviewed research has found that Teach for America trained teachers have been particularly effective teachers in mathematics.<sup>4</sup> Thus this proposed new license may have some positive impact on math learning in the Commonwealth.

Businesses and Entities Affected. The proposed amendments affect the 132 public school divisions in the Commonwealth, current and future teachers, and businesses or organizations that provide training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The requirement that individuals seeking initial teacher licensure and teachers seeking license renewal provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators will increase demand for these services from businesses and organizations that provide such training. The increase in demand may be enough to create additional jobs.

Effects on the Use and Value of Private Property. The requirement that individuals seeking initial teacher licensure and

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teachers seeking license renewal provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators will likely increase business for firms that provide such training. This may increase the value of such organizations and firms.

**Small Businesses: Costs and Other Effects.** The proposed amendments are unlikely to significantly affect costs for small businesses. The requirement that individuals seeking initial teacher licensure and teachers seeking license renewal provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators will increase demand for these services from small businesses that provide such training.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments will not adversely affect small businesses.

**Real Estate Development Costs.** The proposed amendments are unlikely to significantly affect real estate development costs.

**Legal Mandate.**

**General:** 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 Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action 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.

**Small Businesses:** If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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<sup>1</sup>According to the Department of Education the industrial cooperative training endorsement has never been used.

<sup>2</sup>The proposal to discontinue issuing an initial license with an endorsement in speech/language pathology resulted from a joint effort with the Department of Health Professions (DHP) to eliminate confusion as to whether these individuals should be licensed by DHP or the Department of Education. Chapter 781 of the 2014 Acts of Assembly clarified that DHP would issue the licenses; therefore the board is eliminating references to the program from its regulations.

<sup>3</sup>If there are fewer than 20 individuals being trained, the American Red Cross charges \$90 per student.

<sup>4</sup>Glazerman, S., Mayer, D., & Decker, P. (2006). Alternative routes to teaching: The impacts of Teach For America on student achievement and other outcomes. *Journal of Policy Analysis and Management*, 25(1), 75-96.

**Agency's Response to Economic Impact Analysis:** The agency concurs with the economic impact analysis completed by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the regulatory process under the Administrative Process Act.

**Summary:**

*The proposed action repeals the existing regulation (8VAC20-22) and adopts a new regulation (8VAC20-23) regarding licensure for school personnel to align the regulation with recent changes in the Code of Virginia, current best practices in education, current educational research, and the revised Virginia Standards of Learning and the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers. Substantive elements of the proposed new regulations (i) revise selected definitions to conform with changes in the proposed new regulations; (ii) require initial and renewal licensure applicants to provide evidence of training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators; (iii) clarify the endorsement requirements for the teacher of record; (iv) modify the term of issuance of certain licenses; (v) discontinue the Local Eligibility License; (vi) add the Online Teacher License and the Teach for America License; (vii) increase the coursework requirements prior to issuance of a Provisional (Special Education) License to individuals without a five-year Virginia teaching license; (viii) add requirements for any individual licensed and endorsed to teach middle school civics or economics, or high school government or history, seeking license renewal; (ix) allow the division superintendent or the principal to approve renewal activities and exceptions; (x)*

*change professional study coursework titles and course content and add a three-semester-hour course in assessment of and for learning; (xi) revise endorsement areas; (xii) discontinue issuance of an initial license with an endorsement in speech/language pathology as individuals will seek a license from the Virginia Board of Audiology and Speech-Language Pathology; and (xiii) amend the provisions on the revocation, cancellation, suspension, denial, and reinstatement of teaching licenses.*

**CHAPTER 23**  
**LICENSURE REGULATIONS FOR SCHOOL**  
**PERSONNEL**

**Part I**  
**Definitions**

**8VAC20-23-10. Definitions.**

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

"Accredited institution" means an institution of higher education accredited by a regional accrediting agency recognized by the United States Department of Education.

"Accredited virtual school or program" means a virtual school or program accredited by one of the accrediting agencies recognized by the Virginia Department of Education.

"Alternate route to licensure" means a nontraditional route to licensure available to individuals who meet the criteria specified in 8VAC20-23-90.

"Approved program" means a professional education program recognized as meeting state standards for the content and operation of such programs so that graduates of the program will be eligible for state licensure. The Virginia Board of Education has the authority to approve programs in Virginia.

"Cancellation" means the withdrawal of a teaching license following the voluntary return of the license by the license holder.

"Certified provider" means a provider certified by the Virginia Department of Education to provide preparation and training for applicants seeking the Provisional License specified in 8VAC20-23-90.

"Collegiate Professional License" means a five-year, renewable license available to an individual who has satisfied all requirements for licensure set forth in this chapter, including an earned baccalaureate degree from a regionally accredited college or university and the professional teacher's assessments prescribed by the Virginia Board of Education.

"Content area coursework" means courses at the undergraduate level (i.e., two-year or four-year institution) or at the graduate level that will not duplicate previous courses, or the level of coursework, taken in humanities, English, history and social sciences, sciences, mathematics, health and

physical education, and fine arts. These courses are usually available through the college or department of arts or sciences.

"Denial" means the refusal to grant a teaching license to a new applicant or to an applicant who is reapplying after the expiration of a license.

"Division Superintendent License" means a five-year, renewable license available to an individual who has completed an earned master's degree from a regionally accredited college or university and meets the requirements specified in 8VAC20-23-630. The individual's name must be listed on the Virginia Board of Education's list of eligible division superintendents.

"Experiential learning" means a process of applying for an initial license through the alternate route as prescribed by the Virginia Board of Education and meeting the criteria specified in 8VAC20-23-90 E to be eligible to request experiential learning credits in lieu of the coursework for the endorsement (teaching) content area.

"International Educator License" means a five-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional teaching license issued for no more than five years to an exchange teacher with citizenship in a nation other than the United States of America and employed as teacher in a Virginia public school or an accredited nonpublic school.

"Licensure by reciprocity" means a process used to issue a license to an individual coming into Virginia from another state when that individual meets certain conditions specified in this chapter.

"Mentor" means a classroom teacher hired by the local school division who has achieved continuing contract status or other instructional personnel including retired teachers who meet local mentor selection criteria. The mentor should work in the same building as the beginning teacher or be instructional personnel who is assigned solely as a mentor. A mentor should be assigned a limited number of teachers at any time. Instructional personnel who are not assigned solely as mentors should not be assigned to more than four teachers at any time. Mentors guide teachers in the program through demonstrations, observations, and consultations.

"Online Teacher License" means a five-year, renewable license valid only for teaching online courses. Teachers who hold a five-year renewable license issued by the Virginia Board of Education may teach online courses for which they are properly endorsed and do not need to seek this license.

"Postgraduate Professional License" means a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from a regionally accredited college or university.

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"Professional teacher assessment" means those tests or other requirements mandated for licensure as prescribed by the Virginia Board of Education.

"Provisional License" means a nonrenewable license valid for a specified period of time not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in this chapter. The individual must have a minimum of an undergraduate degree from a regionally accredited college or university, with the exception of those individuals seeking the Technical Professional License. The Provisional License, with the exception of those individuals seeking licensure through a career switcher program who will be issued a one-year Provisional License, will be issued for two years. Individuals may apply for a third year on the Provisional License by submitting documentation indicating that all licensure assessments prescribed by the Virginia Board of Education have been taken. Individuals must complete all requirements, including passing all licensure assessments, for a renewable license within the validity period of the license.

"Pupil Personnel Services License" means a five-year, renewable license available to an individual who has earned an appropriate graduate degree from a regionally accredited college or university with an endorsement as a school counselor, school psychologist, school social worker, or vocational evaluator. This license does not require teaching experience unless otherwise outlined under the specific endorsement's requirements.

"Renewable license" means a license issued by the Virginia Board of Education for five years to an individual who meets all requirements specified in this chapter.

"Revocation" means the withdrawal of a teaching license.

"School Manager License" means a five-year, renewable license intended to provide for a differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. For example, a school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian. The license is available to a candidate who holds a baccalaureate degree from a regionally accredited college or university; has three years of success managerial experience; and is recommended for the license by a Virginia school division superintendent.

"Suspension" means the temporary withdrawal of a teaching license.

"Technical Professional License" means a five-year, renewable license available to an individual who has graduated from an accredited high school (or possesses a General Educational Development Certificate); has exhibited academic proficiency, technical competency, and successful occupational experience; and meets the requirements specified in subdivision 4 of 8VAC20-23-50.

## Part II

### Administering the Regulations

#### **8VAC20-23-20. Administering this chapter.**

A. In administering this chapter, modifications may be made in exceptional cases by the Superintendent of Public Instruction. Proposed modifications shall be made in writing to the Superintendent of Public Instruction, Commonwealth of Virginia, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120.

B. In administering this chapter, competencies required for endorsement areas are outlined in the Regulations Governing the Review and Approval of Education Programs in Virginia (8VAC20-543). This document should be referenced for detailed information regarding coursework content for endorsements. Individuals must complete the semester hours required for endorsement areas, or the equivalent, that must be documented and approved by the Department of Education.

## Part III

### Licensure

#### **8VAC20-23-30. Purpose and responsibility for licensure.**

The primary purpose for licensing teachers and other school personnel is to maintain standards of professional competence. The responsibility for licensure is set forth in § 22.1-298.1 of the Code of Virginia, which states that the Virginia Board of Education shall prescribe by regulation the requirements for licensure of teachers.

#### **8VAC20-23-40. Conditions for licensure.**

A. Applicants for licensure must:

1. Be at least 18 years of age;
2. Pay the appropriate fees as determined by the Virginia Board of Education and complete the application process;
3. Have earned a baccalaureate degree, with the exception of the Technical Professional License, from a regionally accredited college or university and meet requirements for the license sought. Persons seeking initial licensure through approved programs from Virginia institutions of higher education shall only be licensed as instructional personnel by the Virginia Board of Education if the professional education programs offered at such institutions have been accredited by a national accrediting agency and the education (endorsement) programs have final approval by the Virginia Board of Education; and
4. Possess good moral character (i.e., free of conditions outlined in Part VII (8VAC20-23-720 et seq.) of this chapter.

B. All candidates who hold at least a baccalaureate degree from a regionally accredited college or university and who seek an initial Virginia teaching license must obtain passing scores on professional teacher's assessments prescribed by the Virginia Board of Education. With the exception of the career switcher program that requires assessments as prerequisites,

individuals must complete the professional teacher's assessments requirements within the three-year validity of the initial provisional license. Candidates seeking a Technical Professional License, International Educator License, School Manager License, or Pupil Personnel Services License are not required to take the professional teacher's assessments. Individuals who hold a valid out-of-state license (full credential without deficiencies) and who have completed a minimum of three years of full-time, successful teaching experience in a public or an accredited nonpublic school, kindergarten through grade 12, outside of Virginia are exempt from the professional teacher's assessment requirements. Documentation must be submitted to verify the school's status as a public or an accredited nonpublic school.

C. All individuals seeking an initial endorsement in early/primary education preK-3, elementary education preK-6, special education-general curriculum, special education-deaf and hard of hearing, special education-blindness and visual impairments, and individuals seeking an endorsement as a reading specialist must obtain passing scores on a reading instructional assessment prescribed by the Virginia Board of Education.

D. Licensure by reciprocity is set forth in 8VAC20-23-100. A school leaders assessment prescribed by the Virginia Board of Education must be met for all individuals who are seeking an endorsement authorizing them to serve as principals and assistant principals in the public schools. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Virginia Board of Education.

E. Individuals seeking initial licensure must demonstrate proficiency in the use of educational technology for instruction, complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Virginia Board of Education in consultation with the Virginia Department of Social Services, and receive professional development in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments.

F. Every person seeking initial licensure shall provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and use of automated external defibrillators. The certification or training program shall be based on the current national evidenced-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross. The Virginia Board of Education shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training.

G. The teacher of record for verified credit courses for high school graduation must hold a Virginia license with the appropriate content endorsement.

## **8VAC20-23-50. Types of licenses; dating licenses.**

A. The following types of licenses are available:

1. Provisional License. The Provisional License is a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in this chapter. The Provisional License will be issued for two years, with the exception of those individuals seeking a Provisional License through a career switcher program. Individuals may apply for a third year on the Provisional License by submitting documentation indicating that all licensure assessments prescribed by the Virginia Board of Education ([http://doe.virginia.gov/teaching/licensure/prof\\_teacher\\_assessment.pdf](http://doe.virginia.gov/teaching/licensure/prof_teacher_assessment.pdf)) have been taken. The Provisional (Career Switcher) License will be dated as set forth in 8VAC20-23-90 A 2. Individuals must complete the requirements including passing all licensure assessments, for the renewable five-year license within the validity period of the Provisional License. The individual must have a minimum of an undergraduate degree from a regionally accredited college or university, with the exception of those individuals seeking the Technical Professional License.

2. Collegiate Professional License. The Collegiate Professional License is a five-year, renewable license available to an individual who has satisfied all requirements for licensure, including an earned undergraduate degree from a regionally accredited college or university and the professional teacher's assessments prescribed by the Virginia Board of Education.

3. Postgraduate Professional License. The Postgraduate Professional License is a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from a regionally accredited college or university.

4. Technical Professional License. The Technical Professional License is a five-year, renewable license available to a person who has graduated from an accredited high school or possesses a General Educational Development Certificate; has exhibited academic proficiency, skills in literacy and communication, technical competency, and successful occupational experience; and has completed nine semester hours of specialized professional studies credit from a regionally accredited college or university. The nine semester hours of professional studies coursework must include three semester hours of human development and learning, three semester hours of curriculum and instruction, and three semester hours of applications of instructional technology or classroom and behavior management. The Technical

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Professional License is issued at the recommendation of an employing educational agency in the areas of career and technical education, educational technology, and military science. Individuals seeking an endorsement to teach military science must have the appropriate credentials issued by the United States military. The employing Virginia educational agency must ensure the credentials issued by the United States military are active during the period the individual is teaching. In addition to demonstrating competency in the endorsement area sought, the individual must:

a. Hold a valid license issued by the appropriate Virginia board for those program areas requiring a license and a minimum of two years of successful experience at the journeyman level or an equivalent. The employing Virginia educational agency must ensure that the valid license issued by the appropriate Virginia board for the occupational program area is active during the period the individual is teaching;

b. Have completed a registered apprenticeship program and two years of successful experience at the journeyman level or an equivalent level in the trade; or

c. Have four years of successful work experience at the management or supervisory level or equivalent or have a combination of four years of training and work experience at the management or supervisory level or equivalent.

Individuals holding the Technical Professional License who seek the Collegiate Professional or Postgraduate Professional License must meet the requirements of the respective licenses.

5. School Manager License. The school manager license is a five-year, renewable license intended to provide for the differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. For example, a school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian. The license is available to a candidate who holds a baccalaureate degree from a regionally accredited college or university, has three years of successful managerial experience, and is recommended for the license by a Virginia school division superintendent.

6. Pupil Personnel Services License. The Pupil Personnel Services License is a five-year, renewable license available to an individual who has earned an appropriate graduate degree from a regionally accredited college or university with an endorsement for school counselor, school psychologist, school social worker, or vocational evaluator. This license does not require teaching experience, unless otherwise outlined under the specific endorsement's requirements.

7. Division Superintendent License. The Division Superintendent License is a five-year, renewable license available to an individual who has completed an earned master's degree from a regionally accredited college or university and meets the requirements specified in 8VAC20-23-630. The individual's name must be listed on the Virginia Board of Education's list of eligible division superintendents.

8. International Educator License. The International Educator License provides a five-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional teaching license issued to an exchange teacher with citizenship in a nation other than the United States of America and who is employed as a teacher in a Virginia public or accredited nonpublic school. To be issued the five-year, nonrenewable International Educator License, an individual serving as a cultural exchange teacher in Virginia must:

a. Be employed by a Virginia public or an accredited nonpublic school;

b. Hold non-United States citizenship and be a nonpermanent resident; and

c. Meet the following requirements as verified by a state-approved, federally-designated Exchange Visitor Program (22 CFR Part 62):

(1) Be proficient in written and spoken English;

(2) Demonstrate competence in the appropriate academic subject area or areas by meeting the credential requirements for a qualified teacher in the exchange country;

(3) Hold the United States equivalent of a baccalaureate degree or higher as determined by an approved credential agency; and

(4) Complete at least two years of successful full-time teaching experience that enables the educator to fulfill a similar assignment in his home country or is comparable to those requirements for Virginia teachers.

If an individual meets requirements of subdivisions 8 a, 8 b, 8 c (1), 8 c (2), and 8 c (3) of this subsection and has completed at least one year, but less than two years, of successful full-time teaching experience that enables the educator to fulfill a similar assignment in his home country or is comparable to those requirements for Virginia teachers, the International Educator License will be issued for three years with an option to extend the nonrenewable International Educator License for the additional two years upon meeting all teacher assessments prescribed by the Virginia Board of Education and a recommendation of the Virginia employing school division or accredited nonpublic school.

Individuals who have been issued an International Educator License who seek a five-year, renewable license

will need to meet all licensure and endorsement requirements, including applicable assessments prescribed by the Virginia Board of Education.

9. Online Teacher License. The Online Teacher License is a five-year, renewable license valid only for teaching online courses. Teachers who hold a five-year renewable license issued by the Virginia Board of Education may teach online courses for which they are properly endorsed and do not need to seek this license.

a. The individual is required to meet requirements for an endorsement in a content (teaching) area, professional studies requirements, and qualifying scores on professional teacher's assessments as prescribed by the Virginia Board of Education. In addition, the individual must complete a three-semester-hour course in online instructional procedures.

Online instructional procedures: 3 semester hours. Skills in this area shall contribute to an understanding of the principles of online learning and online instructional strategies and the application of skills in the ability to use the Internet for teaching, learning, and management; design, deliver, and support instruction in an online environment; adapt strategies for a variety of course models (e.g., synchronous and asynchronous); select, adapt, and create rich multimedia for instruction; adapt individualized education program requirements to online course practices, as appropriate; use data to meet individual students needs; and employ innovative teaching strategies in an online environment. Demonstrated proficiency of advanced skills in the following must be addressed: use of communication technologies to interact with and engage students, parents, and mentors; use of education technologies; management of instructional activities in a technology-mediated environment; and nontraditional content delivery methods.

b. Online teaching experience is not acceptable to meet the full-time teaching experience for other license types, such as a Division Superintendent License, or for endorsements, such as for the reading specialist, school counselor, or administration and supervision endorsements. The Online Teacher License may be issued if requirements have been met as one of the following licenses to individuals teaching only online courses:

(1) Online Teacher (Postgraduate Professional) License - a five-year, renewable license available to an individual who has qualified for the Online Teacher (Collegiate Professional) License and who holds an appropriate earned graduate degree from a regionally accredited college or university.

(2) Online Teacher (Collegiate Professional) License - a five-year, renewable teaching license available to an individual who has satisfied all requirements for

licensure, including an earned baccalaureate degree from a regionally accredited college or university, endorsement and professional studies requirements, and the professional teacher's assessments prescribed by the Virginia Board of Education, or

(3) Online Teacher (Technical Professional) License - a five-year, renewable teaching license available to an individual who has graduated from an accredited high school or possesses a General Educational Development Certificate; has exhibited academic proficiency, technical competency, and occupational experience; and meets the requirements specified in subdivision 4 of this section. An individual seeking an Online Teacher (Technical Professional) License must be recommended for the license by a Virginia public school, a Virginia accredited nonpublic school, or an accredited virtual school program.

c. A nonrenewable Online Teacher (Provisional) License may be issued for a period not to exceed three years to an individual who has allowable deficiencies for full licensure as set forth in 8VAC20-23-90 B. The Online (Provisional) License will be issued for two years. Individuals may apply for a third year on the Online (Provisional) License by submitting documentation indicating that all licensure assessments prescribed by the Virginia Board of Education have been taken. The individual must have a minimum of an undergraduate degree from a regionally accredited college or university, with the exception of those individuals seeking the Technical Professional License. Individuals must complete all requirements for a renewable Online Teacher License within the validity period of the license.

10. Teach For America License. The Teach For America License is a two-year provisional license.

a. This provisional license is available to any participant in Teach For America, a nationwide nonprofit organization focused on closing the achievement gaps between students in high-income and low-income areas, who submits an application and meets the following requirements:

(1) Holds, at minimum, a baccalaureate degree from a regionally accredited institution of higher education;

(2) Has met the requirements prescribed by the Virginia Board of Education for all endorsements sought or has met the qualifying scores on the content area assessment prescribed by the board for the endorsements sought;

(3) Possesses good moral character according to criteria developed by the Virginia Board of Education;

(4) Has been offered and has accepted placement in Teach For America;

(5) Has successfully completed preservice training and is participating in the professional development requirements of Teach For America, including teaching

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frameworks, curricula, lesson planning, instructional delivery, classroom management, assessment and evaluation of student progress, classroom diversity, and literacy development;

(6) Has an offer of employment from a local school board to teach in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia; and

(7) Receives a recommendation from the employing school division for a Teach For America License in the endorsement area in which the individual seeks to be licensed.

b. In addition to the criteria set forth in subdivision 10 a of of this subsection, any individual who seeks an endorsement in early childhood, early/primary, or elementary education shall either (i) agree to complete such coursework in the teaching of reading as may be prescribed by the Virginia Board of Education pursuant to 8VAC20-23-130 during the first year of employment or (ii) achieve a passing score on a reading instructional assessment prescribed by the Virginia Board of Education.

c. Teachers issued a Teach For America provisional license shall not be eligible for continuing contract status while employed under the authority of a Teach For America license and shall be subject to the probationary terms of employment specified in § 22.1-303 of the Code of Virginia.

d. The Virginia Board of Education may extend any Teach For America License for one additional year upon request of the employing school division, provided that no Teach For America License shall exceed a total of three years in length.

e. Notwithstanding any provision of law to the contrary, upon completion of at least two years of full-time teaching experience in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia, an individual holding a Teach For America License shall be eligible to receive a renewable license if he has (i) achieved satisfactory scores on all professional teacher assessments required by the Virginia Board of Education and (ii) received satisfactory evaluations at the conclusion of each year of employment.

f. Notwithstanding any provision of law to the contrary, the Virginia Board of Education shall issue a Teach For America License to any individual who (i) has completed two years of successful teaching in the Teach For America program in another state, (ii) is not eligible to receive a renewable license, and (iii) meets the criteria set forth in subdivision 10 a of this subsection.

B. All licenses will be effective from July 1 in the school year in which the application is made. An employing Virginia public school division, agency, or accredited nonpublic school is required to notify employees in writing at the time of employment of the need to meet appropriate assessment requirements for licensure.

## **8VAC20-23-60. Designations on licenses for career paths to teaching.**

A. Designations on licenses will reflect stages in the professional development of teachers and promote continuing growth and career paths as educators.

B. Teaching licenses may be issued with one of the following designations, and the designation will be processed as an add-on endorsement. These designations will not apply to the Division Superintendent License, School Manager License, International Educator License, or Pupil Personnel Services License.

1. Career Teacher: This voluntary teacher designation will be issued on a renewable teaching license for individuals who have gained continuing contract status in Virginia and who apply for the Career Teacher designation.

2. Mentor Teacher: This voluntary teacher designation will be issued on a renewable teaching license for individuals who have (i) achieved the Career Teacher designation, (ii) received a recommendation for the designation from an employing Virginia school division superintendent or designee or accredited nonpublic school head, (iii) served at least three years as a mentor teacher in Virginia, (iv) documented responsibilities as a mentor, and (v) completed a local or state mentor teacher training program in accordance with the Virginia Board of Education Mentor Teacher Guidelines ([http://www.doe.virginia.gov/teaching/career\\_resources/mentor/program\\_creation\\_guidelines.pdf](http://www.doe.virginia.gov/teaching/career_resources/mentor/program_creation_guidelines.pdf)).

3. Teacher as Leader: This voluntary teacher designation will be issued on a renewable teaching license for individuals who have (i) achieved the Career Teacher designation; (ii) completed at least five years of successful, full-time teaching experience in a Virginia public school or accredited nonpublic school; (iii) received the recommendation from an employing Virginia school division superintendent or designee or an accredited nonpublic school head; (iv) and completed one of the following:

a. National Board Certification or a nationally recognized certification program approved by the Virginia Board of Education and a recommendation from an employing Virginia school division superintendent or designee or accredited nonpublic school head and documentation in an approved Department of Education format verifying the individual's demonstrated skills and abilities as a school leader and direct contributions to school effectiveness and student achievement; or

b. A recommendation from an employing Virginia school division superintendent or designee or accredited nonpublic school head and documentation in an approved Department of Education format verifying the individual's demonstrated skills and abilities as a school leader and direct contributions to school effectiveness and student achievement.

### **8VAC20-23-70. Additional endorsements.**

A. An individual who holds a teaching license may add an additional teaching endorsement to the license by passing a rigorous academic subject test for endorsements in which a test is prescribed by the Virginia Board of Education. This testing option does not apply to individuals (i) who are seeking an early/primary education preK-3 or elementary education preK-6 endorsement, special education endorsements, or a reading specialist endorsement or (ii) who hold a Technical Professional License, Vocational Evaluator License, Pupil Personnel Services License, School Manager License, or Division Superintendent License.

B. One or more endorsements may be added to a license provided specific endorsement requirements have been met. Written requests may be made by the licensed professional and should be directed to the Virginia employing educational agency or college or university. If the request is not acted upon by the local educational agency or college or university within 30 days or is disputed, the license holder may make a written request for an additional endorsement directly to the Office of Professional Licensure, Virginia Department of Education. Written requests should be submitted by January 15 to be in effect by July 1 of the same year.

### **8VAC20-23-80. Deletion of an endorsement.**

An endorsement may be deleted from a license at the request of the licensed professional. Written requests are made by the licensed professional and should be directed to the employing educational agency. If the request is not acted upon by the local educational agency within 30 days or is disputed, the license holder may make a written request for the deletion of an endorsement directly to the Office of Professional Licensure, Virginia Department of Education. Written requests should be submitted by January 15 to be in effect on July 1 of that year. Individuals who wish to add an endorsement that has been deleted must meet requirements for that endorsement at the time it is requested.

### **8VAC20-23-90. Alternate routes to licensure.**

A. Career switcher alternate route to licensure for career professions - Provisional (Career Switcher) License. An alternate route is available to career switchers who seek teaching endorsements preK through grade 12 with the exception of special education.

1. An individual seeking a Provisional (Career Switcher) License through the career switcher program must meet the following prerequisite requirements:

a. An application process;

b. An earned baccalaureate degree from a regionally accredited college or university;

c. The completion of requirements for an endorsement in a teaching area or the equivalent through verifiable experience or academic study;

d. At least five years of full-time work experience or its equivalent; and

e. Virginia qualifying scores on the professional teacher's assessments as prescribed by the Virginia Board of Education.

2. The Provisional (Career Switcher) License is awarded at the end of Level I preparation. All components of the career switcher alternate route for career professions must be completed by the candidate.

3. The Level I requirements must be completed during the course of a single year and may be offered through a variety of delivery systems, including distance learning programs. If an employing agency recommends extending the Provisional (Career Switcher) License for a second year, the candidate will enter Level III of the program. Career switcher programs must be certified by the Virginia Department of Education.

a. Level I preparation. Intensive Level I preparation includes a minimum of 180 clock hours of instruction, including field experience. This phase includes, but is not limited to, curriculum and instruction, including technology, reading, and other specific course content relating to the Standards of Learning; differentiation of instruction; classroom and behavior management; instructional design based on assessment data; and human development and learning.

b. Level II preparation during first year of employment.

(1) Candidate seeks employment in Virginia with the one-year Provisional (Career Switcher) License.

(2) Continued Level II preparation during the first year of employment with a minimum of five seminars that expand the intensive preparation requirements listed in subdivision 3 a of this subsection. The five seminars will include a minimum of 20 cumulative instructional hours. A variety of instructional delivery techniques will be utilized to implement the seminars.

(3) One year of successful, full-time teaching experience in a Virginia public or accredited nonpublic school under a one-year Provisional (Career Switcher) License. A trained mentor must be assigned to assist the candidate during the first year of employment. Responsibilities of the mentor include, but are not limited to, the following:

(a) Collaborate with the beginning teacher in the development and implementation of an individualized professional development plan;

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(b) Observe, assess, coach, and provide opportunities for constructive feedback, including strategies for self-reflection;

(c) Share resources and materials;

(d) Share best instructional, assessment, and organizational practices; classroom and behavior management strategies; and techniques for promoting effective communication; and

(e) Provide general support and direction regarding school policies and procedures.

(4) Upon completion of Levels I and II of the career switcher alternate route to licensure program and submission of a recommendation from the Virginia educational employing agency, the candidate will be eligible to apply for a five-year, renewable license. Renewal requirements for the regular license will be subject to current regulations of the Virginia Board of Education.

c. Level III preparation, if required.

(1) Post preparation, if required, will be conducted by the Virginia employing educational agency to address the areas where improvement is needed as identified in the candidate's professional improvement plan; and

(2) Upon completion of Levels I, II, and III of the career switcher alternate route to licensure program and submission of a recommendation from the Virginia educational employing agency, the candidate will be eligible to receive a five-year renewable license.

4. Verification of program completion will be documented by the certified program provider and the division superintendent or designee.

5. Certified providers implementing a career switcher program may charge a fee for participation in the program.

B. An alternate route is available to individuals employed by an educational agency who seek teaching endorsements preK through grade 12. The employing Virginia educational agency may request a nonrenewable Provisional License on behalf of the individual if the individual has completed an allowable portion of professional studies and endorsement requirements. This route is also applicable to individuals who are employed by a Virginia public school, a Virginia accredited nonpublic school, or an accredited virtual school or program and who are seeking the Online Teacher License that is issued to teachers who teach only online courses. The Provisional License will be issued for two years. Individuals may apply for a third year on the Provisional License by submitting documentation indicating that all licensure assessments prescribed by the Virginia Board of Education have been taken. The Provisional License is a nonrenewable teaching license valid for a period not to exceed three years. Individuals must complete all licensure requirements to become eligible for the five-year, renewable license.

1. An individual seeking a license through this alternate route must have met the following requirements:

a. Entered the teaching field through the alternate route to licensure upon the recommendation of the Virginia employing educational agency. For the Online Teacher Provisional License, individuals must be employed by a Virginia public school division, a Virginia accredited nonpublic school, or an accredited virtual school or program;

b. Earned a baccalaureate degree from a regionally accredited college or university with the exception of individuals seeking the Technical Professional License;

c. Have met requirements for the endorsement area; and

d. Need to complete an allowable portion of professional studies and licensure requirements.

2. The professional studies requirements for the appropriate level of endorsement sought must be completed. A Virginia educational agency may submit to the Superintendent of Public Instruction for approval an alternate program to meet the professional studies requirements. The alternate program must include training (e.g., seminar, internship, coursework, etc.) in human development and learning; curriculum and instruction, including technology; assessment of and for learning; classroom and behavior management; the teaching profession, including legal status of teachers and students, federal and state laws, and teacher evaluation as prescribed by Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers; and reading.

3. One year of successful, full-time teaching experience in the appropriate teaching area in a Virginia public or an accredited nonpublic school must be completed. For the Online Teacher License only, one year of successful online teaching experience in the endorsement area in a public school division, an accredited nonpublic school, or an accredited virtual school or program may be accepted in lieu of the supervised teaching experience. A fully licensed experienced teacher must be available in the school building to assist the beginning teacher employed through the alternate route.

C. Alternate route in special education. The Provisional (Special Education) License is a nonrenewable teaching license issued to an individual employed as a special education teacher in a public school or a nonpublic special education school in Virginia who does not hold the appropriate special education endorsement. The Provisional (Special Education) License will be issued for two years. Individuals may apply for a third year on the Provisional License by submitting documentation indicating that all licensure assessments prescribed by the Virginia Board of Education have been taken. The Provisional License is a nonrenewable teaching license valid for a period not to exceed three years. This alternate route to special education is

not applicable to individuals seeking the Online Teacher License. To be issued the Provisional (Special Education) License through this alternate route, an individual must meet the requirements through one of the two following options:

1. Option I. The individual must hold a full, valid Collegiate Professional or Postgraduate Professional License and must:

- a. Be employed by a Virginia public or nonpublic school as a special educator and have the recommendation of the employing educational agency;
- b. Have earned a baccalaureate degree from a regionally accredited college or university;
- c. Have an assigned mentor with an active Virginia teaching license with an endorsement in special education; and
- d. Have a planned program of study in the assigned endorsement area, make progress toward meeting the endorsement requirements each of the three years of the license, and have completed at least three semester hours of coursework in the competencies of foundations for educating students with disabilities and an understanding and application of the legal aspects and regulatory requirements associated with identification, education, and evaluation of students with disabilities. A survey course integrating these competencies would satisfy this requirement.

The Provisional (Special Education) License through this alternate route shall not be issued without the completion of these prerequisites.

2. Option II. The individual must:

- a. Be employed by a Virginia public or nonpublic school as a special educator and have the recommendation of the employing educational agency;
- b. Have earned a baccalaureate degree from a regionally accredited college or university;
- c. Have an assigned mentor endorsed in special education; and
- d. Have a planned program of study in the assigned endorsement area, make progress toward meeting the endorsement requirements each of the three years of the license, and have completed nine semester hours including courses in the following: characteristics of students with disabilities, individualized education program implementation, and classroom and behavior management.

The Provisional (Special Education) License through this alternate route shall not be issued without the completion of these prerequisites.

D. Alternate programs at institutions of higher education or Virginia school divisions. Alternate programs developed by institutions of higher education (i) recognize the unique strengths of prospective teachers from nontraditional

backgrounds and (ii) prepare these individuals to meet the same standards that are established for others who are granted a license through an alternate route.

E. Experiential learning. Individuals applying for an initial teaching license through the alternate route as prescribed by the Virginia Board of Education must meet the following criteria to be eligible to request experiential learning to satisfy the coursework for the endorsement (teaching) content area:

1. Have earned a baccalaureate degree from a regionally accredited college or university;
2. Have at least five years of documented full-time work experience that may include specialized training related to the endorsement sought; and
3. Have met the qualifying score on the content knowledge assessment prescribed by the Virginia Board of Education.

Experiential learning does not apply to individuals seeking special education and elementary education (i.e., preK-3 and preK-6) endorsements or endorsements in which there is no Virginia Board of Education prescribed content or subject assessment.

### **8VAC20-23-100. Conditions for licensure for out-of-state candidates by reciprocity.**

A. An individual coming into Virginia from any state may qualify for a Virginia teaching license with comparable endorsement areas if the individual (i) has completed a state-approved teacher preparation program through a regionally accredited four-year college or university or (ii) holds a valid out-of-state teaching license (i.e., full credential without deficiencies) that must be in force at the time the application for a Virginia license is made. An individual seeking licensure must establish a file in the Department of Education by submitting a complete application packet that includes official student transcripts. Unless exempted by the criteria in subsection C of this section, professional teacher's assessments prescribed by the Virginia Board of Education must be satisfied.

B. An individual coming into Virginia will qualify for a Virginia teaching license with comparable endorsement areas if the individual holds an active national certification from the National Board for Professional Teaching Standards (NBPTS) or a nationally recognized certification program approved by the Virginia Board of Education.

C. Individuals who hold a valid out-of-state license (i.e., full credential without deficiencies) and who have completed a minimum of three years of full-time, successful teaching experience in a public or an accredited nonpublic school, kindergarten through grade 12, outside of Virginia are exempt from the professional teacher's assessment requirements. Documentation must be submitted to verify the school's status as a public or accredited nonpublic school.

### **8VAC20-23-110. Requirements for renewing a license.**

A. The Division Superintendent, Postgraduate Professional, Collegiate Professional, Technical Professional, Pupil

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Personnel Services, Online Teacher, and School Manager Licenses may be renewed upon the completion of 180 professional development points within a five-year validity period based on an individualized professional development plan that includes ongoing, sustained, and high-quality professional development.

B. An individual who holds an expired license must submit a completed licensure application at the time a licensure renewal request is submitted.

C. Virginia public school divisions and public education agencies must report annually to the Virginia Department of Education that instructional personnel have completed high-quality professional development each year as set forth by the Virginia Department of Education.

D. Any individual licensed and endorsed to teach (i) middle school civics or economics or (ii) high school government or history who is seeking renewal of such license is required to demonstrate knowledge of Virginia history or state and local government by completing a module or professional development course specifically related to Virginia history or state and local government that has a value of five professional development points. This requirement applies for purposes of the individual's next or initial renewal occurring after July 1, 2014.

E. If the requirement has not been met for initial licensure or licensure renewal, individuals seeking renewal of a license shall provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. The certification or training program shall be based on the current national evidence-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross. The Virginia Board of Education shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training.

F. Professional development points may be accrued by the completion of professional development activities to improve and increase instructional personnel's knowledge of the academic subjects the teachers teach or the area assigned from one or more of the following eight options.

1. College credit. Acceptable coursework offers content that provides new information and is offered on campus, off campus, or through extension by any regionally accredited two-year or four-year college or university. College coursework must develop further experiences in subject content taught, teaching strategies, uses of technologies, leadership, and other essential elements in teaching to high standards and increasing student learning. Instructional personnel must complete coursework to improve and increase the knowledge of the academic subjects or endorsement areas in which they are assigned.

Individuals who do not hold a graduate degree must refer to subsection G of this section.

2. Professional conference. A professional conference is a workshop, institute, or seminar of four or more hours that contributes to ongoing, sustained, and high-quality professional development.

3. Curriculum development. Curriculum development is a group activity in which the license holder contributes to the improvement of the curriculum of a school, a school division, or an education institution in the teaching area assigned. This includes the alignment of curriculum frameworks, instructional materials, and assessments to provide a system with clear expectations of what is to be taught and learned.

4. Publication of article. The article must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. Grant reports that present the results of educational research are acceptable provided the license holder had an active role in planning, analyzing, interpreting, demonstrating, disseminating, or evaluating the study or innovation. The article must be published in a recognized professional journal.

5. Publication of book. Books must be published for purchase and must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. The published book must increase the field of content knowledge; planning and assessment for evaluating and providing students with feedback that encourages student progress and measures student achievement; instruction, safety, and learning environment; and communication and community relations working with students, parents, and members of the community to promote broad support for student learning. Points will not be awarded for self-published books.

6. Mentorship. Mentoring is the process by which an experienced professional who has received mentorship training provides assistance to one or more persons for the purpose of improving their performance. Assistance may involve role modeling, direct instruction, demonstration, observation with feedback, developing of plans, and consultation to promote instructional excellence and increased student achievement. Mentoring may include the supervision of a field experience of a pre-service student teacher or an intern in an approved teacher or principal preparation program, as well as mentoring as part of the induction process for a beginning teacher or a first-year administrator. Individuals serving in this role and submitting documentation for license renewal based on the mentorship option shall receive training as a mentor prior to the assignment and at least once during the five-year renewal cycle.

7. Educational project. Educational projects must be planned, focused projects based on high standards of

teaching and learning. Projects must result in a written report or other tangible product. Projects must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. A project could include participation in new professional responsibilities, such as leading a school improvement initiative.

8. Professional development activity. Professional development activities must focus on student learning and achievement, schoolwide educational improvement, leadership, subject content, teaching strategies, and use of technologies and other essential elements in teaching to high standards. Activities must be planned, rigorous, systematic, and promote continuous inquiry and reflection. Local employing educational agencies are encouraged to design professional development activities that are conducted in school settings and linked to student learning and achievement.

G. A minimum of 90 points (i.e., three semester hours in a content area) at the undergraduate (i.e., two-year or four-year institution) or graduate level earned from a regionally accredited college or university in the license holder's endorsement areas shall be required of license holders without a master's degree. With prior approval, exceptions to the content course requirement may be made by the division superintendent or principal. Special education coursework designed to assist classroom teachers and other school personnel in working with students with disabilities, a course in gifted education, a course in educational technology, or a course in English as a second language may be completed to satisfy the content course requirement. Professional development activities designed to support the Virginia Standards of Learning, Standards of Accreditation, and state assessments may be accepted in lieu of the content course. An individual without a master's degree who holds a renewable Online Teacher License may complete pedagogy of online instruction coursework to meet this requirement. The substance of the activities must clearly support these initiatives and address one or more of the following areas: (i) new content knowledge to implement the Virginia Standards of Learning, (ii) curriculum development initiative designed to translate the standards from standards to classroom objectives, (iii) teaching beginning reading skills including phonemic awareness and the structure of language (i.e., phonics), (iv) staff development activities in assessment to assist classroom teachers in the utilization of test results to improve classroom instruction, and (v) professional development designed to implement the technology standards in the schools. Technical Professional License holders without baccalaureate degrees may satisfy the requirement through career and technical education workshops, career and technical education institutes, or through undergraduate coursework at two-year or four-year institutions.

H. Content area courses are courses at the undergraduate level (i.e., two-year or four-year institution) or at the graduate

level that will not duplicate previous courses taken in the humanities, English, history and social sciences, sciences, mathematics, health and physical education, and fine arts. These courses are usually available through the college or department of arts and sciences. License holders with elementary education, middle education, special education, or reading endorsements must satisfy the 90-point requirement through reading coursework or content coursework in one of the areas listed in this subsection. Courses available through a regionally accredited college's or university's department of education may be used to satisfy the content requirement for those license holders with endorsements in health and physical education, career and technical education, and library science education.

I. With prior approval of the division superintendent or principal, the 90 points in a content area also may be satisfied through coursework taken to obtain a new teaching endorsement or coursework taken because of a particular need of a particular teacher.

J. The remaining 90 points may be accrued by activities drawn from one or more of the eight renewal options. Renewal work is designed to provide licensed personnel with opportunities for professional development relative to the grade levels or teaching fields to which they are assigned or for which they seek an added endorsement. Such professional development encompasses (i) responsible remediation of any area of an individual's knowledge or skills that fails to meet the standards of competency and (ii) responsible efforts to increase the individual's knowledge of new developments in his field and to respond to new curricular demands within the individual's area of professional competence.

K. The proposed work toward renewal in certain options must be approved in advance by the chief executive officer or designee of the employing educational agency. Persons who are not employed by an educational agency may renew or reinstate their license by submitting to the Office of Professional Licensure, Department of Education, their individualized renewal record and verification of points, including official student transcripts of coursework taken at a regionally accredited two-year or four-year college or university.

L. Accrual of professional development points shall be determined by criteria set forth by the Virginia Department of Education in the Virginia Renewal Manual ([http://doe.virginia.gov/teaching/licensure/licensure\\_renewal\\_manual.pdf](http://doe.virginia.gov/teaching/licensure/licensure_renewal_manual.pdf)).

M. Persons seeking license renewal as teachers must demonstrate proficiency in the use of educational technology for instruction.

N. Virginia school divisions and nonpublic schools will recommend renewal of licenses using the renewal point system. The renewal recommendation must include verification of demonstrated proficiency in the use of educational technology for instruction.

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O. Training in instructional methods tailored to promote academic progress and effective preparation for the Standards of Learning tests and end-of-grade assessments is required for licensure renewal.

P. If they have not already met the requirement, persons seeking licensure renewal as teachers must complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Virginia Board of Education in consultation with the Virginia Department of Social Services that are relevant to the specific teacher licensure routes.

## Part IV

Licensure Regulations Governing Early/Primary Education, Elementary Education, and Middle Education Endorsements

### **8VAC20-23-120. Early/primary education, elementary education, and middle education endorsements.**

Individuals seeking licensure with endorsements in early/primary education, elementary education, and middle education may meet requirements through the completion of an approved program or if employed by a Virginia public or nonpublic school through the alternate route to licensure. Components of the licensure program include a degree from a regionally accredited college or university in the liberal arts and sciences, or equivalent; professional teacher's assessments requirement prescribed by the Virginia Board of Education; specific endorsement requirements; and professional studies requirements.

### **8VAC20-23-130. Professional studies requirements.**

Professional studies requirements for early/primary education, elementary education, and middle education: 21 semester hours. These requirements may be taught in integrated coursework or modules.

1. Human development and learning (birth through adolescence): 3 semester hours.

a. Skills in this area shall contribute to an understanding of the physical, social, emotional, speech and language, and intellectual development of children and the ability to use this understanding in guiding learning experiences and relating meaningfully to students.

b. The interaction of children with individual differences - economic, social, racial, ethnic, religious, physical, and mental - should be incorporated to include skills contributing to an understanding of developmental disabilities and developmental issues related to but not limited to low socioeconomic status, attention deficit disorders, developmental disorders, gifted education including the use of multiple criteria to identify gifted students, substance abuse, child abuse, and family disruptions.

2. Curriculum and instruction: 3 semester hours.

a. Early/primary education preK-3 or elementary education preK-6 curriculum and instruction: 3 semester hours.

(1) Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; effective communication with and among students; selection and use of materials, including media and contemporary technologies; and selection, development, and use of appropriate curricula, methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy.

(2) Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction must be included.

(3) Instructional practices that are sensitive to culturally and linguistically diverse learners, including limited English proficient students, gifted and talented students, and those students with disabilities; and appropriate for the level of endorsement (i.e., preK-3 or preK-6) sought shall be included.

(4) Teaching methods shall be tailored to promote student engagement and student academic progress and effective preparation for the Standards of Learning assessments.

(5) Study in (i) methods of improving communication between schools and families, (ii) communicating with families regarding social and instructional needs of children, (iii) ways of increasing family involvement in student learning at home and in school, (iv) the Virginia Standards of Learning, and (v) Virginia Foundation Blocks for Early Learning; Comprehensive Standards for Four-Year-Olds prepared by the department's Office of Humanities and Early Childhood shall be included.

(6) Early childhood educators must understand the role of families in child development and in relation to teaching educational skills.

(7) Early childhood educators must understand the role of the informal and play-mediated settings for promoting students' skills and development and must demonstrate knowledge and skill in interacting in such situations to promote specific learning outcomes as reflected in Virginia's Foundation Blocks for Early Learning. Demonstrated proficiency in the use of educational technology for instruction shall be included. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Virginia Board of Education in consultation with the Virginia Department of Social Services that are relevant to the specific teacher licensure routes. Pre-student teaching experiences (i.e., field experiences) should be evident within these skills.

b. Middle education 6-8 curriculum and instruction: 3 semester hours.

(1) Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; effective communication with and among students; and selection and use of materials, including media and contemporary technologies.

(2) Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction must be included.

(3) Instructional practices that are sensitive to culturally and linguistically diverse learners including limited English proficient students, gifted and talented students, and students with disabilities, and must be appropriate for the middle education endorsement shall be included.

(4) Teaching methods shall be tailored to promote student engagement and student academic progress and effective preparation for the Virginia Standards of Learning assessments.

(5) Study in methods of improving communication between schools and families, ways of increasing family involvement in student learning at home and in school, and the Standards of Learning shall be included.

(6) Demonstrated proficiency in the use of educational technology for instruction shall be included.

(7) Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Virginia Board of Education in consultation with the Virginia Department of Social Services that are relevant to the specific teacher licensure routes. Pre-student teaching experiences (i.e., field experiences) should be evident within these skills.

3. Classroom and behavior management: 3 semester hours.

a. Skills in this area shall contribute to an understanding and application of research-based classroom and behavior management techniques, classroom community building, positive behavior supports, and individual interventions, including techniques that promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment.

b. This area shall address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice.

c. Approaches should support professionally appropriate practices that promote positive redirection of behavior, development of social skills, and of self discipline.

d. Knowledge and an understanding of various school crisis management and safety plans and the demonstrated ability to create a safe, orderly classroom environment must be included.

e. The link between classroom management and students' ages must be understood and demonstrated in techniques used in the classroom.

4. Assessment of and for learning: 3 semester hours.

a. Skills in this area shall be designed to develop an understanding and application of creating, selecting, and implementing valid and reliable classroom-based assessments of student learning, including formative and summative assessments. Assessments designed and adapted to meet the needs of diverse learners must be addressed.

b. Analytical skills necessary to inform ongoing planning and instruction, as well as to understand, and help students understand their own progress and growth must be included.

c. Skills also include the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance.

d. Understanding of state assessment programs and accountability systems, including assessments used for student achievement goal setting as related to teacher evaluation and determining student academic progress must be included.

e. Knowledge of legal and ethical aspects of assessment, and skills for developing familiarity with assessments used in preK-12 education (e.g., diagnostic, college admission exams, industry certifications, and placement assessments) must be included.

5. The teaching profession: 3 semester hours.

a. Skills in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development, and organization of public education in the United States.

b. Attention must be given to the legal status of teachers and students, including federal and state laws and regulations; school as an organization and culture; and contemporary issues and current trends in education, including the impact of technology on education. Local, state, and federal governance of schools, including the roles of teachers and schools in communities, must be included.

c. Professionalism and ethical standards, as well as personal integrity must be addressed.

d. Knowledge and understanding of Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers must be included.

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## 6. Reading: 6 semester hours.

a. Early/primary preK-3 and elementary education preK-6 - language acquisition and reading and writing: 6 semester hours. Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher must be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher's program. Additional knowledge and skills that add to a beginning teacher's competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

(1) Language acquisition: 3 semester hours. Skills in this area shall be designed to impart a thorough understanding of the Virginia English Standards of Learning as well as the complex nature of language acquisition as a precursor to literacy. Language acquisition shall follow the typical development of linguistic competence in the areas of phonetics, semantics, syntax, morphology, phonology, and pragmatics.

(2) Reading and writing: 3 semester hours. Skills in this area shall be designed to impart a thorough understanding of the Virginia English Standards of Learning as well as the reciprocal nature of reading and writing. Reading shall include phonemic awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Writing shall include writing strategies and conventions as supporting the composing and writing expression and usage and mechanics domains. Additional skills shall include proficiency in understanding the stages of spelling development, the writing process, as well as the ability to foster appreciation of a variety of fiction and nonfiction texts and independent reading.

b. Middle education - language acquisition and reading development: 3 semester hours and literacy in the content areas: 3 semester hours.

(1) Language acquisition and reading development: 3 semester hours. Skills in this area shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading, to include phonemic awareness, phonics, fluency, vocabulary development, and comprehension strategies for adolescent learners. Additional skills shall include proficiency in writing strategies as well as the ability to foster appreciation of a variety of fiction and nonfiction texts and independent reading for adolescent learners.

(2) Literacy in the content areas: 3 semester hours. Skills in this area shall be designed to impart an understanding of vocabulary development and comprehension skills in English, mathematics, science, history and social science, and other content areas. Strategies include teaching students how to ask effective questions, summarize and retell both verbally and in writing, and to listen

effectively. Teaching strategies include literal, interpretive, critical, and evaluative comprehension, as well as the ability to foster appreciation of a variety of fiction and nonfiction texts and independent reading for adolescent readers.

7. Supervised clinical experience. Supervised clinical experiences shall be continuous and systematic and comprised of early field experiences and a minimum of 10 weeks of full-time student teaching under the supervision of a cooperating teacher with demonstrated effectiveness in the classroom. The summative supervised student teaching experience shall include at least 150 clock hours spent in direct teaching at the level of endorsement. One year of successful full-time teaching experience in the endorsement area in a public or accredited nonpublic school may be accepted in lieu of the supervised teaching experience. For the Online Teacher License only, one year of successful online teaching experience in the endorsement area in a public school, an accredited nonpublic school, or an accredited virtual school or program may be accepted in lieu of the supervised teaching experience. A fully licensed, experienced teacher shall be available in the school building to assist a beginning teacher employed through the alternate route.

### **8VAC20-23-140. Early childhood for three-year-olds and four-year-olds (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with an endorsement in elementary education (such as preK-3 or preK-6) or special education early childhood;
2. Completed 9 semester hours of graduate-level coursework in early childhood education; and
3. Completed a supervised practicum of at least 45 instructional hours in a preschool setting (i.e., three-year-olds and four-year-olds) in a public school, an accredited nonpublic school, or another program approved by the Virginia Board of Education. One year of successful, full-time teaching experience in a public or accredited nonpublic school may be accepted in lieu of the practicum.
4. The add-on endorsement to an elementary endorsement that includes preK is not required to teach preK (i.e., three-year-olds and four-year-olds), but the endorsement recognizes the candidate's additional preparation in early childhood education.

### **8VAC20-23-150. Early/primary education preK-3.**

Endorsement requirements.

1. The candidate must have graduated from an approved teacher preparation program in early/primary education preK-3; or
2. The candidate for the early/primary education preK-3 endorsement must have earned a baccalaureate degree

from a regionally accredited college or university in the liberal arts and sciences, or equivalent, and completed coursework that covers the early/primary education preK-3 competencies and fulfills the following 51 semester-hour requirements:

- a. English (must include composition, oral communication, and literature): 12 semester hours; or complete 6 semester hours in English and pass a rigorous elementary subject test prescribed by the Virginia Board of Education;
- b. Mathematics (must include algebra, geometry, probability and statistics, and methods in teaching elementary mathematics): 12 semester hours; or complete 6 semester hours in mathematics, complete a methods in teaching elementary mathematics course (3 semester hours), and pass a rigorous elementary subject test prescribed by the Virginia Board of Education;
- c. Laboratory sciences: 12 semester hours (in at least two science disciplines and methods in teaching elementary science); or complete 6 semester hours in laboratory science (in two science disciplines), complete a methods in teaching elementary science course (3 semester hours), and pass a rigorous elementary subject test prescribed by the Virginia Board of Education;
- d. History (must include American history and world history): 6 semester hours, and Social Science (must include geography and economics): 6 semester hours; or complete 3 semester hours in history, complete 3 semester hours in social science (geography or economics), and pass a rigorous elementary subject test prescribed by the Virginia Board of Education; and
- e. Arts: 3 semester hours.

**8VAC20-23-160. Elementary education preK-6.**

Endorsement requirements.

- 1. The candidate shall have graduated from an approved teacher preparation program in elementary education preK-6; or
- 2. The candidate for the elementary education preK-6 endorsement must have earned a baccalaureate degree from a regionally accredited college or university majoring in the liberal arts and sciences (or equivalent) and fulfill the following 57 semester-hour requirements:
  - a. English (must include composition, oral communication, and literature): 12 semester hours; or complete 6 semester hours in English and pass a rigorous elementary subject test prescribed by the Virginia Board of Education;
  - b. Mathematics (must include algebra, geometry, probability and statistics, and teaching elementary mathematics): 15 semester hours; or complete 6 hours in mathematics, complete a methods in teaching elementary mathematics course (3 semester hours), and pass a

rigorous elementary subject test prescribed by the Virginia Board of Education;

- c. Science (including a laboratory course): 15 semester hours in at least three science disciplines and at least a three credit science methods course; or complete 6 semester hours (in two science disciplines), complete a methods in teaching elementary science course (3 semester hours), and pass a rigorous elementary subject test prescribed by the Virginia Board of Education;
- d. History (must include American history and world history): 6 semester hours, and Social Science (must include geography and economics): 6 semester hours; or complete 3 semester hours in history, complete 3 semester hours in social science (geography or economics), and pass a rigorous elementary subject test prescribed by the Virginia Board of Education; and
- e. Arts: 3 semester hours.

**8VAC20-23-170. Middle education 6-8.**

Endorsement requirements.

- 1. The candidate must have graduated from an approved teacher preparation discipline-specific program in middle education 6-8 with at least one area of academic preparation from the areas of English, mathematics, science, and history and social sciences; or
- 2. An applicant seeking the middle education 6-8 endorsement must have earned a baccalaureate degree from a regionally accredited college or university in the liberal arts and sciences, or equivalent; and completed the minimum number of semester hours, as indicated, in at least one area of academic preparation (i.e., concentration) that will be listed on the license. The applicant will be restricted to teaching only in the area or areas of concentration listed on the teaching license.
  - a. English. English concentration (must include coursework in language, for example history, structure, grammar, fiction and nonfiction texts, media literacy, advanced composition, and interpersonal communication or speech): 21 semester hours.
  - b. Mathematics. Mathematics concentration (must include coursework in algebra, geometry, probability and statistics, applications of mathematics, and methods of teaching mathematics to include middle school mathematics content): 24 semester hours.
  - c. Science. Science concentration (must include courses in each of the following: biology, chemistry, physics, and Earth and space science; and a laboratory course is required in two of the four areas): 21 semester hours.
  - d. History and social sciences. History and social sciences concentration (must include a course in American history; world history; economics; American government, including state and local government; and geography): 21 semester hours.

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## Part V

Licensure Regulations Governing PreK-12 Endorsements, Special Education, Secondary Grades 6-12 Endorsements, and Adult Education

### **8VAC20-23-180. PreK-12 endorsements, special education, secondary grades 6-12 endorsements, and adult education.**

Individuals seeking licensure with preK-12 endorsements, special education, secondary grades 6-12 endorsements, or adult education may meet requirements through the completion of an approved program or if employed by a Virginia public or nonpublic school through the alternate route to licensure. Components of the licensure program include a degree from a regionally accredited college or university in the liberal arts and sciences, or equivalent; professional teacher's assessment requirements prescribed by the Virginia Board of Education; specific endorsement requirements; and professional studies requirements.

### **8VAC20-23-190. Professional studies requirements.**

Professional studies requirements for adult education, preK-12 endorsements, and secondary grades 6-12 endorsements: 18 semester hours. Professional studies requirements for special education: 21 semester hours. These requirements may be taught in integrated coursework or modules.

1. Human development and learning (birth through adolescence): 3 semester hours.

a. Skills in this area shall contribute to an understanding of the physical, social, emotional, speech and language, and intellectual development of children and the ability to use this understanding in guiding learning experiences.

b. The interaction of children with individual differences - economic, social, racial, ethnic, religious, physical, and mental - should be incorporated to include skills contributing to an understanding of developmental disabilities and developmental issues related to but not limited to low socioeconomic status, attention deficit disorders, developmental disabilities, gifted education including the use of multiple criteria to identify gifted students, substance abuse, child abuse, and family disruptions.

2. Curriculum and instruction: 3 semester hours.

a. Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; effective communication with and among students; selection and use of materials, including media and contemporary technologies; selection, development, and use of appropriate curricula, methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy.

b. Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction must be included.

c. Instructional practices that are sensitive to culturally and linguistically diverse learners, including limited English proficient students; gifted and talented students and those students with disabilities; and appropriate for the level of endorsement sought shall be included.

d. Teaching methods shall be tailored to promote student academic progress and effective preparation for the Virginia Standards of Learning assessments.

e. Methods of improving communication between schools and families, ways of increasing family involvement in student learning at home and in school, and the Virginia Standards of Learning shall be included.

f. Demonstrated proficiency in the use of educational technology for instruction shall be included.

g. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Virginia Board of Education in consultation with the Virginia Department of Social Services that are relevant to the specific teacher licensure routes.

h. Curriculum and instruction for secondary grades 6-12 endorsements shall include middle and secondary education. Pre-student teaching experiences (i.e., field experiences) should be evident within these skills. For preK-12, field experiences shall be at the elementary, middle, and secondary levels.

3. Assessment of and for learning: 3 semester hours.

a. Skills in this area shall be designed to develop an understanding and application of creating, selecting, and implementing valid and reliable classroom-based assessments of student learning, including formative and summative assessments. Assessments designed and adapted to meet the needs of diverse learners must be addressed.

b. Analytical skills necessary to inform ongoing planning and instruction, as well as to understand, and help students understand their own progress and growth must be included.

c. Skills also include the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance.

d. Understanding of state assessment programs and accountability systems, including assessments used for student achievement goal setting as related to teacher evaluation and determining student academic progress, including knowledge of legal and ethical aspects of assessment.

e. Develop familiarity with assessments used in preK-12 education (e.g., diagnostic, college admission exams, industry certifications, placement assessments).

#### 4. The teaching profession: 3 semester hours.

a. Skills in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development, and organization of public education in the United States.

b. Attention must be given to the legal status of teachers and students, including federal and state laws and regulations, school as an organization and culture, and contemporary issues and current trends in education, including the impact of technology on education. Local, state, and federal governance of schools, including the roles of teachers and schools in communities must be included.

c. Professionalism and ethical standards, as well as personal integrity must be addressed.

d. Knowledge and understanding of Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers must be included.

#### 5. Classroom and behavior management: 3 semester hours.

a. Skills in this area shall contribute to an understanding and application of research-based classroom and behavior management techniques, classroom community building, positive behavior supports, and individual interventions, including techniques that promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment.

b. This area shall address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice.

c. Approaches should support professionally appropriate practices that promote positive redirection of behavior, development of social skills and of self-discipline.

d. Knowledge and an understanding of various school crisis management and safety plans and the ability to create a safe, orderly classroom environment must be included. The link between classroom management and the students' ages must be understood and demonstrated in techniques used in the classroom.

#### 6. Reading.

a. Adult education, preK-12, and secondary grades 6-12 - literacy in the content areas: 3 semester hours. Skills in

this area shall be designed to impart an understanding of vocabulary development and comprehension skills in English, mathematics, science, history and social science, and other content areas. Strategies include teaching students how to ask effective questions, summarize and retell both verbally and in writing, and listen effectively. Teaching strategies include literal, interpretive, critical, and evaluative comprehension, as well as the ability to foster appreciation of a variety of fiction and nonfiction texts and independent reading for adolescent learners.

b. Special education - language acquisition and reading and writing: 6 semester hours. Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher must be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher's program. Additional knowledge and skills that add to a beginning teacher's competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

(1) Language acquisition: 3 semester hours. Skills in this area shall be designed to impart a thorough understanding of the Virginia English Standards of Learning as well as the complex nature of language acquisition as a precursor to literacy. Language acquisition shall follow the typical development of linguistic competence in the areas of phonetics, semantics, syntax, morphology, phonology, and pragmatics.

(2) Reading and writing: 3 semester hours. Skills in this area shall be designed to impart a thorough understanding of the Virginia English Standards of Learning as well as the reciprocal nature of reading and writing. Reading shall include phonemic awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Writing shall include writing strategies and conventions as supporting the composing and writing expression and usage and mechanics domains. Additional skills shall include proficiency in understanding the stages of spelling development, the writing process, as well as the ability to foster appreciation of a variety of fiction and nonfiction texts and independent reading.

7. Supervised classroom experience. Supervised clinical experiences shall be continuous and systematic and comprised of early field experiences and a minimum of 10 weeks of full-time student teaching under the supervision of a cooperating teacher with demonstrated effectiveness in the classroom. The summative supervised student teaching experience shall include at least 150 clock hours spent in direct teaching at the level of endorsement.

If a preK-12 endorsement is sought, teaching activities shall be at the elementary and middle or secondary levels. Individuals seeking the endorsement in library media shall

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complete the supervised school library media practicum in a school library media setting. Individuals seeking an endorsement in an area of special education shall complete the supervised classroom experience requirement in the area of special education for which the endorsement is sought. One year of successful full-time teaching experience in the endorsement area in a public or an accredited nonpublic school may be accepted in lieu of the supervised teaching experience. For the Online Teacher License only, one year of successful online teaching experience in the endorsement area in a public school, an accredited nonpublic school, or an accredited virtual school or program may be accepted in lieu of the supervised teaching experience. A fully licensed, experienced teacher shall be available in the school building to assist a beginning teacher employed through the alternate route.

## **8VAC20-23-200. Adult education.**

A. Endorsement requirements. The candidate must have:

1. Earned a baccalaureate degree from a regionally accredited college or university or hold a Collegiate Professional License; and

2. A minimum of 15 semester hours in adult education that must include the following competencies and one semester of supervised successful full-time, or an equivalent number of hours of part-time experience, teaching of adults:

a. Understanding of the nature or psychology of the adult learner or adult development;

b. Understanding of the knowledge, skills, and processes needed for the selection, evaluation, and instructional applications of the methods and materials for adult basic skills including:

(1) Curriculum development in adult basic education or General Educational Development (GED) instruction;

(2) Beginning reading for adults;

(3) Beginning mathematics for adults;

(4) Reading comprehension for adult education;

(5) Foundations of adult education; and

(6) Other adult basic skills instruction.

B. Individuals not holding a Collegiate Professional License or a Postgraduate Professional License must meet the professional teacher's assessment requirements prescribed by the Virginia Board of Education.

## **8VAC20-23-210. Adult English as a second language (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in adult English as a second language; or

2. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with an endorsement in a teaching area; and

3. Completed 21 semester hours of coursework distributed in the following areas:

a. Methods for teaching English as a second language to adults: 3 semester hours;

b. English linguistics: 3 semester hours;

c. Cross-cultural education: 3 semester hours;

d. Modern foreign language: 6 semester hours; and

e. Electives from the following areas: 6 semester hours:

(1) Cross-cultural communication;

(2) Second language acquisition;

(3) General linguistics;

(4) Teaching reading to adults;

(5) Adult English as a second language instruction; or

(6) Adult English as a second language curriculum development.

## **8VAC20-23-220. Career and technical education – agricultural education.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program with a minimum of a baccalaureate degree from a regionally accredited college or university in agricultural education; or

2. Completed 39 semester hours of coursework in agriculture, including at least three semester hours in each of the following areas in subdivisions 2 a through 2 f as well as a minimum of nine hours in one concentration area listed in the following areas subdivisions 2 a through 2 f:

a. Plant science;

b. Animal science;

c. Agricultural mechanics and applied technology with a lab component;

d. Agricultural economics and management;

e. Forestry and wildlife management;

f. Horticulture; and

g. Supervised occupational experience, 3 semester hours, or one year of successful, full-time or the equivalent of relevant occupational experience (a minimum of 2,000 cumulative hours) within the past five years.

B. Technical Professional License. An endorsement in specialized areas may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;

2. Completed two years of successful, full-time or the equivalent of occupational experience within the past five years in the teaching specialty sought;

3. Completed professional studies requirements (human development and learning: 3 semester hours; curriculum and instruction in career and technical education: 3 semester hours; and applications of instructional

technology or classroom and behavior management: 3 semester hours); and

4. Completed an agricultural education certificate or associate degree program in the teaching specialty area sought.

**8VAC20-23-230. Career and technical education – business and information technology.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program with a minimum of a baccalaureate degree from a regionally accredited college or university in business and information technology; or

2. Completed a major in business education or 39 semester hours of coursework in business and information technology, including:

- a. Accounting: 6 semester hours;
- b. Economics: 3 semester hours;
- c. Business law, business principles, management, marketing, or finance: 9 semester hours;
- d. Communications and media to include oral, written, and presentation: 3 semester hours;
- e. Information systems and technology to include computer software applications (e.g., word processing, spreadsheet, database, and presentation), information technology fundamentals, database management, communications systems, programming, software development, security, and networking: 12 semester hours;
- f. Input technologies to include touch keyboarding (required, or documented demonstrated mastery of the touch keyboarding skill), audio input devices, video input devices, pointing devices, touch screens, or other emerging input technologies: 3 semester hours; and
- g. Supervised business experience: 3 semester hours; or one year of successful full-time or the equivalent (i.e., 2,000 part-time hours) relevant occupational experience within the last five years.

B. Technical Professional License. An endorsement in a highly specialized business and information technology area, such as networking, administration, communications systems, programming, database management, Internet application development, medical office procedures, legal office procedures, network administration, and other emerging highly specialized areas may be granted to individuals who have:

- 1. Been recommended by an employing Virginia educational agency;
- 2. Completed two years of successful, full-time or the equivalent occupational experience within the last five years in the teaching specialty area sought;

3. Completed a business certificate or associate degree program from a regionally accredited institution in the teaching specialty area sought; and

4. Completed professional studies requirements (human development and learning: 3 semester hours; curriculum and instruction in career and technical education: 3 semester hours; and applications of instructional technology or classroom and behavior management: 3 semester hours).

**8VAC20-23-240. Career and technical education – family and consumer sciences.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program with a minimum of a baccalaureate degree from a regionally accredited college or university in family and consumer sciences; or

2. Completed a major in family and consumer sciences education or 39 semester hours of coursework in family and consumer sciences distributed in the following areas:

- a. Development of individuals through the lifespan and the family life cycle and family: 9 semester hours;
- b. Resource management, personal and family finance, and consumer economics: 6 semester hours;
- c. Food, nutrition, dietetics, wellness, and food science: 9 semester hours;
- d. Housing, home furnishing, and equipment: 3 semester hours;
- e. Apparel and textiles: 6 semester hours;
- f. Occupational program management: 3 semester hours; and
- g. Supervised occupational experience related to family and consumer sciences, 3 semester hours, or one year of successful, full-time or the equivalent of relevant occupational experience within the last five years.

B. Technical Professional License. An endorsement in a specialized family and consumer sciences area, such as child care occupations, consumer services, family and human services, fashion design occupations, food occupations, hospitality occupations, interior design occupations, and home furnishings occupations, and home and institutional services, may be granted to individuals who have:

- 1. Been recommended by an employing Virginia educational agency.
- 2. Completed at least two years of successful, full-time occupational experience or the equivalent within the past five years in the teaching specialty for which they are seeking endorsement.
- 3. Completed a family and consumer sciences certificate or associate degree program where applicable in the area of endorsement sought.

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4. Completed professional studies requirements (human development and learning: 3 semester hours; curriculum and instruction in career and technical education: 3 semester hours; and applications of instructional technology or classroom and behavior management: 3 semester hours).

## **8VAC20-23-250. Career and technical education – health and medical sciences.**

**A. Endorsement requirements. The candidate must have:**

1. Graduated from an approved program of study with a minimum of a baccalaureate degree from a regionally accredited college or university in a health care program of study and hold a current license or certification as a professional practitioner in the area in which one is to be teaching; or

2. A current license or certification as a professional practitioner in the area in which one is to be teaching and completed two years of successful, full-time or the equivalent of occupational experience within the past five years in an area related to the teaching specialty sought.

**B. Technical Professional License. An endorsement in a specialized health occupations area may be granted to individuals who have:**

1. Been recommended by an employing Virginia educational agency;

2. A license or be certified as a professional practitioner in the area in which one is to be teaching;

3. Completed two years of full-time or the equivalent of occupational experience within the past five years in the teaching specialty sought;

4. Completed a health occupations certificate or associate degree program from a regionally accredited institution in the teaching specialty area sought; and

5. Completed professional studies requirements (human development and learning: 3 semester hours; curriculum and instruction in career and technical education: 3 semester hours; and applications of instructional technology or classroom and behavior management: 3 semester hours).

## **8VAC20-23-260. Career and technical education – marketing education.**

**A. Endorsement requirements. The candidate must have:**

1. Graduated from an approved teacher preparation program with a minimum of a baccalaureate degree from a regionally accredited college or university in marketing education; or

2. Completed a major in marketing education or a minimum of 39 semester hours of coursework in marketing to include:

a. Marketing processes and environment: 3 semester hours;

b. Management and supervision: 6 semester hours;

c. Economics: 3 semester hours;

d. Merchandising and operations: 3 semester hours;

e. Advertising and promotion: 3 semester hours;

f. Sales and selling: 3 semester hours;

g. Communication theory and techniques: 3 semester hours;

h. Consumer behavior: 3 semester hours;

i. International (global) marketing: 3 semester hours;

j. Finance, accounting, or marketing mathematics: 3 semester hours;

k. Technology applications: 3 semester hours; and

l. Supervised marketing occupational experience, 3 semester hours, or one year of full-time work experience in the field of marketing may be accepted in lieu of the supervised marketing internship.

**B. Technical Professional License. An endorsement in a specialized marketing area, such as apparel and accessories, hotel operations, international marketing, or restaurant, may be granted to individuals who have:**

1. Been recommended by an employing Virginia educational agency;

2. Completed two years of full-time occupational experience, or the equivalent, within the last five years in the teaching specialty area sought; and

3. Completed professional studies requirements (human development and learning: 3 semester hours; curriculum and instruction in career and technical education: 3 semester hours; and applications of instructional technology or classroom and behavior management: 3 semester hours).

## **8VAC20-23-270. Career and technical education – technology education.**

**Endorsement requirements. The candidate must have:**

1. Graduated from an approved teacher preparation program from a regionally accredited college or university with a minimum of a baccalaureate degree in technology education; or

2. Completed a major in technology education or 33 semester hours in technology education distributed in the following areas:

a. The nature of technology. Experiences shall include those that promote an understanding of the characteristics, scope, and core concepts of physical, biological, and informational technologies, the relationships among these technologies, and their connections to other science, technology, engineering, and mathematics (STEM) fields: 6 semester hours;

b. Technology and society. Experiences shall include those that develop a working knowledge of the cultural,

social, economic, and political effects of technology, its effect on the environment, and the role of society in the history, development, and use of physical, biological, and informational technologies: 3 semester hours;

c. Engineering. Experiences shall include those that develop comprehension of the attributes of technological design, inclusive of constraints, optimization, predictive analysis, problem solving, critical thinking, technical writing, and integrative mathematics and science: 6 semester hours;

d. Abilities for a technological world. Experiences shall include those that develop the capacity to utilize the design process, to use and maintain technological products and systems, and to assess their impact: 9 semester hours; and

e. The designed world. Experiences shall include those that promote an understanding of current and emerging physical, biological, and informational technologies: 9 semester hours; or

3. Earned a baccalaureate degree from a regionally accredited college or university with a major in one of the following fields of study: architecture, design, engineering, engineering technology, industrial technology, or physics and completed a minimum of 15 semester hours of technology education content coursework, including at least 3 semester hours in each of the following areas:

a. The nature of technology;

b. Technology and society;

c. Engineering;

d. Abilities for a technological world; and

e. The designed world.

## **8VAC20-23-280. Career and technical education – trade and industrial education.**

### A. Endorsement requirements.

1. The candidate must have graduated from an approved teacher preparation program with a minimum of a baccalaureate degree from a regionally accredited college or university in trade and industrial education; or

2. A candidate who has graduated from an approved teacher preparation program that is not in the trade and industrial education program subject area for which the candidate is seeking endorsement must have:

a. A current state licensure or industry certification based on the prescribed standard or examination, if applicable; and

b. Evidence of at least two years of full-time or equivalent occupational experience within the past five years in the teaching specialty for which the candidate is seeking endorsement. A candidate whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a

supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty.

B. Technical Professional License. An endorsement in a specialized trade and industrial education area will be granted to an individual who has:

1. Been recommended by an employing Virginia educational agency;

2. A current license or is currently certified as a professional practitioner in the area in which he is to be teaching, if applicable, or can demonstrate competency in the area of trade and industrial education he is to be teaching;

3. Evidence of at least two years of full-time or the equivalent occupational experience within the past five years in the teaching specialty for which he is seeking endorsement. Candidates whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty; and

4. Completed professional studies requirements (human development and learning: 3 semester hours; curriculum and instruction in career and technical education: 3 semester hours; and applications of instructional technology or classroom and behavior management: 3 semester hours).

C. Add-on endorsement requirements. A candidate must:

1. Hold an active Collegiate Professional or Postgraduate Professional License with a teaching endorsement;

2. Demonstrate competency in the trade or industrial area being sought;

3. Hold current state licensure or industry certification for the trade or industrial area for which endorsement is sought based upon the prescribed standard or examination;

4. Have completed two years or 4,000 clock hours of satisfactory, full-time occupational experience at the journeyman level or an equivalent level in the occupation within the last five years. Candidates whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty; and

5. Have completed 3 semester hours in curriculum and instruction specific to vocational industrial education.

## **8VAC20-23-290. Career and technical education – transition and special needs (add-on endorsement).**

Endorsement requirements. The candidate must have:

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1. Graduated from an approved teacher preparation program with a minimum of a baccalaureate degree from a regionally accredited college or university in special needs; or
2. Completed a major in career and technical education or special education, pre-K-12 with an endorsement in one area of career and technical education or special education preK-12, including 12 semester hours distributed in the following areas:
  - a. Overview of special needs programs and services: 3 semester hours;
  - b. Instructional methods, curriculum, and resources: 3 semester hours;
  - c. Career and life planning, transitioning, occupational information, and delivery of cooperative education programs: 3 semester hours; and
  - d. Purposes and practices and characteristics of special populations: 3 semester hours; and
3. Completed successful, supervised occupational experience, 3 semester hours, or one year of full-time or the equivalent of relevant occupational experience within the past five years.

## **8VAC20-23-300. Computer science.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in computer science; or
2. Earned a baccalaureate degree from a regionally accredited college or university and completed 36 semester hours of coursework distributed in the following areas:
  - a. Mathematics, including discrete mathematics;
  - b. Data structures and algorithm analysis;
  - c. Foundations of computer science; and
  - d. Programming in at least two distinct languages: 6 semester hours.

B. Add-on endorsement requirements in computer science. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. Completed 18 semester hours of coursework distributed in the following areas:
  - a. Mathematics, including discrete mathematics;
  - b. Data structures and algorithm analysis;
  - c. Foundations of computer science; and
  - d. Programming in at least two distinct languages: 6 semester hours.

## **8VAC20-23-310. Dance arts preK-12.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in dance arts; or
2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in dance arts or 24 semester hours with coursework distributed in the following areas:
  - a. Development of movement language: 9 semester hours.
    - (1) A course in each area of ballet, folk, jazz, and modern dance: 6 semester hours; and
    - (2) Area of concentration in one area of ballet, folk, jazz, or modern dance beyond the entry level: 3 semester hours;
  - b. Composition, improvisation, and dance arts production, may include stage lighting, stage costuming, or stage makeup: 3 semester hours;
  - c. Scientific foundations, including human anatomy, kinesiology, and injury prevention and care for dance arts: 9 semester hours; and
  - d. Cultural understanding, including cultural context and dance history: 3 semester hours.

B. Add-on endorsement requirements in dance arts. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. Completed 15 semester hours of coursework distributed in the following areas:
  - a. Development of movement language: 9 semester hours.
    - (1) A course in each area of ballet, folk, jazz, and modern: 6 semester hours; and
    - (2) Area of concentration in one area of ballet, folk, jazz, or modern beyond the entry level: 3 semester hours;
  - b. Composition, improvisation, and dance arts production, may include stage lighting, stage costuming, or stage makeup: 3 semester hours; and
  - c. Cultural understanding, including cultural context and dance history: 3 semester hours.

## **8VAC20-23-320. Driver education (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. Completed an approved teacher preparation program in driver education; or
3. Completed 6 semester hours of coursework distributed in the following areas:

a. Driver Task Analysis: to include instructional strategies as prescribed in the Curriculum and Administrative Guide for Driver Education in Virginia 2010 ([http://www.doe.virginia.gov/instruction/driver\\_education/curriculum\\_admin\\_guide/index.shtml](http://www.doe.virginia.gov/instruction/driver_education/curriculum_admin_guide/index.shtml)); understanding the highway transportation system; applying Virginia's motor vehicle laws; personal, legal, and emotional factors; visual and sensory perception; risk perception and risk management; space management and other defensive driving techniques; environmental, financial, and other vehicle ownership responsibilities; vehicle technologies; and the scientific principles of the driving tasks: 3 semester hours; and

b. Principles and methodologies of classroom and in-car instruction, including applying classroom and in-car teaching techniques for delivering concurrent instruction; applying perception, vehicle balance, speed control, and other risk management principles to the development of precision driving skills; and understanding program administrative tasks, including juvenile licensing laws and issuance of a driver's license; a minimum of 14 hours of actual behind-the-wheel supervised teaching experience demonstrating vehicle control skills and performance capabilities that includes 2 hours of basic evasive maneuvers; and a minimum of 14 hours of mentorship with a licensed, endorsed driver education teacher: 3 semester hours.

4. A current, valid Virginia driver's license.

**8VAC20-23-330. Engineering.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in engineering;

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in engineering or an engineering subspecialty at an Accreditation Board for Engineering and Technology (ABET)-accredited college or university program;

3. Earned a baccalaureate degree from a regionally accredited college or university and completed an engineering technology, science, or technology education major with at least 12 semester hours of coursework in engineering courses, including:

a. Introduction to engineering design;

b. Statics or dynamics;

c. Circuits or fluid mechanics; and

d. Thermodynamics;

4. Completed a science, mathematics, or technology education major with at least five years of successful experience working in an engineering environment; or

5. Hold a professional engineer's (P.E.) license.

**8VAC20-23-340. English.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in English; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in English or a minimum of 36 semester hours of coursework distributed in the following areas:

a. Literacy and reading: 12 semester hours. Courses must include:

(1) Survey of British literature;

(2) Survey of American literature;

(3) World literature; and

(4) Literary theory and criticism.

b. Language: 3 semester hours. Includes the development and nature of the English language.

c. Composition: 12 semester hours. Experiences shall include:

(1) A grammar course integrating grammar and writing;

(2) The teaching of writing, based on current knowledge and most effective practices, including the use of technology for this purpose;

(3) An advanced composition course emphasizing rhetorical practices of expository, persuasive, argumentative, and analytical writing; and

(4) Teaching research including ethical accessing, evaluating, organizing, crediting, and synthesizing information.

d. Oral language: 3 semester hours. Experiences shall include the teaching of public and presentation speaking, including nonverbal communication and the role of communication in small group and mass communication.

e. Electives from the areas listed in this section: 6 semester hours.

**8VAC20-23-350. English as a second language preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in English as a second language; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed 24 semester hours of coursework distributed in the following areas:

a. Teaching of reading and writing. Courses must include the five areas of reading instruction: phonemic awareness, phonics, fluency, vocabulary and text comprehension as well as the similarities and differences between reading in a first language and reading in a second language and a balanced literacy approach; one course must address teaching reading to English language learners: 6 semester hours;

b. English linguistics: 3 semester hours;

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- c. Cross-cultural education: 3 semester hours;
- d. Second language acquisition: 3 semester hours;
- e. Methods of English as a second language, to include the World-Class Instructional Design and Assessment (WIDA) English Language Development (ELD) Standards: 3 semester hours;
- f. English as a second language assessment to include assessing comprehension and communication in English: 3 semester hours; and
- g. Electives from the areas listed in this section: 3 semester hours.

## **8VAC20-23-360. Foreign language preK-12.**

A. The specific language of the endorsement will be noted on the license.

B. Endorsement requirements for foreign language preK-12 - languages other than Latin. The candidate must have:

- 1. Graduated from an approved teacher preparation program in a foreign language; or
- 2. Earned a baccalaureate degree from a regionally accredited college or university and completed 30 semester hours of coursework above the intermediate level in the foreign language distributed in the following areas:

- a. Advanced grammar and composition;
- b. Conversation, culture and civilization, and literature; and
- c. In addition to the 30 semester hours, completed a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels.

3. Endorsement in a second language may be obtained with 24 semester hours of coursework above the intermediate level.

4. Candidates who have learned a foreign language without formal academic credit in a regionally accredited college or university must complete the following requirements:

- a. Achieve a qualifying score on a foreign language assessment in the appropriate language as prescribed by the Virginia Board of Education; and
- b. Earn a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels from a regionally accredited college or university in the United States or obtain teacher certification in another country with at least 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels at a foreign institution.

C. Endorsement requirements for foreign language preK-12 - Latin. The candidate must have:

- 1. Graduated from an approved teacher preparation program in Latin; or
- 2. Earned a baccalaureate degree from a regionally accredited college or university and completed 24 semester

hours of Latin above the intermediate level. A maximum of six semester hours of Roman history, Roman life, mythology, or archaeology may be included in the total hours. A minimum of 3 semester hours of methods of teaching Latin at the elementary and secondary levels are required.

D. Endorsement requirements for foreign language preK-12 - American Sign Language.

1. The candidate must have (i) graduated from an approved teacher preparation program in a foreign language - American Sign Language or (ii) earned a baccalaureate degree from a regionally accredited college or university and completed a major in American Sign Language or 24 semester hours above the intermediate level in American Sign Language. The program shall include (i) courses in advanced grammar and syntax, conversation, and culture and (ii) a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels.

2. Native users or candidates who have learned American Sign Language without formal academic credit in a regionally accredited college or university, as explained in subdivision 1 of this subsection, must complete the following requirements:

a. Competency in American Sign Language demonstrated by written documentation of one of the following:

(1) Hold a current, valid Provisional, Qualified, or Professional certification by the American Sign Language Teachers' Association;

(2) Hold one of the following current, valid national certificates in interpreting:

(a) Registry of Interpreters for Deaf certification in at least one of the following: Certificate of Interpretation (CI), Certificate of Deaf Interpretation (CDI), Reverse Skills Certification (RSC), or Comprehensive Skills Certificate (CSC);

(b) Hold a current, valid National Association for the Deaf Level IV certification or higher; or

(c) National Interpreter Certification (NIC); or

(3) Complete requirements by achieving a qualifying score on an assessment demonstrating proficiency in American Sign Language prescribed by the Virginia Board of Education.

b. Completed a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels from a regionally accredited college or university in the United States; and

c. Earned a minimum of 6 semester hours in coursework including grammar and syntax of American Sign Language.

**8VAC20-23-370. Gifted education (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. Completed an approved teacher preparation program in gifted education; or
3. Completed the following requirements:
  - a. Completed 12 semester hours of graduate-level coursework in gifted education distributed in the following areas:
    - (1) Academic and social-emotional characteristics and special populations of gifted learners: 3 semester hours;
    - (2) Curriculum models and differentiation of instruction for gifted learners: 3 semester hours;
    - (3) Identification and assessment of gifted learners: 3 semester hours; and
    - (4) Current trends and issues in the field of gifted education: 3 semester hours; and
  - b. Completed a practicum of at least 45 instructional hours. This practicum shall include a minimum of 45 instructional hours of successful teaching experiences with gifted students in a public or an accredited nonpublic school. In lieu of the practicum, one year of successful, full-time teaching experience with gifted students in a public or an accredited nonpublic school may be accepted provided the teacher is assigned a mentor holding a valid license with an endorsement in gifted education.

**8VAC20-23-380. Health and physical education preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in health and physical education; or
2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in health and physical education or 45 semester hours of coursework distributed in the following areas:
  - a. Personal health and safety: 3 semester hours;
  - b. Human anatomy, physiology, and kinesiology: 9 semester hours;
  - c. General health and physical education theory, including curriculum design and development in health and physical education: 3 semester hours;
  - d. Instructional methods and skills for secondary physical education: 3 semester hours;
  - e. Instructional methods and skills for elementary physical education: 3 semester hours;
  - f. School health methods course: 3 semester hours;

g. Health and physical education electives: 9 semester hours;

h. Adapted physical education: 3 semester hours;

i. Technology in health and physical education: 3 semester hours;

j. Nutrition: 3 semester hours; and

k. Measurement and evaluation in the content area: 3 semester hours.

**8VAC20-23-390. History and social sciences.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in history and social sciences; or
2. Earned a baccalaureate degree from a regionally accredited college or university and completed 51 semester hours of coursework distributed in the following areas:
  - a. History: a major in history or 18 semester hours in history (must include coursework in American history, Virginia history, and world history);
  - b. Political science: a major in political science or 18 semester hours in political science to include coursework in American government (state and local government);
  - c. Geography: 9 semester hours; and
  - d. Economics: 6 semester hours.

B. Add-on endorsement requirements in history, political science, geography, and economics. The candidate must have:

1. Earned a baccalaureate degree from a regionally accredited college or university and have a teaching license with an endorsement in history, political science, geography, or economics; and
2. Completed 21 semester hours of coursework in the additional social science area (i.e., history, political science, geography, or economics) sought.

**8VAC20-23-400. Journalism (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. Completed a minimum of 15 semester hours in journalism.

**8VAC20-23-410. Keyboarding (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. Completed 6 semester hours in keyboarding. Three of the six semester hours may be from either formal keyboarding instruction or documented demonstrated

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mastery of the touch keyboarding skill, and three semester hours must include document formatting skills, word processing, and computer applications.

## **8VAC20-23-420. Library media preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved preparation program in school library media; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed 24 semester hours distributed in the following areas:

a. Teaching for learning, including knowledge of learners and learning; effective and knowledgeable teaching; collaborative instructional partners; integration of learning standards and technologies; assessment of and for student learning; and the design and implementation of instruction that engages students interests and develops their ability to inquire, think critically, and gain and share knowledge: 3 semester hours;

b. Literacy and reading, including familiarity with children's, young adult, and professional literature in multiple formats; use of a variety of strategies to promote reading for enjoyment and information; collection development to support diverse learning needs; and collaboration to reinforce reading instructional strategies: 6 semester hours;

c. Information and knowledge, including efficient and ethical information-seeking behavior, ethical and equitable access to information, design and delivery of authentic learning through current and emerging technology, and the use of evidence-based action research to create and share knowledge: 6 semester hours;

d. Advocacy and leadership, including networking with the library community, commitment to professional development, leadership in articulating the role of the school library program in the educational community and in student learning, and advocacy for school library programs, resources, and services: 3 semester hours; and

e. Program management and administration, including planning, developing, implementing, and evaluating library programs, collections, and facilities; personnel; funding; organization of materials; professional ethics; and strategic planning and program assessment: 6 semester hours.

3. Supervised school library media practicum. Experiences shall include clinical experience to give the applicant an opportunity to apply the skills, understandings, and competencies required for the endorsement. One year of successful, full-time experience as a school librarian in a public or accredited nonpublic school may be accepted in lieu of the supervised practicum.

## **8VAC20-23-430. Mathematics.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in mathematics; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in mathematics or 36 semester hours of coursework distributed in each of the following areas:

a. Algebra. Experience shall include linear algebra (matrices, vectors, and linear transformations) and abstract algebra (ring, group, and field theory);

b. Geometry. Experience shall include Euclidean and non-Euclidean geometries;

c. Analytic geometry;

d. Probability and statistics;

e. Discrete mathematics. Experience shall include the study of mathematical properties of finite sets and systems and linear programming;

f. Calculus. Experience shall include multivariable calculus; and

g. Mathematical modeling.

## **8VAC20-23-440. Mathematics – Algebra I (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and

2. Either:

a. Completed an approved teacher preparation program in Algebra I; or

b. Completed 24 semester hours that include coursework in each of the following areas:

(1) Elementary functions, introductory college algebra, and trigonometry;

(2) Linear algebra;

(3) Calculus;

(4) Euclidean geometry;

(5) Probability and statistics;

(6) Discrete mathematics;

(7) Mathematical modeling; and

(8) Methods of teaching algebra.

## **8VAC20-23-450. Music education – instrumental preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in music education - instrumental; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed 42 semester hours of coursework distributed in the following areas:

a. Basic music knowledge. Experiences shall be related to music theory, music history, and literature: 18 semester hours.

b. Musical performance. Experiences shall consist of developing competency in a primary performance medium (band or orchestral instrument), in a secondary performance medium (band, orchestral, or keyboard instrument), and in teaching, rehearsing, and conducting ensembles: 18 semester hours.

c. Electives with coursework selected from either of the two areas listed in subdivisions 2 a and 2 b of this section: 6 semester hours.

### **8VAC20-23-460. Music education – vocal/choral preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in music education - vocal/choral; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed 42 semester hours of coursework distributed in the following areas:

a. Basic music knowledge. Experiences shall be related to music theory, music history, and literature: 18 semester hours.

b. Musical performance. Experiences shall consist of developing competency in a primary and secondary medium, selected from voice or keyboard and in teaching, rehearsing, and conducting ensembles: 18 semester hours.

c. Electives with coursework selected from either of the two areas listed in subdivisions 2 a and 2 b of this section: 6 semester hours.

### **8VAC20-23-470. Science – biology.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in biology;

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in biology or 32 semester hours in biology, and at least one course in each of the following: genetics, biochemistry/molecular biology, cell biology, botany, zoology, anatomy/physiology, ecology, and evolutionary biology and other preparation consistent with the competencies for the endorsement; or

3. Earned an endorsement in another science discipline and at least 18 semester hours in biology, including at least one course in each of the following areas: genetics, biochemistry/molecular biology or cell biology, botany or zoology, anatomy/physiology, and evolutionary biology or ecology.

### **8VAC20-23-480. Science – chemistry.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in chemistry;

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in chemistry or 32 semester hours in chemistry, including at least one course in each of the following: inorganic chemistry, organic chemistry, physical chemistry, biochemistry, and analytical chemistry and other preparation consistent with the competencies required for the endorsement; or

3. Earned an endorsement in another science discipline and at least 18 semester hours in chemistry, including at least one course in each of the following areas: inorganic chemistry, organic chemistry, physical chemistry, biochemistry, and analytical chemistry.

### **8VAC20-23-490. Science – Earth science.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in Earth science;

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in Earth science, geology, or environmental science with a minimum of 32 semester hours in Earth sciences, including at least one course in each of the following: structural geology, petrology, paleontology, oceanography, meteorology, and astronomy/space science; or

3. Earned an endorsement in another science discipline and at least 18 semester hours in Earth sciences, including at least one course in each of the following areas: structural geology, petrology, paleontology, oceanography, meteorology, and astronomy/space or planetary science.

### **8VAC20-23-500. Science – physics.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in physics;

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in physics or 32 semester hours in physics, including the following coursework: mechanics, electricity and magnetism, optics, and modern physics and other preparation consistent with the competencies required for the endorsement; or

3. Earned an endorsement in another science discipline and at least 18 semester hours in physics, including preparation in each of the following areas: mechanics, electricity and magnetism, optics, and modern physics.

### **8VAC20-23-510. Special education – adapted curriculum K-12.**

Endorsement requirements: The candidate must have:

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1. Graduated from an approved program in special education - adapted curriculum; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed 27 semester hours in the education of students with disabilities distributed in the following areas:

a. Core coursework: 12 semester hours distributed among the following areas:

(1) Foundations: 3 semester hours. Characteristics that include knowledge of the foundation for educating students with disabilities; historical, ethical, and legal aspects that include an understanding and application of the federal and state regulatory requirements; and expectations associated with identification, education, and evaluation of students with disabilities;

(2) Assessment and evaluation: 3 semester hours. Includes an understanding and application of the foundation of assessment and evaluation related to best practices in special education, including types and characteristics of assessment, introduction to formal and informal assessment, and the use of assessments and other information to determine special education eligibility, service delivery, curriculum, and instruction of students with disabilities. Understanding of the current legal and ethical issues related to assessment selection and use, including comprehensive evaluation requirements, students with disabilities participation in the state and local accountability systems, assessment options, appropriate grading and testing accommodations, and assessment of students from diverse backgrounds.

(3) Collaboration that includes skills in consultation, case management, co-teaching, and collaboration: 3 semester hours. Includes understanding roles and responsibilities, knowledge and application of effective communication skills and of culturally responsive practices and strategies, and the ability to develop home, school, and community partnerships to address the needs of students with disabilities.

(4) Management of classroom instruction and behaviors: 3 semester hours. Includes an understanding and knowledge of research-based classroom management techniques, positive behaviors supports, and individual interventions and a demonstrated ability to create a safe, orderly classroom environment including classroom organization, instructional design, and establishment of classroom routines and procedures. Knowledge of the elements of effective instructional planning, differentiation of instruction, and other instructional approaches to enhance student engagement and achievement. Understanding of behavior assessments, data collection and analysis, and development and monitoring of behavior intervention plans.

b. Adapted curriculum coursework: 15 semester hours of coursework distributed in the following areas:

(1) Characteristics: 3 semester hours. Skills in this area include the ability to demonstrate knowledge of the characteristics, including medical and health conditions, and learning and support needs of students with disabilities (K-12) whose cognitive and functional skills are significantly different from typically developing peers and therefore require adaptations to the general curriculum for an appropriate education, including, but not limited to, students with autism spectrum disorders, developmental delay, intellectual disability, traumatic brain injury, and multiple disabilities including sensory, deaf-blindness, speech-language, orthopedic and/or health impairments as an additional disability to those referenced above.

(2) Individualized education program (IEP) implementation: 3 semester hours. Knowledge of the eligibility process and legal and regulatory requirements of IEP development, including timelines, components, team composition, roles, and responsibilities. Skills in this area include the ability to apply knowledge of assessment and evaluation throughout the K-12 grade levels to construct, use, and interpret a variety of standardized and nonstandardized data collection techniques; to make decisions about student progress, instruction, program, goal development, modifications, adaptations, placement, and teaching methodology for students with disabilities who are accessing the general education curriculum and Standards of Learning through an aligned curriculum; and to demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities in an adapted curriculum across the K-12 grade levels.

(3) Transitioning: 3 semester hours. Skills in this area include the ability to prepare students and work with families to provide successful student transitions throughout the educational experience to include postsecondary education, training, employment, and independent living that addresses an understanding of long-term planning, age-appropriate transition assessments, career development, life skills, community experiences and resources, and self-determination to include goal setting, decision making, problem solving, self-awareness and self-advocacy, guardianship, and other legal considerations.

(4) Instructional methods and strategies for the adapted curriculum: 3 semester hours. An understanding and application of service delivery, curriculum, and instruction of students with disabilities who need an adapted curriculum. Knowledge of the general curriculum requirements and expectations and how to provide access to the curriculum based on student

characteristics and needs. Skills in this area include the ability to understand and use a range of modifications, adaptations, special instructional strategies, and research-based interventions that reflect best practice in reading, writing, and mathematics instruction for students with more significant disabilities; ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments; knowledge of available assistive and instructional technologies, including alternative communication methods and systems to promote learning and independence for students with disabilities in the adaptive curriculum and the ability to evaluate its effectiveness; ability to develop and use curriculum-based and standardized assessment to conduct ongoing evaluations of instructional material and practices to determine effectiveness and assess student needs as they relate to curriculum design and delivery; ability to modify and adapt instructional content in a variety of settings and collaborate with general education content teachers to develop and implement instructional practices that meet the needs of students with disabilities in the adapted curriculum and monitor student progress.

(5) Individualized supports and specialized care of students with significant disabilities: 3 semester hours. Knowledge of and ability to implement adapted strategies to address the positioning, handling, communication, personal care, and medical needs of students with significant disabilities. Knowledge and understanding of the roles of related disciplines and service providers in collaborative planning and service delivery. Demonstration of the ability to develop and utilize a blended curriculum design to address disability-specific or unique needs such as feeding and communication while addressing the adapted curriculum requirements.

**8VAC20-23-520. Special education blindness and visual impairments preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in special education visual impairments preK-12; or
2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in special education blindness and visual impairments or 30 semester hours in education of students with visual impairments, distributed with at least one course in each of the following areas:
  - a. Characteristics of students with visual impairment. Provides an overview of the characteristics of and services to persons with visual impairments, including the impact of visual impairment on infant and child growth and development, child and adolescent emotional and social development, and family interaction patterns.

Includes the educational, conceptual, psychosocial, and physical implications of a visual impairment.

b. Foundations. Includes knowledge of the foundation for educating students with disabilities; historical, ethical, and legal aspects that include understanding and application of the regulatory requirements; and expectations associated with identification, education, and evaluation of students with disabilities.

c. Braille code: 3 semester hours. Includes the literary code of Braille, its implications for educational and literacy programs for students with visual disabilities and how to teach the Braille code to students with visual impairments.

d. Braille reading and writing: 3 semester hours. Includes instruction in the various technologies used by students who use Braille; basic instruction on transcription of advanced Braille codes, including music, foreign language, chemistry, computer Braille, and Nemeth code (Braille mathematics code); techniques for teaching skills in each code; and technology tools used to create Braille and tactile materials in addition to other assistive technologies used for instruction in mathematics and science.

e. Medical and educational implications of visual impairment. Includes anatomy of the human eye, normal visual development, pathology of the eye, examination procedures for the identification of visual pathology, and the effects of pathology on visual learning and development.

f. Assistive technology for students with sensory impairment. Introduces specific technology and resources available to enhance and improve ability of individuals with sensory disabilities and includes literacy skill development of students who are blind or visually impaired using technology.

g. Curriculum and assessment. Includes knowledge of educational assessments used with students with visual impairments and additional disabilities including deaf-blindness. Addresses assessment of technology needs of students with visual impairments, including functional vision assessments, learning media assessments, assistive technology, and assessment in areas of the expanded core curriculum; application of assessment results to development of the individualized education program (IEP); planning for placement; and services and accommodations for students with visual impairments.

h. Positive behavior intervention supports. Includes understanding of research-based, positive behavior intervention supports and individual interventions; knowledge of the elements of effective instructional planning, differentiation of instruction, and other instructional approaches to enhance student engagement and achievement; and understanding of behavior

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assessments, data collection and analysis, development and monitoring of behavior intervention plans.

i. Collaboration. Includes skills in consultation, case management, co-teaching, and collaboration that include understanding roles and responsibilities, knowledge and application of effective communication skills, of culturally responsive practices and strategies, and the ability to develop home, school, and community partnerships to address the needs of students who are visually impaired.

j. Teaching methods.

(1) Includes methods of teaching compensatory skills, the core curriculum, and technology used by students who are blind and visually impaired; introduces individual family service plans (IFSPs); and includes understanding and application of development and implementation of the IEP, including service delivery, curriculum, and instruction of students who are visually impaired.

(2) Knowledge of the general curriculum requirements and expectations and how to provide access to the curriculum based on student characteristics and needs.

(3) Ability to assess, interpret data, and implement instructional practices to address the identified needs of the students. Skills in this area include the ability to identify, understand, and implement a range of specialized instructional strategies and research-based interventions that reflect best practice in instruction for students who are visually impaired.

(4) Ability to align the instructional practices and intervention with the Standards of Learning and state assessments.

(5) Ability to develop and use curriculum-based and standardized assessments to conduct ongoing evaluations of instructional materials and practices to assess student needs as they relate to curriculum design and delivery.

(6) Ability to model and directly teach instructional strategies in a variety of settings, and monitor student progress.

(7) Ability to adapt materials and procedures to meet the needs of students with visual impairments.

k. Orientation and mobility. Includes the components of orientation and mobility (O&M); how the need for independent travel in the blind population created the field of O&M; and the philosophy and history of O&M, including cane instruction, dog guides, and methods of travel. Addresses techniques in developing orientation skills and basic mobility instruction. Motor and concept skill development are emphasized.

## **8VAC20-23-530. Special education deaf and hard of hearing preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in special education deaf and hard of hearing; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in special education deaf and hard of hearing or 27 semester hours in education of students who are deaf and hard of hearing distributed in the following areas:

a. Foundations: 3 semester hours. Includes knowledge of the foundation for educating students with disabilities; historical, ethical and legal aspects that include understanding and application of the regulatory requirements; and expectations associated with identification, education, and evaluation of students with disabilities.

b. Characteristics: 3 semester hours. Includes the ability to demonstrate knowledge of etiologies of hearing loss, definitions, characteristics, learning, and support needs of students who are deaf and hard of hearing from pre-K through secondary levels, who may be using various communication modalities/languages and who may have additional disabilities.

c. Assessment and evaluation: 3 semester hours. Includes an understanding and application of the foundation of assessment and evaluation related to best practices, including types and characteristics of assessments, formal and informal assessment, and the use of assessment information to determine special education eligibility and inform service delivery, curriculum, accommodations, instructional methods, and student progress. Understanding comprehensive evaluation requirements, participation of students with disabilities in state and local accountability systems, assessment options, appropriate testing accommodations, and assessment of students from diverse backgrounds.

d. Instructional planning: 3 semester hours.

(1) Familiarity with individual family service plans (IFSPs).

(2) An understanding and application of development and implementation of the individualized education program (IEP) including service delivery, curriculum, and instruction of students who are deaf and hard of hearing and transition.

(3) Knowledge of the general curriculum requirements and expectations and how to provide access to the curriculum based on student characteristics and needs.

(4) Ability to assess, interpret data, and implement instructional practices to address the identified needs of the students. Skills in this area include the ability to identify, understand, and implement a range of specialized instructional strategies and research-based

interventions that reflect best practice in instruction for students who are deaf and hard of hearing.

(5) Ability to align the instructional practices and intervention with the Standards of Learning and state assessments.

(6) Ability to develop and use curriculum-based and standardized assessments to conduct ongoing evaluations of instructional materials and practices to assess student needs as they relate to the curriculum design and delivery.

(7) Ability to model and directly teach instructional strategies in a variety of settings, collaborate with general educators to develop and implement instructional practices that meet the needs of students who are deaf and hard of hearing, and monitor student progress.

e. Speech, language, and literacy development: 3 semester hours. Includes an understanding of the normal developmental sequence of speech, language (oral, signed, and written), auditory, and cognitive milestones, varying methodologies and strategies used in assessing language skills (through the air and spoken) of a student who is deaf and hard of hearing; demonstrate skills necessary to foster and enhance language development and communication skills in students who are deaf and hard of hearing including American Sign Language, cued speech, and listening and spoken language skills. Ability to model and directly teach instructional strategies that foster language and literacy development.

f. Classroom and behavior management: 3 semester hours. Includes an understanding and knowledge of research-based classroom management techniques, positive behavior intervention supports and individual interventions; and demonstrated ability to create a safe, orderly classroom environment including classroom organization, instructional design, and establishment of classroom routines and procedures. Knowledge of the elements of effective instructional planning, differentiation of instruction, and other instructional approaches to enhance student engagement and achievement. Understanding of behavior assessments, data collection and analysis, development, and monitoring of behavior intervention plans

g. Audiology and speech and hearing science: 3 semester hours. Understanding of the basic principles of sound reception and production including neuroanatomy of speech and hearing mechanisms and physical characteristics and measurement of acoustic stimuli; biological, neurological, and acoustic bases of communication; reading and interpreting audiograms and other audiologic assessments used in determining eligibility; knowledge of types, degrees, and effects of hearing loss on developmental domains; relevance of age of onset, age of identification of hearing loss, and age of amplification and intervention in speech and language

development; ability to troubleshoot hearing aids, external components of cochlear implants, and other assistive listening devices; ability to foster development of listening skills.

h. Collaboration: 3 semester hours. Includes skills in consultation, case management, co-teaching, and collaboration that includes understanding roles and responsibilities, knowledge and application of effective communication skills, of culturally responsive practices and strategies, and the ability to develop home, school, and community partnerships to address the needs of students who are deaf and hard of hearing.

i. Communication Modalities: 3 semester hours. Includes introduction to the various communication modalities used by students who are deaf and hard of hearing, including listening and spoken language, cued speech, speech reading, and through the air communication including use of American Sign Language (ASL) and contact varieties of signed language and coursework to learn ASL.

## **8VAC20-23-540. Special education early childhood (birth-age five years).**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in early childhood special education; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in early childhood special education or 27 semester graduate hours in early childhood special education, including at least one course in each of the following:

a. Foundations and legal aspects of special education: 3 semester hours;

b. Assessment for diagnosis, program planning, and curriculum-based measurement to document progress for young children with typical development, disabling, and at-risk conditions: 3 semester hours;

c. Curriculum and instructional programming for preschool: 3 semester hours;

d. Speech and language development and intervention: 3 semester hours;

e. Medical aspects: 3 semester hours;

f. Social and emotional skills and behavior management for early childhood: 3 semester hours;

g. Consultation, co-teaching, coaching, and mentoring: 3 semester hours;

h. Family-centered intervention: 3 semester hours; and

i. Early childhood elective: 3 semester hours.

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## **8VAC20-23-550. Special education – general curriculum K-12.**

Endorsement requirements: The candidate must have:

1. Graduated from an approved program in special education - general curriculum; or

2. Earned a baccalaureate degree from a regionally accredited college or university and completed 27 semester hours in the education of students with disabilities distributed in the following areas:

a. Core coursework: 12 semester hours distributed among the following areas:

(1) Foundations: 3 semester hours. Characteristics that include knowledge of the foundation for educating students with disabilities; historical, ethical, and legal aspects that include an understanding and application of the federal and state regulatory requirements; and expectations associated with identification, education, and evaluation of students with disabilities.

(2) Assessment and evaluation: 3 semester hours. Includes an understanding and application of the foundation of assessment and evaluation related to best practice in special education, including types and characteristics of assessment, introduction to formal and informal assessment, and the use of assessments and other information to determine special education eligibility, service delivery, curriculum, and instruction of students with disabilities. Understanding of the current legal and ethical issues related to assessment selection and use, including comprehensive evaluation requirements, students with disabilities participation in the state and local accountability systems, assessment options, appropriate grading and testing accommodations, and assessment of students from diverse backgrounds.

(3) Collaboration that includes skills in consultation, case management, co-teaching, and collaboration: 3 semester hours. Includes understanding roles and responsibilities, knowledge and application of effective communication skills and of culturally responsive practices and strategies and the ability to develop home, school, and community partnerships to address the needs of students with disabilities.

(4) Management of classroom instruction and behaviors: 3 semester hours. Includes an understanding and knowledge of research-based classroom management techniques, positive behavior support, and individual interventions and a demonstrated ability to create a safe, orderly classroom environment, including classroom organization, instructional design, and establishment of classroom routines and procedures. Knowledge of the elements of effective instructional planning, differentiation of instruction, and other instructional approaches to enhance student engagement and

achievement. Understanding of behavior assessments, data collection and analysis, development, and monitoring of behavior intervention plans.

b. General curriculum coursework: 15 semester hours distributed in the following areas:

(1) Characteristics: 3 semester hours. Skills in this area shall include the ability to demonstrate knowledge of definitions, characteristics, and learning and behavioral support needs of students with disabilities who are accessing the general education curriculum at the elementary, middle, and high school levels, including but not limited to, students with learning disabilities, emotional disability, and intellectual disabilities; developmental delay; autism; other health impairments; traumatic brain injury; and multiple disabilities.

(2) Individualized education program development and implementation: 3 semester hours. Knowledge of the eligibility process and legal and regulatory requirements of IEP development including timelines, components, team composition, and roles and responsibilities. Skills in this area include the ability to apply knowledge of assessment and evaluation throughout the K-12 grade levels to construct, use, and interpret a variety of standardized and nonstandardized data collection techniques; to make decisions about student progress, instructional program, goal development, accommodations, placement, and teaching methodology for students with disabilities who are accessing the general education curriculum and the standards of learning; and to demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities who are accessing the general education curriculum across the K-12 grade levels.

(3) Transitioning: 3 semester hours. Skills in this area include the ability to prepare students and work with families and community agencies to provide successful student transitions throughout the educational experience to include postsecondary education training, employment, and independent living that addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy, and self-determination, guardianship, and legal considerations.

(4) Instructional strategies in reading and writing: 3 semester hours.

(a) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in reading and writing.

(b) Knowledge of the general curriculum, English requirements and expectations, and how to provide access to the curriculum based on student characteristics and needs.

(c) Ability to assess, interpret data, and implement instructional practices to address the identified reading needs of the students. Skills in this area include the ability to identify, understand, and implement a range of specialized instructional strategies and research-based interventions that reflect best practice in reading and writing instruction for students with disabilities.

(d) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(e) Knowledge and ability to utilize current assistive and instructional reading and writing technologies to promote learning and independence for students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(f) Ability to develop and use curriculum-based and standardized reading and writing assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as they relate to the curriculum design and delivery.

(g) Ability to model and directly teach reading and writing instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the general curriculum, and monitor student progress.

(5) Instructional strategies in mathematics: 3 semester hours.

(a) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in mathematics.

(b) Knowledge of the general curriculum mathematics requirements and expectations and how to provide access to the curriculum based on student characteristics and needs.

(c) Ability to assess, interpret data, and implement instructional practices to address calculations, reasoning, and problem-solving skills. Skills in this area include the ability to understand and use a range of specialized mathematics instructional strategies and research-based interventions that reflect best practice in mathematics instruction for students with disabilities.

(d) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(e) Knowledge of and ability to utilize current mathematics related assistive and instructional technologies to promote learning and independence for students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(f) Ability to develop and use curriculum-based and standardized mathematics assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as they relate to the mathematics curriculum design and delivery.

(g) Ability to model and directly teach mathematics instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the mathematics general curriculum, and monitor student progress.

**8VAC20-23-560. Special education – general curriculum K-6 (add-on endorsement).**

Endorsement requirements: The candidate must:

1. Hold an earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with an endorsement in elementary education (i.e., early/primary education preK-3 or elementary education preK-6).

2. Have completed 15 semester hours in the education of students with disabilities distributed in each of the following areas:

a. Foundations: 3 semester hours. Characteristics that include knowledge of the foundation for educating students with disabilities; historical, ethical, and legal aspects that include an understanding and application of the federal and state regulatory requirements; and expectations associated with identification, education, and evaluation of students with disabilities.

b. Individualized education program development and implementation: 3 semester hours. Knowledge of the eligibility process and legal and regulatory requirements of IEP development including timelines, components, team composition, and roles and responsibilities. Skills in this area include the ability to apply knowledge of assessment and evaluation throughout the K-12 grade levels to construct, use, and interpret a variety of standardized and nonstandardized data collection techniques; to make decisions about student progress, instructional, program, goal development, accommodations, placement, and teaching methodology for students with disabilities who are accessing the general education curriculum and the Virginia Standards of Learning; and to demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities who are accessing the general education curriculum across the K-12 grade levels.

c. Assessment and evaluation: 3 semester hours. Includes an understanding and application of the foundation of assessment and evaluation related to best practice in

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special education, including types and characteristics of assessment, introduction to formal and informal assessment, and the use of assessments and other information to determine special education eligibility, service delivery, curriculum, and instruction of students with disabilities. Understanding of the current legal and ethical issues related to assessment selection and use, including comprehensive evaluation requirements, students with disabilities' participation in the state and local accountability systems, assessment options, appropriate grading and testing accommodations, and assessment of students from diverse backgrounds.

d. Instructional strategies in reading and writing: 3 semester hours.

(1) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in reading and writing.

(2) Knowledge of the general curriculum, English requirements and expectations, and how to provide access to the curriculum based on student characteristics and needs.

(3) Ability to assess, interpret data, and implement instructional practices to address the identified reading needs of the students. Skills in this area include the ability to identify, understand, and implement a range of specialized instructional strategies and research-based interventions that reflect best practice in reading and writing instruction for students with disabilities.

(4) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(5) Knowledge and ability to utilize current assistive and instructional reading and writing technologies to promote learning and independence for students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(6) Ability to develop and use curriculum-based and standardized reading and writing assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as they relate to the curriculum design and delivery.

(7) Ability to model and directly teach reading and writing instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the general curriculum, and monitor student progress.

e. Instructional strategies in mathematics: (3 semester hours).

(1) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in mathematics.

(2) Knowledge of the general curriculum mathematics requirements and expectations and how to provide access to the curriculum based on student characteristics and needs.

(3) Ability to assess, interpret data, and implement instructional practices to address calculations, reasoning, and problem-solving skills. Skills in this area include the ability to understand and use a range of specialized mathematics instructional strategies and research-based interventions that reflect best practice in mathematics instruction for students with disabilities.

(4) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(5) Knowledge of and ability to utilize current mathematics-related assistive and instructional technologies to promote learning and independence for students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(6) Ability to develop and use curriculum-based and standardized mathematics assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as they relate to the mathematics curriculum design and delivery.

(7) Ability to model and directly teach mathematics instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the mathematics general curriculum, and monitor student progress.

## **8VAC20-23-570. Special education – general curriculum middle grades 6-8 (add-on endorsement).**

Endorsement requirements: The candidate must:

1. Hold an earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with an endorsement in middle education (i.e., middle education 6-8 English, middle education 6-8 history and social sciences, middle education 6-8 mathematics, or middle education-sciences).

2. Have completed 15 semester hours in the education of students with disabilities distributed in each of the following areas:

a. Foundations: 3 semester hours. Characteristics that include knowledge of the foundation for educating students with disabilities; historical, ethical, and legal aspects that include an understanding and application of the federal and state regulatory requirements; and expectations associated with identification, education, and evaluation of students with disabilities.

b. Individualized education program development and implementation: 3 semester hours. Knowledge of the

eligibility process and legal and regulatory requirements of IEP development, including timelines, components, team composition, and roles and responsibilities. Skills in this area include the ability to apply knowledge of assessment and evaluation throughout the K-12 grade levels to construct, use, and interpret a variety of standardized and nonstandardized data collection techniques; to make decisions about student progress, instructional, program, goal development, accommodations, placement, and teaching methodology for students with disabilities who are accessing the general education curriculum and the standards of learning; and to demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities who are accessing the general education curriculum across the K-12 grade levels.

c. Transitioning: 3 semester hours. Skills in this area include the ability to prepare students and work with families and community agencies to provide successful student transitions throughout the educational experience to include postsecondary education training, employment, and independent living that addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy, and self-determination, guardianship, and legal considerations.

d. Instructional strategies in reading and writing: 3 semester hours.

(1) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in reading and writing.

(2) Knowledge of the general curriculum, English requirements and expectations, and how to provide access to the curriculum based on student characteristics and needs.

(3) Ability to assess, interpret data, and implement instructional practices to address the identified reading needs of the students. Skills in this area include the ability to identify, understand, and implement a range of specialized instructional strategies and research-based interventions that reflect best practice in reading and writing instruction for students with disabilities.

(4) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(5) Knowledge and ability to utilize current assistive and instructional reading and writing technologies to promote learning and independence for students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(6) Ability to develop and use curriculum-based and standardized reading and writing assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as it relates to the curriculum design and delivery.

(7) Ability to model and directly teach reading and writing instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the general curriculum, and monitor student progress.

e. Instructional strategies in mathematics: (3 semester hours).

(1) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in mathematics.

(2) Knowledge of the general curriculum mathematics requirements and expectations and how to provide access to the curriculum based on student characteristics and needs.

(3) Ability to assess, interpret data, and implement instructional practices to address calculations, reasoning and problem-solving skills. Skills in this area include the ability to understand and use a range of specialized mathematics instructional strategies and research-based interventions that reflect best practice in mathematics instruction for students with disabilities.

(4) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(5) Knowledge of and ability to utilize current mathematics-related assistive and instructional technologies to promote learning and independence for students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(6) Ability to develop and use curriculum-based and standardized mathematics assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as they relate to the mathematics curriculum design and delivery.

(7) Ability to model and directly teach mathematics instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the mathematics general curriculum, and monitor student progress.

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## **8VAC20-23-580. Special education – general curriculum secondary grades 6-12 (add-on endorsement).**

Endorsement requirements: The candidate must:

1. Hold an earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with an endorsement in English, history and social sciences, mathematics, biology, chemistry, Earth science, or physics.

2. Have completed 15 semester hours in the education of students with disabilities distributed in each of the following areas:

a. Foundations: 3 semester hours. Characteristics that include knowledge of the foundation for educating students with disabilities; historical, ethical, and legal aspects that include an understanding and application of the federal and state regulatory requirements; and expectations associated with identification, education, and evaluation of students with disabilities.

b. Individualized education program development and implementation: 3 semester hours. Knowledge of the eligibility process and legal and regulatory requirements of IEP development, including timelines, components, team composition, and roles and responsibilities. Skills in this area include the ability to apply knowledge of assessment and evaluation throughout the K-12 grade levels to construct, use, and interpret a variety of standardized and nonstandardized data collection techniques; to make decisions about student progress, instructional, program, goal development, accommodations, placement, and teaching methodology for students with disabilities who are accessing the general education curriculum and the Virginia Standards of Learning; and to demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities who are accessing the general education curriculum across the K-12 grade levels.

c. Transitioning: 3 semester hours. Skills in this area include the ability to prepare students and work with families and community agencies to provide successful student transitions throughout the educational experience to include postsecondary education training, employment, and independent living that addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy, and self-determination, guardianship, and legal considerations.

d. Instructional strategies in reading and writing: 3 semester hours.

(1) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in reading and writing.

(2) Knowledge of the general curriculum, English requirements and expectations, and how to provide access to the curriculum based on student characteristics and needs.

(3) Ability to assess, interpret data, and implement instructional practices to address the identified reading needs of the students. Skills in this area include the ability to identify, understand, and implement a range of specialized instructional strategies and research-based interventions that reflect best practice in reading and writing instruction for students with disabilities.

(4) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(5) Knowledge and ability to utilize current assistive and instructional reading and writing technologies to promote learning and independence for students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(6) Ability to develop and use curriculum-based and standardized reading and writing assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as they relate to the curriculum design and delivery.

(7) Ability to model and directly teach reading and writing instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the general curriculum, and monitor student progress.

e. Instructional strategies in mathematics: (3 semester hours).

(1) An understanding and application of service delivery, curriculum, and instruction of students with disabilities in mathematics.

(2) Knowledge of the general curriculum mathematics requirements and expectations and how to provide access to the curriculum based on student characteristics and needs.

(3) Ability to assess, interpret data, and implement instructional practices to address calculations, reasoning, and problem-solving skills. Skills in this area include the ability to understand and use a range of specialized mathematics instructional strategies and research-based interventions that reflect best practice in mathematics instruction for students with disabilities.

(4) Ability to align the instructional practices and intervention with the Virginia Standards of Learning and state assessments.

(5) Knowledge of and ability to utilize current mathematics-related assistive and instructional technologies to promote learning and independence for

students with disabilities in the general curriculum and the ability to evaluate the effectiveness of the use of the technologies.

(6) Ability to develop and use curriculum-based and standardized mathematics assessments to conduct ongoing evaluations of instructional materials and practices to determine effectiveness and assess student needs as they relate to the mathematics curriculum design and delivery.

(7) Ability to model and directly teach mathematics instructional strategies in a variety of settings, collaborate and co-teach with general educators to develop and implement instructional practices that meet the needs of students with disabilities in the mathematics general curriculum, and monitor student progress.

**8VAC20-23-590. Speech communication (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. A minimum of 15 semester hours in speech communication.

**8VAC20-23-600. Theatre arts preK-12.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in theatre arts; or
2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in theatre arts or 33 semester hours distributed among the following areas:
  - a. Directing: 6 semester hours;
  - b. Technical theatre: 9 semester hours;
  - c. Cultural context and theatre history: 3 semester hours;
  - d. Performance: 6 semester hours; and
  - e. Dramatic literature: 9 semester hours.

B. Add-on endorsement requirements in theatre arts preK-12. The candidate must have:

1. An earned baccalaureate degree from a regionally accredited college or university and hold a license issued by the Virginia Board of Education with a teaching endorsement in a teaching area; and
2. Completed 15 semester hours distributed in the following areas:
  - a. Directing: 3 semester hours;
  - b. Technical theatre: 3 semester hours;
  - c. Cultural context and theatre history: 3 semester hours; and
  - d. Performance: 6 semester hours.

**8VAC20-23-610. Visual arts preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in visual arts; or
2. Earned a baccalaureate degree from a regionally accredited college or university and completed a major in visual arts or 36 semester hours in art distributed in the following areas:
  - a. Two-dimensional media: 12 semester hours;
  - b. Three-dimensional media: 12 semester hours;
  - c. Cultural context and art history: 6 semester hours;
  - d. Evaluation and criticism and aesthetics: 3 semester hours; and
  - e. Related areas of the fine arts: 3 semester hours.

Part VI

Licensure Regulations Governing Support Personnel

**8VAC20-23-620. Administration and supervision preK-12.**

A. An endorsement in administration and supervision preK-12 consists of Level I, which is required to serve as a building-level administrator or central office instructional supervisor, and Level II, which is an optional endorsement to which an experienced building-level administrator may aspire. Individuals must meet the requirements for the administration and supervision preK-12 endorsement through one of the four options listed in this section. A school leader's assessment prescribed by the Virginia Board of Education must be met for all individuals who are seeking an initial endorsement authorizing them to serve as principals and assistant principals in the public schools. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Virginia Board of Education.

B. Level I, Option I: Approved program route to Level I administration and supervision preK-12 endorsement. To become eligible for a Level I endorsement under this option, the candidate must have:

1. Earned a master's degree from a regionally accredited college or university;
2. Completed three years of successful, full-time experience in a public school or accredited nonpublic school in an instructional personnel position that requires licensure in Virginia;
3. Completed an approved program in administration and supervision from a regionally accredited college or university;
4. Completed a deliberately structured and supervised internship that is focused on student academic progress for all students and that:

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a. Provides significant experiences within a school environment for candidates to synthesize and apply content knowledge and develop professional skills through school-based leadership experiences;

b. Shall occur in a public or accredited nonpublic school;

c. Provides exposure to five different multiple sites (i.e., elementary, middle high, central office, agency) with diverse student populations; and

d. Documents a minimum of 320 clock hours, of which 120 clock hours are embedded as experiential field-based opportunities experienced during coursework; and

5. Satisfied the requirements for the school leaders licensure assessment prescribed by the Virginia Board of Education. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Virginia Board of Education.

C. Level I, Option II: Alternate route to Level I administration and supervision preK-12 endorsement restricted to the Virginia school division in which the superintendent submitted the recommendation for endorsement. This endorsement is valid only in the designated Virginia school division and would not be portable or reciprocal. In order to be eligible for Level I endorsement under this option, the candidate must have:

1. Earned a master's degree from a regionally accredited college or university;

2. Completed graduate coursework in school law, evaluation of instruction, and other areas of study as required by an employing Virginia school superintendent. The graduate coursework must be taken from a regionally accredited college or university that has a state-approved administration and supervision program;

3. Completed three years of successful, full-time experience in a public school or accredited nonpublic school in an instructional personnel position that requires licensure in Virginia;

4. Satisfied the requirements for the school leaders licensure assessment specified by the Virginia Board of Education; and

5. Been recommended by the superintendent in the employing Virginia school division.

D. Level I, Option III: Alternate route to Level I administration and supervision preK-12 endorsement. In order to be eligible for Level I endorsement under this option, the candidate must have:

1. Earned a master's degree from a regionally accredited college or university;

2. Completed graduate coursework in school law, evaluation of instructional personnel, special education, school finance, educational leadership, and other areas of

study as required by an employing Virginia school superintendent, and the graduate coursework must be taken from a regionally accredited college or university that has a state-approved administration and supervision program, or the candidate must have completed school law, school finance, and a research-based program approved by the Virginia Department of Education that includes organizational leadership, instructional leadership, instructional practices in content areas, data utilization, evaluation and instructional coaching, and creating positive school cultures;

3. Completed three years of successful, full-time experience in a public school or accredited nonpublic school in an instructional personnel position that requires licensure in Virginia;

4. Satisfied the requirements for the school leaders licensure assessment specified by the Virginia Board of Education; and

5. Been recommended by the superintendent in the employing Virginia school division.

E. Level I, Option IV: Out-of-state administration and supervision endorsement. Virginia does not issue a stand-alone license in administration and supervision. The endorsement is added to a license. The candidate must have:

1. Earned a master's degree from a regionally accredited college or university;

2. Completed three years of successful, full-time experience in a public school or accredited nonpublic school in an instructional personnel position;

3. Satisfied the requirements for the school leaders licensure assessment specified by the Virginia Board of Education; and

4. A current, valid out-of-state license, which is full credential, with an endorsement in administration and supervision or completed an approved program in administration and supervision from a regionally accredited college or university leading to an endorsement as a building-level administrator.

F. Level II: Principal of Distinction endorsement in administration and supervision preK-12. A building-level administrator may seek the Principal of Distinction, Level II endorsement in administration and supervision preK-12 after successfully serving as a building-level administrator for at least five years in a public school or an accredited nonpublic school and successfully completing a formal induction program as a principal or assistant principal. In order to earn the Principal of Distinction, Level II endorsement, the candidate must meet two or more of the following criteria as specified by the Virginia Board of Education and documented in a Virginia Department of Education approved format and be recommended by the employing Virginia school division superintendent:

1. Evidence of improved student achievement;

- 2. Evidence of effective instructional leadership;
- 3. Evidence of positive effect on school climate or culture;
- 4. Earned doctorate in educational leadership or evidence of formal professional development in the areas of school law, school finance, supervision, human resource management, and instructional leadership; or
- 5. Evidence of a completion of a high-quality professional development project designed by the division superintendent.

## **8VAC20-23-630. Division Superintendent License.**

An individual may be a candidate for the list of eligible division superintendents and the renewable Division Superintendent License through the completion of the requirements in one of the following four options:

### 1. Option I. The individual must:

- a. Hold an earned doctorate degree in educational administration or educational leadership from a regionally accredited college or university; and
- b. Have completed five years of educational experience in a public or an accredited nonpublic school, two of which must be successful, full-time teaching experience at the preK-12 level and two of which must be in administration and supervision at the preK-12 level.

### 2. Option II. The individual must:

- a. Hold an earned master's degree from a regionally accredited college or university and completed 30 graduate semester hours beyond the conferral date of the master's degree; and
- b. Have completed requirements for administration and supervision preK-12 endorsement that includes the demonstration of competencies in the following areas:
  - (1) Knowledge, understanding, and application of planning, assessment, and instructional leadership that builds collective professional capacity, including:
    - (a) Principles of student motivation, growth, and development as a foundation for age- appropriate and grade-appropriate curriculum, instruction, and assessment;
    - (b) Collaborative leadership in gathering and analyzing data to identify needs to develop and implement a school improvement plan that results in increased student learning;
    - (c) Planning, implementation, and refinement of standards-based curriculum aligned with instruction and assessment;
    - (d) Collaborative planning and implementation of a variety of assessment techniques, including examination of student work that yields individual, class, grade level, and school level data as a foundation for identifying existing competencies and targeting areas in need of further attention;

(e) Incorporation of differentiated and effective instruction that responds to individual learner needs including appropriate response to cultural, ethnic, and linguistic diversity;

(f) Knowledge, understanding, and application of the federal and state regulatory requirements and expectations associated with identification, education, and evaluation of students with disabilities;

(g) Collaboratively working with parents and school personnel to ensure that students with disabilities are included as a valued part of the school community, and that they receive effective and appropriately intensive instruction to assist them in meeting the standards set for all students as well as individual goals outlined in their individualized education programs;

(h) Integration of technology in curriculum and instruction to enhance learner understanding;

(i) Identification, analysis, and resolution of problems using effective problem-solving techniques; and

(j) Development, articulation, implementation, and stewardship of a vision of excellence linked to mission and core beliefs that promote continuous improvement consistent with the goals of the school division.

(2) Knowledge, understanding, and application of leadership and organizations, including:

(a) The change process of systems, organizations, and individuals, using appropriate and effective adult learning models;

(b) Aligning organizational practice, division mission, and core beliefs for developing and implementing strategic plans;

(c) Information sources and processing, including data collection and data analysis strategies;

(d) Using data as a part of ongoing program evaluation to inform and lead change;

(e) Developing a change management strategy for improved student outcomes;

(f) Developing distributed leadership strategies to create personalized learning environments for diverse schools; and

(g) Effective two-way communication skills including consensus building, negotiation, and mediation skills.

(3) Knowledge, understanding, and application of management and leadership skills that achieve effective and efficient organizational operations and sustain an instructional program conducive to student academic progress, including:

(a) Alignment of curriculum and instruction and assessment of the educational program to achieve high academic success at the school and division or district level;

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(b) Principles and issues of supervising and leading others to ensure a working and learning climate that is safe, secure, and respectful of a diverse school community;

(c) Management decisions that ensure successful teaching and learning including, human resources management and development, theories of motivation, change in school culture, innovation and creativity, conflict resolution, adult learning, and professional development models;

(d) Knowledge, understanding, and application of Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers and Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Principals;

(e) Principles and issues related to fiscal operations of school management;

(f) Principles and issues related to school facilities and use of space and time for supporting high-quality school instruction and student learning;

(g) Legal issues impacting school operations and management;

(h) Technologies that support management functions; and

(i) Application of data-driven decision making to initiate and continue improvement in school and classroom practices and student achievement.

(4) Knowledge, understanding, and application of the conditions and dynamics impacting a diverse school community, including:

(a) Emerging issues and trends within school and community relations;

(b) Working collaboratively with staff, families, and community members to secure resources and to support the success of a diverse population;

(c) Developing appropriate public relations and public engagement strategies and processes for building and sustaining positive relationships with families, caregivers, and community partners; and

(d) Integration of technology to support communication efforts.

(5) Knowledge, understanding, and application of the purpose of education and the role of professionalism in advancing educational goals, including:

(a) Philosophy of education that reflects commitment to principles of honesty, fairness, caring, and equity in day-to-day professional behavior;

(b) Integration of high-quality, content-rich, job-embedded professional learning that respects the contribution of all faculty and staff members in building a diverse professional learning community;

(c) Reflective understanding of moral and legal consequences of decision making in the school setting;

(d) Intentional and purposeful effort to model professional, moral, and ethical standards as well as personal integrity in all interactions; and

(e) Intentional and purposeful effort to model continuous professional learning and to work collegially and collaboratively with all members of the school community to support the school's goals and enhance its collective capacity.

(6) Knowledge, understanding, and application of leadership theories and influences that impact schools, including:

(a) Concepts of leadership including systems theory, change theory, learning organizations, and current leadership theory;

(b) Identify and respond to internal and external forces and influences on a school;

(c) Identify and apply the processes of educational policy development at the state, local, and school level; and

(d) Identify and demonstrate ways to influence educational policy development at the state, local, and school level.

3. Option III. The individual must:

a. Hold an earned master's degree from a regionally accredited college or university;

b. Hold a current, valid out-of-state license with an endorsement as a division or district superintendent; and

c. Have completed five years of educational experience in a public or an accredited nonpublic school, two of which must be successful, full-time teaching experience at the preK-12 level and two of which must be in successful administration and supervision.

4. Option IV. The individual must:

a. Hold an earned master's degree or its equivalent from a regionally accredited college or university;

b. Have held a senior leadership position such as chief executive officer or senior military officer; and

c. Be recommended by a school board interested in employing the individual as superintendent.

## **8VAC20-23-640. Mathematics specialist for elementary education.**

Endorsement requirements. The candidate must have:

1. Earned a baccalaureate degree from a regionally accredited college or university and an endorsement in a teaching area;

2. Completed at least three years of successful, full-time teaching experience in a public or accredited nonpublic school in which the teaching of mathematics was an important responsibility; and

3. Either:

- a. Graduated from an approved mathematics specialist for elementary preparation program - master's level; or
- b. Completed a master's level program in mathematics, mathematics education, or related education field with at least 21 semester hours undergraduate or graduate mathematics coursework distributed in the following areas: (i) number and operations; (ii) rational numbers; (iii) geometry and measurement; (iv) probability and statistics; (v) algebra and functions; and (vi) at least nine semester hours of graduate coursework pertaining to mathematics education in mathematics instructional leadership, evaluation of mathematics curriculum and instruction, mathematical learning theory, and student assessment for mathematics.

**8VAC20-23-650. Mathematics specialist for middle education.**

Endorsement requirements. The candidate must have:

- 1. Earned a baccalaureate degree from a regionally accredited college or university and an endorsement in a teaching area;
- 2. Completed at least three years of successful, full-time teaching experience in a public or accredited nonpublic school in which the teaching of mathematics was an important responsibility;
- 3. Hold the secondary mathematics teaching endorsement (6-12); and

4. Either:

- a. Graduated from an approved mathematics specialist for middle education preparation program - master's level; or
- b. Completed a master's level program in mathematics, mathematics education, or related education field with at least 21 semester hours of undergraduate or graduate mathematics coursework distributed in the following areas: (i) number and operations; (ii) rational numbers; (iii) geometry and measurement; (iv) probability and statistics; (v) algebra and functions; and (vi) at least nine semester hours of graduate coursework pertaining to mathematics education in mathematics instructional leadership, evaluation of mathematics curriculum and instruction, mathematical learning theory, and student assessment for mathematics.

**8VAC20-23-660. Reading specialist.**

Endorsement requirements. The candidate must have:

- 1. Completed a graduate-level reading specialist state-approved preparation program - master's degree required - that includes course experiences of at least 30 semester hours of graduate coursework in the competencies for the endorsement, as well as a practicum experience in the diagnosis and remediation of reading difficulties.

2. Satisfied the requirements for the reading specialist assessment specified by the Virginia Board of Education.

3. At least three years of successful classroom teaching experience in which the teaching of reading was an important responsibility.

**8VAC20-23-670. School counselor preK-12.**

Endorsement requirements.

1. Option I. The candidate must have:

- a. Earned a master's degree from a regionally accredited college or university and completed an approved school counselor preparation program that shall include at least 100 clock hours of internship and practicum experiences in the preK-6 setting and 100 clock hours of internship and practicum experiences in the grades 7-12 setting; and
- b. Two years of successful, full-time teaching experience or two years of successful, full-time experience in school counseling in a public or an accredited nonpublic school. Two years of successful, full-time experience in school counseling in a public or an accredited nonpublic school under a Provisional License may be accepted to meet this requirement.

2. Option II. The candidate must have:

- a. Earned a master's degree from a regionally accredited college or university and completed an approved school counselor preparation program that shall include at least 100 clock hours of internship and practicum experiences in the preK-6 setting and 100 clock hours of internship and practicum experiences in the grades 7-12 setting; and
- b. Two years of successful, full-time teaching experience or two years of successful, full-time experience in school counseling in a public or an accredited nonpublic school. Two years of successful, full-time experience in school counseling in a public or an accredited nonpublic school under a nonrenewable Provisional License may be accepted to meet this requirement.

**8VAC20-23-680. School manager license.**

A. The school manager license is intended to provide for the differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. For example, a school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian.

B. To earn a school manager license, the candidate must:

- 1. Have earned a baccalaureate degree from a regionally accredited college or university;
- 2. Have three years successful, full-time managerial experience; and
- 3. Be recommended for the license by a Virginia school division superintendent.

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## **8VAC20-23-690. School psychology.**

### Endorsement requirements:

#### 1. Option I. The candidate must:

- a. Complete an approved program in school psychology;
- b. Earn a baccalaureate degree from a regionally accredited college or university and complete 60 graduate-level hours, 54 of which are academic coursework, exclusive of field-based experiences, that culminate in at least a master's degree; and
- c. Complete an internship that is documented by the degree-granting institution. The internship experience shall occur on a full-time basis over a period of one year or on a half-time basis over a period of two consecutive years. The internship shall occur under conditions of appropriate supervision, that is, the school-based supervisor shall be licensed as either a school or clinical psychologist. The internship shall include experiences at multiple age levels, at least one half of which shall be in an accredited school setting.

#### 2. Option II. The candidate must hold a currently valid certificate issued by the National School Psychology Certification Board.

## **8VAC20-23-700. School social worker.**

### Endorsement requirements. The candidate must have:

1. Earned a master's of social work degree from a regionally accredited college or university school of social work with a minimum of 60 graduate-level semester hours;
2. A minimum of six graduate semester hours in education to include six semester hours from two of the following courses:
  - a. The teaching profession (3 semester hours);
  - b. Characteristics of special education (3 semester hours);
  - c. Human development and learning (3 semester hours);  
or
  - d. Classroom and behavior management (3 semester hours).
3. Completed a supervised practicum or field experience of a minimum of 400 clock hours in a public or an accredited nonpublic school discharging the duties of a school social worker. One year of successful, full-time experience as a school social worker in a public or an accredited nonpublic school may be accepted in lieu of the school social work practicum.

## **8VAC20-23-710. Vocational evaluator.**

### Endorsement requirements:

1. Option I. The candidate must be certified as a vocational evaluation specialist by holding a professional vocational evaluator (PVE) credential or a certified vocational evaluator (CVE) specialist credential, meeting all standards and criteria of the Commission on Certification of Work

Adjustment and Vocational Evaluation Specialists (CCWAVES).

2. Option II. The candidate must have earned a master's degree in vocational evaluation, career and technical education, special education, or rehabilitation counseling and completed 15 graduate semester hours distributed in the following areas:

- a. Tests and measurements: 3 semester hours;
- b. Medical and educational aspects of disability: 3 semester hours;
- c. Occupational information and job analysis: 3 semester hours;
- d. Purposes and practices of vocational evaluation: 3 semester hours; and
- e. Career, life planning, and transition services: 3 semester hours.

### Part VII

#### Revocation, Cancellation, Suspension, Denial, and Reinstatement of Teaching Licenses

## **8VAC20-23-720. Revocation.**

A. A license issued by the Virginia Board of Education may be revoked for the following reasons:

1. Obtaining or attempting to obtain such license by fraudulent means or through misrepresentation of material facts;
2. Falsification of school records, documents, statistics, or reports;
3. Conviction of any felony;
4. Conviction of any misdemeanor involving moral turpitude;
5. Conviction of any misdemeanor involving a minor child or drugs, not including alcohol;
6. Conduct with direct and detrimental effect on the health, welfare, discipline, or morale of students;
7. Misapplication of or failure to account for school funds or other school properties with which the licensee has been entrusted;
8. Acts related to secure mandatory tests as specified in subsection A of § 22.1-292.1 of the Code of Virginia;
9. Knowingly and willfully with the intent to compromise the outcome of an athletic competition procure, sell, or administer anabolic steroids or cause such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fail to report the use of such drugs by a student to the school principal and division superintendent as required by clause (iii) of subsection A of § 22.1-279.3:1 of the Code of Virginia. Any person whose license is suspended or revoked by the board pursuant to this section shall be ineligible for three school years for employment in the public schools of the Commonwealth;

10. Revocation, suspension, surrender, cancellation, invalidation, or denial of, or other adverse action against, a teaching, administrator, pupil personnel services, or other education-related certificate or license by another state, territory, or country;

11. Founded case of child abuse or neglect after all appeal rights have been exhausted;

12. Notification of dismissal or resignation pursuant to subsection F of § 22.1-313 of the Code of Virginia; or

13. Other good and just cause in the best interest of the public schools of the Commonwealth of Virginia.

## B. Procedures.

1. A complaint may be filed by anyone, but it shall be the duty of a division superintendent, principal, or other responsible school employee to file a complaint in any case in which he has knowledge that a holder of a license is guilty of any offense set forth in subsection A of this section. The person making the complaint shall submit the complaint in writing to the appropriate division superintendent.

2. Upon receipt of the complaint against the holder of a license, a division superintendent or his duly authorized representative shall investigate the complaint. If, on the basis of such investigation, the division superintendent finds the complaint to be without merit, he shall so notify the complaining party or parties in writing and then close his file on the matter. This action shall be final unless the local school board, on its own motion, votes to proceed to a hearing on the complaint.

C. Petition for revocation. Should the division superintendent or local school board conclude that there is reasonable cause to believe that a complaint against the holder of a license is well founded, the license holder shall be notified of the complaint by a written petition for revocation of a license signed by the division superintendent. A copy of such petition shall be sent by certified mail, return receipt requested, to the license holder's last known address.

D. Form of petition. The petition for the revocation of a license shall set forth:

1. The name and last known address of the person against whom the petition is being filed;

2. The type of license and the license number held by the person against whom the petition is being filed;

3. The offenses alleged and the specific actions that comprise the alleged offenses;

4. A statement of rights of the person charged under this chapter. The statement of rights shall include notification to the person of the right to cancel the license if he chooses not to contest the allegations in the petition. The statement must notify the individual that he shall receive a notice of cancellation that will include the statement: "The license holder voluntarily returned the license in response to a

petition for revocation." The individual also shall be notified that the cancellation of the license will be reported to division superintendents in Virginia and to chief state school officers of the other states and territories of the United States; and

5. Any other pertinent information.

E. Filing of petition. The original petition shall be entered in the files of the local school board where the license holder is or was last employed.

F. Response to petition. The license holder shall present his written answer to the petition, if any, within 14 days of delivery or attempted delivery of the petition as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, he may cancel the license by returning the license to the division superintendent with a written, signed statement requesting cancellation in response to a petition for revocation. The division superintendent shall forward the request for cancellation along with the petition for revocation to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send a notice of cancellation to the person by certified mail within 14 days of receipt of the request for cancellation.

2. If the license holder files a written answer admitting or denying the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition as certified by the United States Postal Service, the local school board shall promptly proceed to a hearing. The local school board shall provide a hearing at the time and place of its regular meeting or at such other reasonable time and place it may specify. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing.

3. At the hearing, the local school board shall receive the recommendation of the division superintendent and then either deny the petition or recommend license revocation or suspension. A decision to deny the petition shall be final, except as specified in subsection G of this section, and the investigative file on the petition shall be closed and maintained as a separate file. Any record or material relating to the allegations in the petition shall be placed in the investigative file. Should the local school board recommend the revocation or suspension of a license, the division superintendent shall forward the recommendation and the investigative file to the Superintendent of Public Instruction within 14 days.

G. Revocation on motion of the Virginia Board of Education. The Virginia Board of Education reserves the right to act directly to revoke a license when the Virginia Board of Education has reasonable cause to believe that subsection A of this section is applicable. The Superintendent of Public Instruction may send a petition for revocation to the license

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holder as provided by subsection D of this section. The license holder shall have the opportunity to respond to the petition or request cancellation of the license within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service.

1. If the license holder files a written answer admitting the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition as certified by the United States Postal Service, the petition shall be forwarded to the Virginia Board of Education for action. No revocation will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in 8VAC20-23-780 C.

2. If the license holder timely files his written answer denying the allegations in the petition, the Superintendent of Public Instruction shall schedule a hearing with the investigative panel provided in 8VAC20-23-780 A. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing. The investigative panel shall take action on the petition as specified in 8VAC20-23-780 A. No revocation will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in 8VAC20-23-780 C.

H. Reinstatement of license. A license that has been revoked may be reinstated by the Virginia Board of Education after five years if the board is satisfied that reinstatement is in the best interest of the public schools of the Commonwealth of Virginia. The individual seeking reinstatement must submit a written request and completed application to the board. The request for reinstatement will be reviewed by the Superintendent of Public Instruction's investigative panel pursuant to 8VAC20-23-780. Notification to all appropriate parties will be communicated in writing by the Virginia Department of Education.

## **8VAC20-23-730. Cancellation.**

A. A license may be canceled by the voluntary return of the license by the license holder. Reasons for cancellation are the same as those listed under 8VAC20-23-720 A.

B. The individual may voluntarily return the license to the division superintendent or the Superintendent of Public Instruction with a written, signed statement requesting cancellation. The individual shall acknowledge in the request that he understands that the notice of cancellation will include the statement: "The license holder voluntarily returned his teaching license and requested cancellation. Reasons for cancellation are the same as those for revocation." However, if the request for cancellation is in response to a petition for revocation, the individual shall acknowledge that he understands that the notice of cancellation will include the statement: "The license holder voluntarily returned the license in response to a petition for revocation." The individual also shall acknowledge that he understands that the cancellation of the license will be reported to division superintendents in

Virginia and to chief state school officers of the other states and territories of the United States. The division superintendent shall forward any request for cancellation and, if applicable, the petition for revocation to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send the person a notice of cancellation by certified mail within 14 days of receipt of the request for cancellation.

C. A license that has been canceled may be reinstated by the Virginia Board of Education if the board is satisfied that reinstatement is in the best interest of the public schools of the Commonwealth of Virginia. The individual seeking reinstatement must submit a written request and completed application to the board. The request for reinstatement will be reviewed by the Superintendent of Public Instruction's investigative panel pursuant to 8VAC20-23-780 A. Notification to all appropriate parties will be communicated in writing by the Virginia Department of Education.

## **8VAC20-23-740. Suspension.**

A. A license may be suspended for the following reasons:

1. Physical, mental, or emotional incapacity as shown by a competent medical authority;

2. Incompetence or neglect of duty;

3. Failure or refusal to comply with school laws and regulations, including willful violation of contractual obligations;

4. Acts related to secure mandatory tests as specified in subsection A of § 22.1-292.1 of the Code of Virginia;

5. Knowingly and willfully with the intent to compromise the outcome of an athletic competition procure, sell, or administer anabolic steroids or cause such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fail to report the use of such drugs by a student to the school principal and division superintendent as required by clause (iii) of subsection A of § 22.1-279.3:1 of the Code of Virginia. Any person whose license is suspended or revoked by the board pursuant to this section shall be ineligible for three school years for employment in the public schools of the Commonwealth; or

6. Other good and just cause in the best interest of the public schools of the Commonwealth of Virginia.

B. Procedures.

1. A complaint may be filed by anyone, but it shall be the duty of a division superintendent, principal, or other responsible school employee to file a complaint in any case in which he has knowledge that the license holder has committed any offense set forth in subsection A of this section. The person making the complaint shall submit the complaint in writing to the appropriate division superintendent.

2. Upon receipt of the complaint against the holder of a license, a division superintendent or his duly authorized representative shall investigate the complaint. If, on the basis of such investigation, the division superintendent finds the complaint to be without merit, he shall so notify the complaining party or parties in writing and then close his file on the matter. This action shall be final unless the local school board on its own motion votes to proceed to a hearing on the complaint.

C. Petition for suspension. Should the division superintendent or local school board conclude that there is reasonable cause to believe that a complaint against the holder of a license is well founded, the license holder shall be notified of the complaint by a written petition for suspension of a license signed by the division superintendent. A copy of such petition shall be sent by certified mail, return receipt requested, to the license holder's last known address.

D. Form of petition. The petition for the suspension of a license shall set forth:

1. The name and last known address of the person against whom the petition is being filed;
2. The type of license and the license number held by the person against whom the petition is being filed;
3. The offenses alleged and the specific actions that comprise the alleged offenses;
4. A statement of the rights of the person against whom the petition is being filed. The statement of rights shall notify the person of the right to cancel the license if he chooses not to contest the allegations in the petition. The statement also shall notify the individual that the license may be suspended for up to five years and that he shall receive a notice of cancellation that will include the statement: "The license holder voluntarily returned the license in response to a petition for suspension." The individual also shall be notified that the cancellation and period of suspension will be reported to division superintendents in Virginia and to chief state school officers of the other states and territories of the United States; and
5. Any other pertinent information.

E. Filing of petition. The original petition shall be entered in the files of the local school board where the license holder is or was last employed.

F. Response to petition. The license holder shall present his written answer to the petition, if any, within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, he may cancel the license by returning the license to the division superintendent with a written and signed statement requesting cancellation. The division superintendent shall forward the request for cancellation along with the petition for suspension to the Superintendent of Public Instruction within 14 days of

receipt. The Superintendent of Public Instruction shall cancel the license and send the person a notice of cancellation by certified mail within 14 days of receipt of the request for cancellation.

2. If the license holder files a written answer admitting or denying the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition as certified by the United States Postal Service, the local school board shall promptly proceed to a hearing. The local school board shall provide a hearing at the time and place of its regular meeting or at such other reasonable time and place it may specify. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing.

3. At its hearing, the local school board shall receive the recommendation of the division superintendent and then either deny the petition or recommend suspension. A decision to deny the petition shall be final, except as specified in subsection G of this section, and the investigative file on the petition shall be closed and maintained as a separate file. Any record or material relating to the allegations in the petition shall be placed in the investigative file. Should the local school board recommend the suspension of a license, the division superintendent shall forward the recommendation and the investigative file to the Superintendent of Public Instruction within 14 days.

G. Suspension on motion of the Virginia Board of Education. The Virginia Board of Education reserves the right to act directly to suspend a license when the Virginia Board of Education has reasonable cause to believe that subsection A of this section is applicable. The Superintendent of Public Instruction may send a petition for suspension to the license holder as specified in subsection D of this section. The license holder shall have the opportunity to respond to the petition or request cancellation of the license within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service.

1. If the license holder files a written answer admitting the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition as certified by the United States Postal Service, the petition shall be forwarded to the Virginia Board of Education for action. No suspension will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in 8VAC20-23-780 C.

2. If the license holder timely files his written answer denying the allegations in the petition, the Superintendent of Public Instruction shall schedule a hearing with the investigative panel provided in 8VAC20-23-780 A. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing. The investigative panel shall take action on the petition as specified in 8VAC20-

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23-780 A. No suspension will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in 8VAC20-23-780 C.

H. Reinstatement of license. A license may be suspended for a period of time not to exceed five years. The license may be reinstated by the Superintendent of Public Instruction, upon written request and application, with verification that all requirements for license renewal have been satisfied. Notification to all appropriate parties will be communicated in writing by the Virginia Department of Education.

## **8VAC20-23-750. Denial.**

A license may be denied for the following reasons:

1. Attempting to obtain such license by fraudulent means or through misrepresentation of material facts;
2. Falsification of records or documents;
3. Conviction of any felony;
4. Conviction of any misdemeanor involving moral turpitude;
5. Conviction of any misdemeanor involving a minor child or drugs, not including alcohol;
6. Conduct with a direct and detrimental effect on the health, welfare, discipline, or morale of students;
7. Revocation, suspension, surrender, cancellation, invalidation, or denial of, or other adverse action against, a teaching, administrator, pupil personnel services, or other education-related certificate or license by another state, territory, or country;
8. Founded case of child abuse or neglect, after all appeal rights have been exhausted; or
9. Other good and just cause in the best interest of the public schools of the Commonwealth of Virginia.

## **8VAC20-23-760. Expired licenses.**

A. The holder of a license that has expired must apply for a license according to the procedures set forth in 8VAC20-23-40 or 8VAC20-23-110. Such application may be denied renewal by the Superintendent of Public Instruction for any of the reasons specified in 8VAC20-23-750. No such denial will be ordered unless the license holder is given the opportunity for the hearing specified in 8VAC20-23-780 C.

B. A license issued by the Virginia Board of Education may be revoked or suspended for any of the reasons listed in 8VAC20-23-720 A or 8VAC20-23-740 A, even if the license is expired, as long as the basis for action occurred prior to the issuance of the license or while the license was active.

## **8VAC20-23-770. Right to counsel and transcript.**

A license holder or applicant shall have the right, at his own expense, to be represented by an attorney or other representative at (i) any local school board hearing provided for in 8VAC20-23-720 F 2 or 8VAC20-23-740 F 2, (ii) investigative panel hearing provided for in 8VAC20-23-780 A, or (iii) proceedings before the Virginia Board of Education

as specified in 8VAC20-23-780 C. The hearing before the local school board provided for in 8VAC20-23-720 F 2 or 8VAC20-23-740 F 2 and the investigative panel hearing provided for in 8VAC20-23-780 A shall be recorded, and upon written request the license holder or applicant shall be provided a transcript of the hearing at his own expense. Any such hearing before the Virginia Board of Education shall be recorded, and upon written request the license holder or applicant shall be provided a transcript of the hearing at no charge.

## **8VAC20-23-780. Action by the Superintendent of Public Instruction and the Virginia Board of Education.**

A. Upon receipt of a petition, the Superintendent of Public Instruction will ensure that an investigative panel at the state level reviews the petition. The panel shall consist of three to five members selected by the Superintendent of Public Instruction. The applicant or license holder shall be given at least 14 days' notice of the date, time, and location of the investigative panel hearing when his case will be considered. The Virginia Department of Education shall ensure that the applicant or license holder receives all documentation that will be used during the investigative panel hearing prior to the hearing. Representatives of the local school division and the applicant or license holder are entitled to be present with counsel and witnesses if so desired. The investigative panel hearing shall be recorded. The recommendation of the investigative panel is made to the Superintendent of Public Instruction who will forward his recommendation and the documentation used during the investigative panel hearing to the Virginia Board of Education or its duly designated committee at one of its scheduled meetings. The applicant or license holder shall be given at least 14 days' notice of the Virginia Board of Education meeting when his case will be considered. Following the investigative panel hearing, the Virginia Department of Education shall forward the recommendation of the investigative panel to the applicant or license holder as soon as practicable, but no later than 14 days prior to the scheduled Virginia Board of Education meeting when his case will be considered.

B. The Superintendent of Public Instruction is authorized to approve the issuance of licenses for individuals who have a misdemeanor convictions related to drugs, not including alcohol, based on a review of the cases. No individual would be denied a license without a hearing of the Virginia Board of Education as required in this section.

C. The Virginia Board of Education, or its duly designated committee, shall consider the recommendation of the Superintendent of Public Instruction and such relevant and material evidence as the applicant or license holder may desire to present at the hearing. At its discretion, the Virginia Board of Education may ask the applicant or license holder questions. At the conclusion of the hearing, the Virginia Board of Education will announce its decision.

D. The decision of the Virginia Board of Education shall be recorded in the minutes of the meeting, and the applicant or license holder and principal complainants will receive written notice of the decision.

**8VAC20-23-790. Right of applicant or license holder to appear at hearing.**

An applicant or a license holder shall have the right to appear in person at the hearings held by the local school board, Virginia Board of Education, or board committee described in this part unless he is confined to jail or a penal institution. The local school board or Virginia Board of Education, at its discretion, may continue such hearings for a reasonable time if the applicant or license holder is prevented from appearing in person for reasons such as documented medical or mental impairment.

**8VAC20-23-800. Notification.**

Notification of the revocation, suspension, cancellation, denial, or reinstatement of a license shall be made by the Superintendent of Public Instruction, or his designee, to division superintendents in Virginia and to chief state school officers of the other states and territories of the United States.

VA.R. Doc. No. R13-3476; Filed August 10, 2015, 10:40 a.m.

**STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Council of Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

**Title of Regulation:** **8VAC40-40. College Scholarship Assistance Program Regulations (repealing 8VAC40-40-10 through 8VAC40-40-130).**

**Statutory Authority:** § 23-38.47 (Repealed) of the Code of Virginia.

**Effective Date:** September 7, 2015.

**Agency Contact:** Lee Ann Rung, Manager, Executive and Council Affairs, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, or email leannrung@schev.edu.

**Summary:**

*This action repeals the College Scholarship Assistance Program Regulations as unnecessary due to the repeal of the statutory authority for the program by Chapter 484 of the 2014 Acts of Assembly.*

VA.R. Doc. No. R16-4478; Filed August 6, 2015, 4:28 p.m.



**TITLE 9. ENVIRONMENT**

**VIRGINIA WASTE MANAGEMENT BOARD**

**Forms**

**REGISTRAR'S NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

**Title of Regulation:** **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.**

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

FORMS (9VAC20-90)

[Solid Waste Information and Assessment Program - Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions \(rev. 11/14\) 11/2014\)](#)

~~[Solid Waste Annual Permit Fee Quarter Payment Form, PF001 \(rev. 7/14\)](#)~~

[Solid Waste Annual Permit Fee Quarter Payment Form PF001 \(rev. 7/2015\)](#)

VA.R. Doc. No. R16-4491; Filed August 19, 2015, 10:54 a.m.

**STATE WATER CONTROL BOARD**

**Forms**

**REGISTRAR'S NOTICE:** Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

**Title of Regulation:** **9VAC25-610. Groundwater Withdrawal Regulations.**

**Agency Contact:** Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4209, email debra.harris@deq.virginia.gov.

FORMS (9VAC25-610)

[Department of Environmental Quality Water Division Permit Application Fee Form \(rev. 10/14\)](#)

[Application Instructions for Completing a Groundwater Withdrawal Permit Application \(rev. 11/13\)](#)

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[Application for a Groundwater Withdrawal Permit \(rev. 9/12\)](#)

[Groundwater Withdrawal Permit - Change of Ownership Agreement Form \(rev. 11/13\)](#)

[Uncontested Termination Agreement \(rev. 11/13\)](#)

~~[Water Well Completion Report, Form GW2 \(eff. 7/07\)](#)~~

[Uniform Water Well Completion Report, Form GW-2 \(rev. 7/15\)](#)

[Public Notice Authorization Form - Authorization for Public Notice Billing to Groundwater Withdrawal Permit Applicant \(rev. 11/13\)](#)

[Preapplication Meeting - Application for a Groundwater Withdrawal Permit \(rev. 9/12\)](#)

[Local and Areawide Planning Requirements \(rev. 9/12\)](#)

[Quarterly Groundwater Withdrawal Report \(rev. 11/13\)](#)

[Mitigation Plan \(rev. 11/13\)](#)

[Existing Users Groundwater Withdrawal Permit Application and Instructions \(eff. 2/14\)](#)

VA.R. Doc. No. R16-4489; Filed August 12, 2015, 9:36 a.m.



## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Fast-Track Regulation

**Title of Regulation: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-35, 12VAC30-50-75).**

**Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.**

**Public Hearing Information: No public hearings are scheduled.**

**Public Comment Deadline: October 7, 2015.**

**Effective Date: October 22, 2015.**

**Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.**

**Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social**

Security Act (42 USC 1396a) provides governing authority for payments for services.

**Purpose:** This amendment to the state Medicaid regulations eliminates redundant coverage of benzodiazepines and barbiturates between Medicare and Medicaid. This amendment will not prevent full benefit dual eligibles from receiving these drugs. With this change, full benefit dual eligibles will obtain these two drugs from their Medicare Part D pharmacy benefit provider, rather than through the Medicaid fee-for-service program. In accordance with existing Medicaid policy, DMAS will continue to provide coverage for all other Virginia Medicaid-covered drugs that are not covered under Medicare Part D coverage.

**Rationale for Using Fast-Track Process:** DMAS is utilizing the fast-track rulemaking process because the agency does not anticipate any objections to these changes. Full benefit dual eligibles will continue to have the same access to all of the classes of drugs they previously had under Medicaid. This change is anticipated by the provider community because the expanded Medicare Part D drug coverage for benzodiazepines and barbiturates, regardless of medical condition, will be a national change that all Medicare Part D pharmacy benefit plans must implement. These plans are required by the Centers for Medicare & Medicaid Services to inform their enrollees of these changes.

**Substance:** The sections of the State Plan for Medical Assistance that will be affected by this action are 12VAC30-50-35 (Requirements relating to payment for covered outpatient drugs for the categorically needy) and 12VAC30-50-75 (Requirements relating to payment for covered outpatient drugs for the medically needy). Prior to the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA), federal law restricted coverage of these two drugs under Medicare Part D, but they were available through Medicaid. Effective January 1, 2014, benzodiazepines and barbiturates will be covered for full benefit dual eligibles under Medicare Part D for all health conditions.

This change resulted from the passage of § 175 of MIPPA and the Affordable Care Act of 2010. MIPPA amended § 1860D-2(e)(2)(A) of the Social Security Act to remove the blanket exclusion of these two drugs from Part D coverage. The Affordable Care Act amended § 1927(d)(2) of the Social Security Act to require Medicare Part D coverage of benzodiazepines and barbiturates for any health condition, effective January 1, 2014.

Because of this additional Part D drug coverage, DMAS no longer needs to provide this class of drugs to full benefit dual eligible individuals. Therefore, DMAS terminates coverage of benzodiazepines and barbiturates for full benefit dual eligibles in order to eliminate redundant coverage of these two drugs.

**Issues:** The primary advantage to the general public and private citizens with this proposed regulatory amendment is the cost savings associated with the implementation of this

change. DMAS will no longer need to provide benzodiazepines and barbiturates. With the implementation of this change, the cost of these drugs will be borne by the Medicare Part D plan of the enrollee, not by the Virginia Medicaid program. There are no disadvantages to the general public or private citizens.

The primary advantage to the agency and the Commonwealth is the transfer of coverage for barbiturates and benzodiazepines to the federally funded Medicare Part D plans, which will save money for the Commonwealth.

Medicaid enrolled pharmacies that provide coverage to full benefit dual eligibles also participate in the Medicare Part D plans that will be providing this additional coverage. It is anticipated that the transition to a different payor for these classes of drugs from the Virginia Medicaid program to Medicare Part D plans should cause no disruption in coverage. There are no perceived disadvantages to the Commonwealth for this proposed regulatory change.

Department of Planning and Budget's Economic Impact Analysis:

**Summary of the Proposed Amendments to Regulation.** Pursuant to changes in federal law, the proposed regulations eliminate Medicaid coverage of benzodiazepines and barbiturates as of January 1, 2014, for recipients who will be eligible to receive these drugs under their Medicare coverage.

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

**Estimated Economic Impact.** Prior to the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA), federal law restricted coverage of these two drugs under Medicare Part D, but they were available through Medicaid.

Effective January 1, 2014, benzodiazepines and barbiturates will be covered for full benefit dual eligibles under Medicare Part D for all health conditions. This change resulted from the passage of both Section 175 of MIPPA and the Affordable Care Act of 2010. MIPPA amended section 1860D-2(e)(2)(A) of the Social Security Act to remove the blanket exclusion of these two drugs from Part D coverage. The Affordable Care Act amended section 1927(d)(2) of the Social Security Act, to require Medicare Part D coverage of benzodiazepines and barbiturates for any health condition, effective January 1, 2014.

Because of this additional Part D drug coverage, Virginia Medicaid no longer needs to provide this class of drugs to full benefit dual eligible individuals. Thus, the proposed regulations terminate coverage of benzodiazepines and barbiturates for approximately 109,000 full benefit dual eligibles. With this change, full benefit dual eligibles will obtain these two drugs from their Medicare Part D pharmacy benefit provider, rather than through the Medicaid fee-for-service program.

While changes in coverage of these drugs will take place regardless of this regulatory action, the main economic impact of these changes is the shift in the funding sources. Currently, these drugs are paid by Virginia Medicaid which is funded jointly by state (50%) and by federal (50%) governments. As of January 1, 2014, Medicare program which is funded 100% by federal government will pay for these drugs. Thus, the Commonwealth will realize some fiscal savings and there will be additional federal funds coming into Virginia. Since additional federal funds coming into Virginia do not have offsetting reductions elsewhere in the state, these funds represent a net injection into Virginia's economy. These injections are likely to have positive impacts on state gross domestic product, employment, and income.

**Businesses and Entities Affected.** There are approximately 109,000 categorically and medically needy full benefit dual eligibles and approximately 1,000 pharmacies participating in the Medicaid program currently.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** This change should have a positive impact on employment in the Commonwealth as there will be some state fiscal savings and inflow of additional federal funds in the Commonwealth.

**Effects on the Use and Value of Private Property.** These changes are not anticipated to have a direct impact on the use and value of private property.

**Small Businesses: Costs and Other Effects.** These changes are not anticipated to have costs or other adverse impacts on small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** These changes are not anticipated to have an adverse impact on small businesses.

**Real Estate Development Costs.** No effect on real estate development costs is expected.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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

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

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget. The agency concurs with this analysis.

Summary:

*The amendments eliminate redundant coverage of benzodiazepines and barbiturates between Medicare and Medicaid. Individuals who are eligible for both Medicare and Medicaid will obtain these medications under Medicare Part D drug coverage.*

**12VAC30-50-35. Requirements relating to payment for covered outpatient drugs for the categorically needy.**

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit-Part D. The following excluded drugs are covered:

1. Agents when used for anorexia, weight loss, or weight gain (see specific drug categories in subsection B of this section);
2. Agents when used for the symptomatic relief of cough and colds (see specific drug categories in subsection B of this section);
3. Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section); and
4. Nonprescription drugs (see specific drug categories in subsection B of this section);;
- ~~5. Barbiturates, except for dual eligible individuals when used in the treatment of epilepsy, cancer, or a chronic mental health disorder (see specific drug categories in subsection B of this section); and~~
- ~~6. Benzodiazepines, except for dual eligible individuals as Part D will provide coverage for all conditions (see specific drug categories in subsection B of this section).~~

B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12VAC30-50-520.

**12VAC30-50-75. Requirements relating to payment for covered outpatient drugs for the medically needy.**

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit Part D. The following excluded drugs are covered:

1. Agents when used for anorexia, weight loss, or weight gain (see specific drug categories in subsection B of this section);
2. Agents when used for the symptomatic relief of cough and colds (see specific drug categories in subsection B of this section);
3. Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section); and
4. Nonprescription drugs (see specific drug categories in subsection B of this section);;
- ~~5. Barbiturates, except for dual eligible individuals when used in the treatment of epilepsy, cancer, or a chronic mental health disorder (see specific drug categories in subsection B of this section); and~~
- ~~6. Benzodiazepines, except for dual eligible individuals as Part D will provide coverage for all conditions (see specific drug categories in subsection B of this section).~~

B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12VAC30-50-520.

VA.R. Doc. No. R16-3797; Filed August 10, 2015, 8:20 a.m.

## Fast-Track Regulation

Title of Regulation: **12VAC30-100. State Programs (amending 12VAC30-100-260, 12VAC30-100-270, 12VAC30-100-320, 12VAC30-100-340).**

Statutory Authority: §§ 32.1-325 and 32.1-330.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 7, 2015.

Effective Date: October 22, 2015.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, or email victoria.simmons@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants the Board of Medical Assistance Services the authority to

administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

DMAS provides financial assistance to individuals who have been diagnosed as HIV positive to purchase group health insurance plan benefits through their employers. This assistance is permitted under the authority of § 32.1-330.1 of the Code of Virginia and the HIV Health Care Services Program (42 USC § 300ff-21 et seq.).

Purpose: The purpose of this regulatory change is to amend the current HIV Premium Assistance Program regulations in three ways: (i) refer to individual and spousal income, rather than family income, when evaluating individuals for this program's eligibility; (ii) expand the list of countable liquid assets that DMAS may evaluate during eligibility determination; and (iii) provide for coverage of family members if the participant's health insurance is the sole source of health insurance for the family.

DMAS believes that the proposed amendments contribute to preserving the health, safety, and welfare of the citizens of the Commonwealth.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is being utilized to promulgate this change in regulatory language as it is expected to be noncontroversial. Removing this nonemployment requirement enables persons who are still able to work to remain in the workforce, which benefits the general economy as well as these individuals' families.

Substance: 12VAC30-100-260 - Currently, Medicaid regulations require that an HIV Premium Assistance Program participant's family income not exceed 250% of the federal poverty level. This program provides assistance to qualifying individuals to purchase private health insurance, which covers their medical care for their HIV diagnoses. In some instances, program participants have been required to move into residences with their adult children. This current regulatory wording requires DMAS to consider the income of these employed adult children in determining if the parent can receive premium assistance. DMAS believes it is not appropriate to consider the income of adult children in determining eligibility for this program. It is more cost effective for DMAS to provide premium assistance for these individuals as compared to having these individuals become eligible for the full range of Medicaid-covered services. DMAS recommends the modification of the family income to include only that of the program participant and the program participant's spouse.

12VAC30-100-270 - Currently, this Medicaid regulation contains a specific finite list of liquid assets that DMAS

considers when evaluating an individual's eligibility for the HIV Premium Assistance Program. If a participant's financial circumstances change during this period of program eligibility, DMAS needs to be able to consider all available liquid assets in determining eligibility. The appropriated funds for this program are limited and individuals who have sufficient assets to afford their care should not be permitted to access these limited funds. Permitting DMAS to consider liquid assets beyond the finite list will help ensure that funds are allocated appropriately. Adding reference from § 6.2-1100 of the Code of Virginia that lists liquid assets accomplishes this.

12VAC30-100-340 - Currently, this Medicaid regulation contains all the requirements of § 32.1-330.1 of the Code of Virginia except for the requirement to provide "Coverage of family members, if the HIV-infected person's policy is the sole source of health insurance." Since family coverage is already unofficially permitted in DMAS policy, this change will create no practical difference in this program. The amendment adds the language of § 32.1-330.1 to the regulation.

Issues: These changes will not have any disadvantages to the Commonwealth, public, or government officials. The advantage of changing "family income" to the "participant and spouse income" is to prevent potential applicants from being disqualified from the program due to the income earned by their adult children. The advantage of broadening the list of liquid assets that DMAS can consider in determining eligibility is to ensure that benefits are provided to appropriate individuals. There is no advantage to adding reference to coverage of family members as this merely adds current policy to regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Medical Assistance Services (DMAS) administers the Human Immunodeficiency Virus (HIV) Premium Assistance Program under the authority of § 32.1-330.1 of the Code of Virginia. Participants in the HIV premium assistance program must be unable to work or have a substantial likelihood of being unable to work within three months of becoming eligible to receive the assistance. In addition, a physician must certify this condition.

DMAS is proposing to amend regulations for the HIV Premium Assistance program in 3 areas: (1) to refer to individual/spousal income, rather than family, when evaluating individuals for program eligibility; (2) to expand the list of countable liquid assets that DMAS may evaluate during eligibility determination; and (3) to include a provision for coverage of family members if the participants' health insurance is the sole source of health insurance for the family.

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

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**Estimated Economic Impact.** Currently, DMAS counts family income to determine if an individual can qualify for HIV premium assistance. The agency proposes that only the individual's and spouse's income will be considered when evaluating an individual for this assistance. Sometimes these individuals have to move into their adult employed children's homes and under the current regulations these children's incomes count in determining their parent's eligibility.

Countable liquid assets are now limited to the following: a) savings accounts, b) checking accounts, c) money market certificates, d) certificates of deposit, e) mutual funds, and f) stocks and bonds. DMAS proposes to add "All other liquid assets as provided in § 6.2-1100 of the Code of Virginia" to the list of countable liquid assets. Under this portion of the Code of Virginia liquid assets are defined as:

(i) cash on hand; (ii) cash on deposit in Federal Home Loan Banks, Federal Reserve Banks, savings institutions, or in commercial banks that is withdrawable upon not more than 30 days' notice and that is not pledged as security for indebtedness; (iii) the liquid asset fund of the United States League of Saving Institutions; (iv) obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States; or (v) any other asset that the Commissioner designates as a liquid asset. Any deposits in financial institutions under the control or in the possession of any supervisory authority are not liquid assets.

This is intended to more fully reflect all assets that an individual may acquire in determining eligibility for HIV premium assistance.

When the section of this regulation on health insurance premium payments was initially drafted, DMAS did not address coverage of family members in cases in which the participant's policy was the sole source of health insurance. The agency proposes to include a provision for coverage of family members if the participants' health insurance is the sole source of health insurance for the family.

All of the funding for the HIV Premium Assistance Program is spent each year. The funding is the limiting factor as toward how much is spent, not the number of people who qualify. The proposed amendments will just change who receives how much. In that sense, the proposed amendments may be considered beneficial in that they help enable the funds to be distributed to those who are most needy. Those who lose out on premium assistance may feel otherwise.

**Businesses and Entities Affected.** The proposed amendments affect individuals with HIV. There are currently 8 individuals in the HIV Premium Assistance Program.

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect particular localities.

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

**Effects on the Use and Value of Private Property.** The proposed amendments do not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed amendments do not significantly affect costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments will not adversely affect small businesses.

**Real Estate Development Costs.** The proposed amendments will not affect real estate development costs.

**Legal Mandate**

**General:** 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 Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action 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.

**Small Businesses:** If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning the HIV Premium Assistance Program. The agency raises no issues with this analysis.

Summary:

*The amendments to the Human Immunodeficiency Virus (HIV) Premium Assistance Program include (i) referring to individual and spousal income, rather than family income, when evaluating individuals for program eligibility; (ii) expanding the list of countable liquid assets that may be evaluated during eligibility determination; and (iii) including provision for coverage of family members if the participant's health insurance is the sole source of health insurance for the family.*

**12VAC30-100-260. Eligibility requirements.**

An applicant will be determined to be eligible for the HIV Premium Assistance Program if the individual:

1. Is a Virginia resident at the time of application and is:
  - a. A citizen of the United States;
  - b. An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including an alien who is lawfully present in the United States pursuant to 8 USC § 1101 et seq.; or
  - c. An alien lawfully admitted under authority of the Indochina Migration and Refugee Assistance Act of 1975, 22 USC § 2601 et seq.;
2. Is certified by a licensed physician to be HIV positive;
3. Is certified by a licensed physician to be unable to work or to have a substantial likelihood of being unable to work within three months of the date of the physician's certification due to the HIV infection;
4. Is eligible for continuation of group health insurance plan benefits through the employer and the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, or for continuation of benefits under any type of health insurance plan unless DMAS has reason to believe it is not cost effective;
5. Has family applicant and spouse income no greater than 250% of the poverty level;
6. Has countable liquid assets no more than \$10,000 in value; and
7. Is not eligible for Medicaid.

**12VAC30-100-270. Determination of countable income and liquid assets.**

When determining eligibility for the HIV Premium Assistance Program, the countable income and assets of each applicant shall be determined as follows:

1. Income shall include total projected family applicant and spouse income for the year beginning with the month of application to the program, including but not limited to:

- a. Wages;
- b. Commissions and fees;
- c. Salaries and tips;
- d. Profit from self-employment;
- e. Dividends or interest income;
- f. Disability benefits;
- g. Unemployment;
- h. Pension or retirement.

2. Countable liquid assets shall include assets available as of the date of the application which are convertible to cash. The following liquid assets shall be counted when determining eligibility:

- a. Savings accounts;
- b. Checking accounts;
- c. Money market certificates;
- d. Certificates of deposit;
- e. Mutual funds; ~~or~~
- f. Stocks and bonds; or
- g. All other liquid assets as provided in § 6.2-1100 of the Code of Virginia.

**12VAC30-100-320. Notification.**

The program shall inform an applicant, enrollee, or the individual's representative of the individual's legal rights and obligations and give written notice of the following:

1. The final determination on an application, which shall include the reason or reasons if an applicant is found ineligible;
2. The imminent expiration of program authority and funding;
3. A notice of action to deny, cancel, or suspend program benefits which shall:
  - a. Include a statement of the proposed action, the reason for the action, and the statutory or regulatory authority for the action;
  - b. Include notification of the right to appeal the action;
  - c. Be mailed at least 15 calendar days before the effective date of the action.

**12VAC30-100-340. Health insurance premium payments.**

A. Premium payments shall be made to the employer, the insurer, or the enrollee, according to procedures established by the program.

B. Applicants and enrollees shall provide information as may be necessary for the payment of health insurance premiums by the program, including but not limited to the name and address of the employer or health insurance



officer, director, or partner may be deemed to be "owner" of the real or personal property being offered for sale, provided such entity is licensed to do business in the Commonwealth of Virginia.

**18VAC25-21-50. Application.**

A. All applicants seeking licensure ~~by reciprocity or examination~~ shall submit a fully executed application with the appropriate fee or fees attached. Applicants will be notified if their application is incomplete.

Applications for licensure by examination must comply with the requirements of the board's designee as to the deadline for submission of the application to the board's designee.

B. 1. If a corporation, limited liability company, or other entity, the application shall include copies of the certificate of incorporation or certificate of organization issued by the Virginia State Corporation Commission, articles and bylaws.

2. If a foreign corporation, foreign limited liability company, or other entity, the application shall include copies of the certificate of authority to conduct business issued by the Virginia State Corporation Commission, which shall be required in lieu of the certificates as required by subdivision 1 of this subsection.

3. Any firm applicant shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline. Applicants for licensure who do not meet requirements set forth in this section may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.

C. All applications will be reviewed by the Auctioneers Board staff, or the board's designee, to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation or the board's designee. However, failure to review an application within 30 days of receipt shall not imply or result in the automatic approval of the application. No applicant will be approved for licensure unless all requirements of this part of this chapter are met.

**18VAC25-21-70. Fees.**

Fees are nonrefundable and shall not be prorated. The following fees shall apply:

1. Individual auctioneer license	\$25
2. Auctioneer firm license	\$55
<del>3. Examination</del>	<del>\$40</del>
<del>4. Reexamination fee</del>	<del>\$40</del>
<del>5.</del> 3. Renewal for individual auctioneer's license	\$55
<del>6.</del> 4. Renewal for firm or corporation license	\$65
<del>7.</del> 5. Late renewal for an individual auctioneer's license	\$80
<del>8.</del> 6. Late renewal for an auction firm or corporate license	\$90
<del>9.</del> 7. Reinstatement of the individual auctioneer's license	\$105
<del>10.</del> 8. Reinstatement of the firm or corporate license	\$115

The fee for examination or reexamination is subject to contracted charges by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The board may adjust the fee charged to candidates in accordance with these contracts.

Part III  
Renewal/Reinstatement

**18VAC25-21-80. Notice of renewal.**

The ~~Department of Professional and Occupational Regulation~~ board will mail a renewal notice to the licensee outlining the amount due and procedures for renewal to the last known mailing address of record. Failure to receive this notice shall not relieve the individual or firm licensee of the obligation to renew.

Licenses issued under this chapter shall be issued for a two-year period. Each license holder, corporation or firm shall be required to renew the license by submitting the proper fee made payable to the Treasurer of Virginia, with verification of current surety bond coverage as detailed in 18VAC25-21-30. ~~In addition, individual license holders applying for renewal are required to certify that they comply with the continuing education requirements as contained in this chapter.~~ By renewing the license, the licensee is certifying continued compliance with the Standards of Practice in Part IV (18VAC25-21-100 et seq.) and Standards of Conduct in Part V (18VAC25-21-180 et seq.), as well as Continuing Education Requirements in Part VII (18VAC25-21-230 et seq.) of this chapter.

**18VAC25-21-90. Failure to renew.**

A. Any ~~individual or firm~~ licensee who fails to renew a license within 30 days after the license expires, shall be required to pay a late renewal fee.

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B. Any ~~individual or firm~~ licensee, including individuals initially licensed pursuant to § 54.1-603 A of the Code of Virginia, who fails to renew his license within six calendar months after the expiration date of the license shall be required to apply for reinstatement of the license. The applicant shall submit to the ~~Department of Professional and Occupational Regulation board~~ a reinstatement application and fee and comply with the following paragraph.

If the license has expired for six months or more, but less than two years, the applicant shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, individual license holders applying for reinstatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter. A license that is reinstated shall be deemed as having been continuous without interruption. Nothing in these regulations shall divest the board of its authority to discipline a license holder for a violation of the law or regulation during the period of time for which the ~~regulant~~ licensee was licensed.

C. If the license has expired for two years or more, the applicant shall be required to submit a new application and meet current entry requirements that are in effect as of the date the application is received by the board office. The applicant shall be required to submit the examination fee and sit for and pass the Virginia Licensed Auctioneer's Examination or comply with the provisions contained in 18VAC25-21-40. Any auctioneering activity conducted between the time the previous license expired and the effective date of the new license shall be considered unlicensed activity.

D. The date that the complete renewal application, including fees and all required documentation, is received by the ~~Department of Professional and Occupational Regulation board~~ or its agent will determine whether a license will be renewed without penalty or will be subject to reinstatement requirements.

E. ~~Auctioneer individual and firm licenses~~ Licenses issued under this regulation shall expire 24 months from the last day of the month in which the license was issued. The expiration date of the license will be included on the license.

## **18VAC25-21-95. Board discretion to deny renewal or reinstatement.**

The board may deny renewal or reinstatement of a license for the same reason as it may refuse initial licensure or discipline a licensee. The licensee has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

## **18VAC25-21-110. Contracts.**

A. When an ~~an auctioneer or auction firm~~ a licensee agrees to conduct an auction, a contract shall be drawn setting forth the

particulars of the terms and conditions under which the auctioneer or auction firm received the real or personal property for auction and particulars for the disbursement of the proceeds. Each contract for auction shall include the following:

1. a. A detailed list of the real or personal property received for sale with adequate descriptions of the property so that the personal property [ of material value ] can be readily identified. If a list cannot be made at the time of signing of the contract, [ and the owner of the items agrees to waive this requirement in writing in an addendum to the contract, ] then a list must be [ signed and dated by the owner and ] made a part of the contract (and attached) prior to auction of the real or personal property for that day; or

b. If the auctioneer or auction firm enters into a contract to sell items on a consignment basis where the total value of all the items to be sold at any one action does not exceed \$500, [ ~~and the owner of the items agrees to waive this requirement in writing on a document separate from, but made a part of, the contract,~~ ] then the requirement contained in subdivision 1 a of this subsection is not applicable.

2. The name, address, telephone number, and license number of the ~~Virginia auctioneer or auction firm~~ licensee entering into the contract.

3. The name, address and telephone number of the property owner.

4. The date, time and place of the auction or auctions at which the real or personal property is scheduled to be auctioned. The date by which the property is to be returned or otherwise disposed of in accordance with the terms of the contract if it is not sold.

5. The fee or percentage of gross sales the auctioneer or auction firm will charge the owner and what services are included in the fee, such as preparation, travel, labor, advertising and any other auction related expenses.

6. By what date the owner is to be paid and who is responsible for disbursing the funds.

7. A statement that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made available for inspection by the owner on a daily basis.

8. The following statement above the owner's signature line: "I have read and accepted the terms of this contract."

B. A legible executed copy of the contract and any addendums shall be given to the owner at the time of execution.

## **18VAC25-21-120. Conduct at auctions.**

No ~~an auctioneer or auction firm~~ licensee shall attempt to escalate bidding through false bids, or through collusion with another (shills). The ~~an auctioneer or auction firm~~ licensee shall not bid on the owner's behalf nor knowingly accept a bid

made by the owner or made on the owner's behalf unless notice has been given that liberty for such bidding has been reserved. The ~~auctioneer or auction firm~~ licensee shall ~~not~~ neither bid on his own behalf nor knowingly accept a bid made on his behalf unless notice has been given that such bidding will be permitted.

**18VAC25-21-140. Documentation.**

Upon completion of the ~~auctioneer's or auction firm's~~ licensee's service, each owner shall be given legible copies of bills of sale, clerk sheets, consignment sheets, settlement papers, balance sheets or other evidence to properly account for all items sold at auction.

**18VAC25-21-150. Escrow funds.**

A. Proceeds of a personal property auction not disbursed to the owner on auction day shall be deposited in an auction escrow account by the ~~auctioneer/auction firm~~ licensee no later than the next banking day following the date of auction or sale of the goods, whichever occurs first.

B. Notwithstanding the provisions of subsection A of this section ~~for~~, proceeds that are paid via credit card, ~~the payment of such proceeds from the credit card issuer~~ debit card, check card, or any other electronic funds transfer (EFT) method shall be deposited into an auction escrow account upon receipt from the ~~credit card issuer~~ originating source.

C. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Contingency accounts established to guarantee checks accepted on the owner's behalf shall not be considered commingling of funds. Moneys due to the licensee shall not be withdrawn from the auction escrow account until final settlement is made with the owner.

D. Funds to be deposited in the escrow account may include moneys that shall ultimately belong to the licensee for incidental expenses per the terms of the contract. Such moneys shall be separately identified in the escrow account records and shall be paid to the licensee by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds" provided that there are periodic withdrawals of said funds at intervals of not more than six months and that the licensee can at all times accurately identify the total funds in that account that belong to the licensee.

E. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

~~C. Auctioneers/auction firms~~ F. Auctioneers and auction firms shall use federally insured depositories in the Commonwealth of Virginia. All accounts, checks, and bank

statements shall be labeled "escrow" and the accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.

~~D. G.~~ Proceeds due from the sale of goods other than real property shall be disbursed to the owner no later than 30 days after the date of each auction.

~~E. H.~~ Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

~~F. I.~~ If the ~~owners'~~ owner's goods are not sold in a single auction, proceeds due shall be disbursed to the owner within 30 days after each auction for goods other than real property, or in accordance with the agreement of sale for the sale of real property. Notice must be given to the owner of tentative date of auction, or date of return to the owner, of the remaining goods.

~~G. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Contingency accounts established to guarantee checks accepted on the owner's behalf shall not be considered commingling of funds. Moneys due to the licensee shall not be withdrawn from the auction escrow account until final settlement is made with the owner.~~

~~H. J.~~ The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the licensee. A licensee shall not disburse or cause to be disbursed moneys from an escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

~~I. Funds to be deposited in the escrow account may include moneys that shall ultimately belong to the licensee for incidental expenses per the terms of the contract. Such moneys shall be separately identified in the escrow account records and shall be paid to the licensee by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds" provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account that belong to the licensee.~~

~~J. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.~~

**18VAC25-21-160. Records.**

The licensee is required to maintain, for a period of four years from the date of settlement, written records of the following: the contract drawn with each owner; auction records, including but not limited to lists of buyers and their

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addresses; and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices and the final settlement papers ~~shall be retained for a period of four years from the date of settlement.~~ These business records shall be available for inspection by the board or its designees as deemed appropriate and necessary.

## **18VAC25-21-170. Change of address.**

A. ~~An auctioneer's or auction firm's license~~ Licenses shall not be transferable and shall bear the same name and physical address as the business. Upon dissolution or change in the form of the business entity of an auction firm, the auction firm license shall become void.

B. ~~Written notice shall be given within 30 days~~ A licensee shall report all changes of address to the board by each individual or firm licensee of any change of physical business address or location in writing, within 30 calendar days of the change, whereupon the board shall issue an amended license without fee for the unexpired portion of the biennial period.

C. A post office box is ~~not an acceptable~~ only when a physical business address is also provided. If the licensee holds more than one license, certificate, or registration, the licensee shall inform the board of all licenses, certificates, and registrations affected by the address change.

### Part V Standards of Conduct

## **18VAC25-21-180. Discipline.**

The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained, renewed or reinstated through fraud or misrepresentation;
2. The ~~licensed auctioneer or firm licensee~~ has been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. A certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;
3. The ~~licensed auctioneer or firm licensee~~ has been found by any regulatory board, agency, or jurisdiction where licensed to have had a license or registration suspended, revoked or surrendered in connection with a disciplinary action, who has been the subject of discipline in another jurisdiction or to have violated any applicable regulations or laws in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a

court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;

4. The ~~licensed auctioneer or firm licensee~~ has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of auctioneering duties;

5. The ~~license auctioneer or firm licensee~~ violated or ~~induced~~ assisted another person to violate any provisions of ~~Chapters~~ Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 6 of Title 54.1 of the Code of Virginia, ~~or any provision of this chapter;~~ or combined or conspired with or acted as agent, partner, or associate for another; or

6. The licensee fails to comply, or misrepresents any information pertaining to his compliance, with any of the continuing education requirements as contained in this chapter.

## **18VAC25-21-185. Cooperation with board.**

A. The licensee shall, upon request or demand, produce to the board, or any of its agents, within 10 days any plan, document, book, record or copy thereof in his possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board.

B. A professional licensee who has direct knowledge that any individual, including himself, or firm may be violating any of these provisions, or the provisions of Chapters 1 (§ 54.1-100 et seq.) through 3 (§ 54.1-300 et seq.) or Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia, shall immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

~~C. The board, in its discretion, may refuse to grant the renewal or reinstatement of a license of any person for any of the reasons specified in subsection A of this section.~~

## **18VAC25-21-220. Periodic requalification for continued course approval.**

~~At times established by the board, the~~ The board may require that schools that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that they continue to comply with the requirements of 18VAC25-21-190 and 18VAC25-21-200. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.

## **18VAC25-21-250. Continuing education requirements for renewal or reinstatement.**

A. ~~Individuals~~ Licenseses whose licenses expire [ ; ] or [ who ] apply to reinstate [ , after February 1, 2008, ] shall be required to comply with the continuing education provisions of this chapter.

~~B. Individuals are required to complete at least six continuing education credit hours of board-approved continuing education courses for any license renewal or reinstatement.~~

B. Licensees are required to complete at least six continuing education credit hours of board-approved continuing education courses for any license renewal or reinstatement.

A Virginia licensee that is also licensed in another state with which the board shares a reciprocal agreement may use board-approved continuing education in that state to meet the required six hours of continuing education for Virginia, provided that the reciprocal jurisdiction affords the same privilege to Virginia licensees.

C. 1. Each ~~individual licensee~~ applying for renewal shall certify that he has met the continuing education requirements of this chapter. Only continuing education courses completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license.

2. ~~Individuals~~ Licensees shall maintain records of completion of continuing education credit hours for two years from the date of expiration of the license for which the continuing education credit hours are being used to renew the license. Individuals shall provide such records to the board or its duly authorized agents upon request.

3. Continuing education credit hours utilized to satisfy the continuing education requirements to renew a license shall be valid only for that renewal and shall not be accepted for any subsequent renewal cycles or reinstatement.

D. 1. Each individual applying for reinstatement shall provide, as part of his reinstatement application, evidence of compliance with the continuing education requirements of this chapter. The completion date of continuing education courses submitted in support of a reinstatement application shall not be more than two years old as of the date a complete reinstatement application is received by the board.

2. Continuing education credit hours utilized to satisfy the continuing education requirements in order to reinstate a license shall be valid only for that reinstatement and shall not be accepted for any subsequent renewal cycles or reinstatement.

E. Notwithstanding the provisions of subsection C of this section, continuing education hours earned during a licensing renewal cycle to satisfy the continuing education requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for any subsequent renewal cycles or reinstatement.

**18VAC25-21-280. Periodic requalification for continued course approval.**

~~At times established by the board, the~~ The board may require that course providers that have previously obtained course approval provide the board with evidence, in a form

set forth by the board, that they continue to comply with the requirements of 18VAC25-21-230 A and 18VAC25-21-240. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.

FORMS (18VAC25-21)

[ [Auctioneer License By Examination Application, 2907EXLIC \(rev. 11/08\)](#)

[Auctioneer Surety Bond Form, 2905\\_07BOND \(rev. 11/08\)](#)

~~[Auctioneer License by Examination Application, 2907EXLIC \(rev. 3/13\)](#)~~

~~[Auctioneer Surety Bond Form, 2905\\_07BOND \(rev. 4/10\)](#)~~ ]

[Auctioneer Firm License Application, 2908LIC \(rev. 11/08\)](#)

[Auction Firm Surety Bond Form, 2906\\_08BOND \(rev. 11/08\)](#)

[ [States with Approved Reciprocal Agreements, 29RECLST \(rev. 11/08\)](#)

[Virginia Approved Auctioneering Schools, 29SCHLST \(rev. 11/08\)](#)

~~[States with Approved Reciprocal Agreements, 29RECLST \(rev. 2/12\)](#)~~

~~[Virginia Approved Auctioneering Schools, 29SCHLST \(rev. 9/13\)](#)~~ ]

[Auctioneering School Application for Course Approval, 29CRS \(rev. 11/08\)](#)

[Auctioneer License By Reciprocity Application, 2907RECLIC \(rev. 11/08\)](#)

[Auctioneer License Reinstatement Application, 2905\\_07REI \(rev. 11/08\)](#)

[Application for Continuing Education Course Approval, 29CECRS \(rev. 11/08\)](#)

[Auctioneer Firm License Renewal Form, 2906\\_08REN \(eff. 11/08\)](#)

[Individual Auctioneer License Renewal Form, 2905\\_07REN \(eff. 11/08\)](#)

[Continuing Education Medical Exemption Request, 2905\\_07CEXMP \(eff. 11/08\)](#)

VA.R. Doc. No. R09-2002; Filed August 5, 2015, 2:11 p.m.

**BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY**

**Final Regulation**

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (adding 18VAC30-20-141).**

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

Effective Date: October 7, 2015.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960

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Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

## Summary:

*The regulation sets forth (i) the educational qualifications, supervised experience, and certification necessary for a speech-language pathologist to perform an endoscopic evaluation of swallowing and (ii) requirements for endoscopic evaluation that include referral from a qualified physician, performance in a health care facility with protocols for emergency medical backup, and reports to the referring physician.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## **18VAC30-20-141. Performance of flexible endoscopic evaluation of swallowing.**

A. For the purposes of this section, an endoscopic procedure shall mean a flexible endoscopic evaluation of swallowing limited to the use of flexible endoscopes to observe, collect data, and measure the parameters of swallowing for the purposes of functional assessment and therapy planning.

B. A speech-language pathologist who performs an endoscopic procedure shall meet the following qualifications:

1. Completion of a course or courses or an educational program offered by a provider approved in 18VAC30-20-300 that includes at least 12 hours on endoscopic procedures;

2. Successful performance of at least 25 flexible endoscopic procedures under the immediate and direct supervision of a board-certified otolaryngologist or another speech-language pathologist who has successfully performed at least 50 flexible endoscopic procedures beyond the 25 required for initial qualification and has been approved in writing by a board-certified otolaryngologist to provide that supervision; and

3. Current certification in basic life support.

C. The speech-language pathologist who qualifies to perform an endoscopic procedure pursuant to subsection B of this section shall maintain documentation of course completion and written verification from the supervising otolaryngologist or speech-language pathologist of successful completion of flexible endoscopic procedures.

D. An endoscopic procedure shall only be performed by a speech-language pathologist on referral from an otolaryngologist or other qualified physician.

E. A speech-language pathologist shall only perform an endoscopic procedure in a facility that has protocols in place for emergency medical backup. A flexible endoscopic evaluation of swallowing shall only be performed by a speech-language pathologist in either:

1. A licensed hospital or nursing home under the general supervision of a physician who is readily available in the event of an emergency, including physical presence in the facility or available by telephone; or

2. A physician's office at which the physician is on premises and available to provide onsite supervision.

F. The speech-language pathologist shall promptly report any observed abnormality or adverse reaction to the referring physician, an appropriate medical specialist, or both. The speech-language pathologist shall provide a report of an endoscopic procedure to the referring physician in a timely manner and, if requested, shall ensure access to a visual recording for viewing.

G. A speech-language pathologist is not authorized to possess or administer prescription drugs except as provided in § 54.1-3408 B of the Code of Virginia.

H. A speech-language pathologist who has been performing flexible endoscopic evaluations of swallowing prior to [ ~~(insert effective date of regulation)~~ October 7, 2015, ] may continue to perform such evaluations provided he has written verification from a board-certified otolaryngologist that he has the appropriate training, knowledge, and skills to safely perform such evaluations.

VA.R. Doc. No. R11-2689; Filed August 7, 2015, 3:10 p.m.

## **CEMETERY BOARD**

### **Proposed Regulation**

**Title of Regulation:** **18VAC47-20. Cemetery Board Rules and Regulations (amending 18VAC47-20-180, 18VAC47-20-190, 18VAC47-20-270; adding 18VAC47-20-280).**

**Statutory Authority:** §§ 54.1-201 and 54.1-2313 of the Code of Virginia (18VAC47-20-270).

§§ 54.1-201, 54.1-2312.01, and 54.1-2313 of the Code of Virginia (18VAC47-20-180, 18VAC47-20-190, 18VAC47-20-280).

#### **Public Hearing Information:**

October 20, 2015 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, VA 23233

**Public Comment Deadline:** November 6, 2015.

**Agency Contact:** Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email [cemetery@dpor.virginia.gov](mailto:cemetery@dpor.virginia.gov).

**Basis:** Chapter 500 of the 2014 Acts of Assembly states in part "The Board shall adopt such regulations as the Board deems appropriate and necessary to implement the provisions of this section. Regulations of the Board shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)."

Section 54.1-2313 D of the Code of Virginia states: "In addition to the general powers and duties conferred in this

subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this chapter."

Section 54.1-201 A 1 of the Code of Virginia states: "The powers and duties of regulatory boards shall be as follows: to establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation."

Section 54.1-201 A 5 of the Code of Virginia states: "The powers and duties of regulatory boards shall be as follows: to promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board . . ."

**Purpose:** The purpose of the proposed regulation is to make clarifying changes, to incorporate language as necessary to implement new statutory requirements for interment of pets to ensure consistency with § 54.1-2312.01 of the Code of Virginia, and to make other changes that the board considers necessary. Since the regulations have not undergone substantial revision since 2007, a thorough review was necessary to ensure the regulations provide minimum burdens on the regulants while still protecting the public health, safety, and welfare and reflect current procedures and policies of the board and the Department of Professional and Occupational Regulation. The goal of the proposed amendments is to make clear to both the cemetery companies and the public what the requirements are for cemeteries that choose to permit the interment of pets so an individual can choose whether or not he wants to be interred in that cemetery.

**Substance:** The proposed amendments to (i) 18VAC47-20-180 clarify records requirements for pet interments; (ii) 18VAC47-20-190 update prohibited activities to ensure consistency with statutory changes regarding pet interment; (iii) 18VAC47-20-270 reduce the hours to make training more meaningful without unnecessary excess information to fill the hours; and (iv) 18VAC47-20-280 add a section to implement § 54.1-2312.01 of the Code of Virginia regarding pet interment.

**Issues:** The primary advantage to the public is that the revisions will improve the clarity of the regulations and ensure consistency with current board practices, legal requirements, and standards of practice in the industry, all to

better protect the health, safety, and welfare of citizens of the Commonwealth. The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance that Virginia places on ensuring the regulations are the least burdensome but also provide protection to the citizens of the Commonwealth. No disadvantages to the Commonwealth could be identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to § 54.1-2312.01, the Cemetery Board (Board) proposes to amend its regulation to decrease the mandatory hours that a training course must last and to allow cemetery companies to set up separate sections in their cemeteries that allow pets to be buried either separately or beside their owners.

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

Estimated Economic Impact. Current regulation requires that training courses for compliance agents and their designees approved by the Board include all Board required information and be at least eight hours long. The Board has determined, however, that teaching all the required information in any given course generally takes much less time than the minimum eight hours allotted. Accordingly, the Board now proposes to amend the regulation so that approved training courses must be at least four hours. Because the changed hours would be a minimum, and because courses will still cover all information required by the Board even if it takes longer than four hours to do so, the public is unlikely to be harmed by more poorly informed cemetery compliance officers. Cemetery companies will likely save money on account of this change as they pay for their compliance officers' training. Compliance agents and designees will likely benefit from having to spend less time in training.

Currently, cemetery companies are only allowed to inter human remains. In 2014, the General Assembly passed legislation that allows cemetery companies to set aside sections of their cemeteries to bury humans and their pets so long as:

1. The sections set aside are "segregated entirely from the remainder of the cemetery devoted to the interment of human remains,"
2. Pets are not buried in the same grave, crypt or niche as a human and
3. Sections set aside are clearly marked and advertised as being for pets and their owners.

This legislation also allows for sections of cemeteries to be set aside strictly for pets so long as those sections are segregated, clearly marked and advertised as strictly for pets by the cemetery companies. The Board now proposes to amend its regulation to reflect these legislative changes and to require cemetery companies that set up sections of their

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cemeteries for pets or pets and their owners to keep permanent records identifying the name and type of pet interred, the name of the owner of the pet and the exact location where the pet is interred. Cemetery companies are not required to set up separate sections of their cemeteries for pets or pets and their owners and, so, are unlikely to do so unless the revenue that is accrued from doing so outweighs costs.

**Businesses and Entities Affected.** Board staff reports that there are 93 cemetery companies in the Commonwealth that own and operate 164 cemeteries. Approximately 90 of those cemetery companies would qualify as small businesses. All of these cemetery companies will gain the ability to inter pets or pets and their owners so long as they follow rules set forth in the authorizing legislation and this proposed regulation. Board staff further reports that fewer than 10 people per year apply to the Board to be compliance agents or designees that would be affected by the changing training course hour minimum.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulation.

**Projected Impact on Employment.** These proposed regulatory changes are unlikely to have any impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** These proposed regulatory changes are unlikely to have any impact on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Small business cemetery companies will not be required to incur any costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small business cemetery companies will not be required to incur any costs on account of this regulatory action.

**Real Estate Development Costs.** Cemetery companies may choose to incur extra property development costs to set up sections of their cemeteries for pets or pets and their owners but would likely only do so if they had an expectation that they would see increased profits from that choice.

**Legal Mandate.**

**General:** 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 Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed 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.

**Small Businesses:** If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

**Agency's Response to Economic Impact Analysis:** The board concurs with the approval.

**Summary:**

*The proposed amendments (i) reduce the length of training courses from eight hours to four hours and (ii) incorporate provisions on pet interments and pet and owner interments to align with Chapter 500 of the 2014 Acts of Assembly.*

**18VAC47-20-180. Records of interments.**

A permanent record shall be kept of every interment in the cemetery, showing the date of the interment, the name of the person interred, together with information identifying the specific location in which the interment was made. For interments made pursuant to § 54.1-2312.01 of the Code of Virginia, the permanent records shall also include the type and name of the pet interred and the name of the owner with information identifying the specific location in which the pet interment was made.

**18VAC47-20-190. Prohibited activities.**

In addition to the acts set forth in §§ 54.1-2314, 54.1-2315, and 54.1-2316 of the Code of Virginia, the board may discipline a licensee or registrant for the following acts:

1. Employing or affiliating with by independent contract, sales personnel not registered with the board.

2. Unless otherwise addressed in this chapter, failing to retain for a period of three years all records required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia at the place of business in Virginia of the licensed cemetery company.
3. Failing to produce to the board or any of its agents, upon request, any document, book, or record required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia.
4. Failing to respond to an inquiry by the board or any of its agents within 21 days.
5. Advertising in any name other than the name in which licensed or registered.
6. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or registration.
7. Allowing a cemetery company license or sales personnel registration to be used by an unlicensed cemetery company or unregistered sales personnel.
8. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.
9. Having failed to inform the board in writing, within 30 days, that the company, an officer, director, or compliance agent, has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or any crime involving moral turpitude.
10. Having failed to inform the board in writing, within 30 days, of a disciplinary action in a jurisdiction where licensed, including suspension, revocation, or surrender in connection with a disciplinary action.
11. Failing to reasonably maintain the buildings, grounds, and facilities of a cemetery licensed to a cemetery company.
12. Failing to file any report required by Chapter 23.1 of Title 54.1 of the Code of Virginia.
13. Engaging in negligent, improper, fraudulent, or dishonest conduct.
14. Failing to segregate entirely the section of the cemetery dedicated to the interment of pets or the interment of human remains and the pets of such deceased humans by means such as hedge, wall, tree line, fence, roadway, or other similar physical barrier or boundary.
15. Permitting the interment of a pet in the same grave, crypt, or niche as the remains of a human.
16. If a cemetery company has a section devoted to the interment of pets or the interment of human remains and the pets of such deceased humans, any advertisements failing to clearly state the cemetery company has such section or sections in its cemetery.
17. Failing to clearly mark the section or sections devoted to the interment of pets or the interment of human remains

and the pets of such deceased humans with signage that is reasonably apparent to the general public.

**18VAC47-20-270. Standards of approval of training course.**

All training courses shall be approved by the board. The training course shall be at least ~~eight~~ four hours and include appropriate testing procedures to demonstrate an understanding of the topics. The training program shall include, but is not limited, to the following topics:

1. Cemetery Board statute and regulations;
2. Perpetual care trust fund requirements;
3. Preneed trust fund requirements;
4. Preneed burial contracts;
5. Interment records;
6. General price list;
7. Itemized statement of goods and services provided;
8. Advertising;
9. Solicitation;
10. Funeral rule; and
11. Proper care, maintenance, administration, and embellishment of the cemetery.

**18VAC47-20-280. Special interment requirement**

A licensed cemetery company may establish a section in its cemetery devoted to the interment of pets or the interment of human remains and the pets of such deceased humans in accordance with § 54.1-2312.01 of the Code of Virginia. All other provisions of this chapter shall apply.

VA.R. Doc. No. R15-4107; Filed August 17, 2015, 1:24 p.m.

**BOARD FOR CONTRACTORS**

**Final Regulation**

**Title of Regulation: 18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-40, 18VAC50-30-90, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-185, 18VAC50-30-190, 18VAC50-30-200).**

**Statutory Authority: §§ 54.1-201, 54.1-1102, and 54.1-1146 of the Code of Virginia.**

**Effective Date: November 1, 2015.**

**Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.**

**Summary:**

*The amendments provide for the licensure of residential building energy analysts to comport with Chapter 865 of the 2011 Acts of Assembly. The amendments add a definition of residential building energy analyst, establish licensure eligibility criteria, list the fees associated with the license, add prohibited acts for the license, and identify other administrative requirements.*

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Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## **18VAC50-30-40. Evidence of ability and proficiency.**

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;
2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;
3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;
4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or
5. [ ~~On or after July 1, 1995, an An~~ ] applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or
2. [ ~~On or after July 1, 1995, an An~~ ] an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or
2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;
2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or
3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to § 54.1-1129.1 A of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or
3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

G. An applicant for certification as an accessibility mechanic shall:

1. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances; 80 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 20 hours of formal training, but not to exceed 60 hours;
2. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances and a certificate of completion of an accessibility mechanic examination of a training program determined to be equivalent to the requirements established by the board; or
3. Successfully complete an accessibility mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

H. An applicant for a limited use/limited application (LULA) endorsement shall:

1. Hold a current certification as an accessibility mechanic issued by the board.
2. Have one year of practical experience in the construction, installation, maintenance, service, repair, and testing of limited use/limited application elevators and complete a vocational education program approved by the board; and satisfactorily complete a written examination administered by the board; or complete a limited use/limited application elevator training program determined to be equivalent to the requirements established by the board.

I. Pursuant to § 54.1-1145 B of the Code of Virginia, an applicant for licensure as a residential building energy analyst shall provide satisfactory proof to the board of:

1. The completion of a residential building energy analyst training program approved by the board;
2. The completion of a minimum of five residential building energy analyses under the supervision of a licensed residential building energy analyst;
3. Current membership in good standing with a certifying organization approved by the board; and
4. Maintaining a minimum of \$100,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia unless the individual is employed by a company that holds a valid residential building energy analyst firm license issued by the board.

The applicant shall provide information for the past five years prior to application on any outstanding past-due debts, outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies.

J. Individuals applying for initial licensure as residential building energy analysts who meet the criteria of § 54.1-1145 C of the Code of Virginia are not required to meet the eligibility standards for licensure found in subsection I of this section.

**18VAC50-30-90. Fees for licensure and certification.**

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

Original tradesman license by examination	\$130
Original tradesman license without examination	\$130
Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license)	\$95
Liquefied petroleum gas fitter	\$130
Natural gas fitter provider	\$130
Backflow prevention device worker certification	\$130
Elevator mechanic certification	\$130
Certified accessibility mechanic	\$130
Water well systems provider certification	\$130
<u>Residential building energy analyst license</u>	<u>\$130</u>
Limited use/limited application endorsement	\$65

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# Regulations

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## 18VAC50-30-120. Renewal.

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal.

C. Certified elevator mechanics and certified accessibility mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code pertaining to elevators, escalators, and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	\$90
Liquefied petroleum gas fitter license	\$90
Natural gas fitter provider license	\$90
Backflow prevention device worker certification	\$90
Elevator mechanic certification	\$90
Certified accessibility mechanic	\$90
Water well systems provider certification	\$90
<u>Residential building energy analyst license</u>	<u>\$90</u>

All fees are nonrefundable and shall not be prorated.

For renewal fees received on or before August 31, 2017, the fee shall be \$60.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

J. Residential building energy analysts, as a condition of renewal or reinstatement, shall provide documentation of continued membership, in good standing, of a certifying organization approved by the board and proof of insurance as required in 18VAC50-30-40 I 4.

## 18VAC50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	\$140*
Liquefied petroleum gas fitter license	\$140*
Natural gas fitter provider license	\$140*
Backflow prevention device worker certification	\$140*
Elevator mechanic certification	\$140*
Certified accessibility mechanic	\$140*
Water well systems provider certification	\$140*
<u>Residential building energy analyst license</u>	<u>\$140*</u>

\*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

For reinstatement fees received on or before August 31, 2017, the fee shall be \$100. This fee includes the renewal fee listed in 18VAC50-30-120.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, ~~[ or ]~~ water well systems providers, or residential building energy analysts, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Any individual who completes a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, subsequent to the expiration of a residential building energy analyst license may have engaged in illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

Part V  
Standards of Conduct

**18VAC50-30-185. Revocation of licensure or certification.**

A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. The board shall have the power to require remedial education and to fine, suspend, revoke or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, ~~or~~ accessibility mechanics, or residential building energy analysts in the Commonwealth of Virginia.

**18VAC50-30-190. Prohibited acts.**

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;
3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker, water well systems provider, elevator mechanic, or accessibility mechanic certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;
4. Negligence or incompetence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider;
5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider;
6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider by a court of competent jurisdiction;
7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under \$1,000, or backflow prevention device workers, elevator mechanics, accessibility mechanics, or water well systems

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# Regulations

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providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, elevator or accessibility work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Uniform Statewide Building Code;

15. Practicing in a classification or specialty service for which the regulant is not licensed or certified;

16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation,

maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment; ~~and~~

17. Failure to obtain a building permit or applicable inspection where required;

18. Failure to perform a residential building energy analysis consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the "Energy Star" Program; and

19. Failure of a residential building energy analyst to maintain the general liability insurance required in 18VAC50-30-40 I 4.

## Part VI

Vocational Training and Continuing Education Providers

### **18VAC50-30-200. Vocational training.**

A. Vocational training courses must be completed through accredited colleges, universities, junior and community colleges; adult distributive, marketing and formal vocational training as defined in this chapter; Virginia Apprenticeship Council programs; or proprietary schools approved by the Virginia Department of Education.

B. Backflow prevention device worker courses must be completed through schools approved by the board. The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

C. Elevator mechanic courses must be completed through schools approved by the board. The board accepts training programs approved by the National Elevator Industry Education Program (NEIEP). Other programs could be approved after board review.

D. Water well systems provider courses must be completed through schools or programs approved by the board.

E. Certified accessibility courses must be completed through education providers approved by the board.

F. Residential building energy analyst courses must be completed through programs that meet or exceed the standards set forth by the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Home Performance with Energy Star Program. Other programs could be approved after board review.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

- [ FORMS (18VAC50-30)
- [Education Provider Listing Application, A501-27EDLIST-v3 \(rev. 12/12\)](#)
- [Education Provider Registration/Course Approval Application, A501-27EDREG-v5 \(rev. 12/12\)](#)
- [Tradesman Additional Designation & License Upgrade Application, A501-2710\\_ADDLIC-v2 \(rev. 12/12\)](#)
- [Tradesman Exam & License Application, A501-2710EXLIC-v2 \(rev. 12/12\)](#)
- [Tradesman Individual Experience Form, A501-2710EXP-v2 \(rev. 12/12\)](#)
- [Tradesman – Inactive/Activate License Application, A501-2710INAT-v1 \(eff. 1/13\)](#)
- [Backflow Prevention Device Worker Certification Application, A501-2717CERT-v2 \(rev. 12/12\)](#)
- [Certified Elevator Mechanic Application, A501-2718CERT-v3 \(rev. 7/13\)](#)
- [Temporary Elevator Mechanic Certification \(rev. 4/10\)](#)
- [Certified Water Well System Provider Application, A501-2719CERT-v2 \(rev. 12/12\)](#)
- [Certified Accessibility Mechanics Application, A501-2720CERT-v1 \(eff. 1/14\)](#)
- [Certified Accessibility Mechanics Limited Use/Limited Application \(LULA\) Endorsement Application, A501-2720LULA-v1 \(eff. 1/14\)](#)
- [Residential Building Energy Analyst License Application, Form A501-2722LIC-v4 \(rev. 7/14\)](#)
- [Residential Building Energy Analyst Experience Form, Form A501-2722EXP-v3 \(rev. 7/13\) \]](#)

V.A.R. Doc. No. R13-2739; Filed August 17, 2015, 10:48 a.m.

**BOARD OF MEDICINE**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Medicine will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-121, 18VAC85-20-122).**

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

**Effective Date:** October 7, 2015.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**Summary:**

*The amendments conform regulation requirements for postgraduate training per Chapter 525 of the 2015 Acts of Assembly so that 12 months of such training must be done in one program or institution.*

**18VAC85-20-121. Educational requirements: Graduates of approved institutions.**

A. Such an applicant shall be a graduate of an institution that meets the criteria appropriate to the profession in which he seeks to be licensed, which are as follows:

1. For licensure in medicine. The institution shall be approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.
2. For licensure in osteopathic medicine. The institution shall be approved or accredited by the Bureau of Professional Education of the American Osteopathic Association or any other organization approved by the board.
3. For licensure in podiatry. The institution shall be approved and recommended by the Council on Podiatric Medical Education of the American Podiatric Medical Association or any other organization approved by the board.

B. Such an applicant for licensure in medicine, osteopathic medicine, or podiatry shall provide evidence of having completed ~~one year~~ 12 months of satisfactory postgraduate training as an intern or resident ~~in a hospital or health care facility offering approved internship and residency training programs~~ in one program or institution when such a program or institution is approved by an accrediting agency recognized by the board for internship and residency training.

C. For licensure in chiropractic.

1. If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.
2. If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

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# Regulations

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## **18VAC85-20-122. Educational requirements: Graduates and former students of institutions not approved by an accrediting agency recognized by the board.**

A. A graduate of an institution not approved by an accrediting agency recognized by the board shall present documentary evidence that he:

1. Was enrolled and physically in attendance at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled two consecutive academic years at the institution's principal site.

2. Has fulfilled the applicable requirements of § [54.1-2930](#) of the Code of Virginia.

3. Has obtained a certificate from the Educational Council of Foreign Medical Graduates (ECFMG), or its equivalent. Proof of licensure by the board of another state or territory of the United States or a province of Canada may be accepted in lieu of ECFMG certification.

4. Has had supervised clinical training as a part of his curriculum in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the clinical training received or in a program acceptable to the board and deemed a substantially equivalent experience, if such training was received in the United States.

5. Has completed two years of satisfactory postgraduate training as an intern, ~~or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency, or clinical fellow.~~ The two years shall include at least 12 months in one program or institution approved by an accrediting agency recognized by the board for internship or residency training or in a clinical fellowship acceptable to the board in the same or a related field.

a. The board may substitute other postgraduate training or study for one year of the two-year requirement when such training or study has occurred in the United States or Canada and is:

- (1) An approved fellowship program; or
- (2) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

b. The board may substitute continuous full-time practice of five years or more with a limited professorial license in Virginia and one year of postgraduate training in a foreign country in lieu of two years of postgraduate training.

6. Has received a degree from the institution.

B. A former student who has completed all degree requirements except social services and postgraduate internship at a school not approved by an accrediting agency recognized by the board shall be considered for licensure provided that he:

1. Has fulfilled the requirements of subdivisions A 1 through 5 of this section;

2. Has qualified for and completed an appropriate supervised clinical training program as established by the American Medical Association; and

3. Presents a document issued by the school certifying that he has met all the formal requirements of the institution for a degree except social services and postgraduate internship.

VA.R. Doc. No. R16-4123; Filed August 17, 2015, 2:09 p.m.

## **Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Medicine will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18VAC85-40-10, 18VAC85-40-40 through 18VAC85-40-60, 18VAC85-40-65 through 18VAC85-40-70).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

**Effective Date:** October 7, 2015.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**Summary:**

*The amendments conform to Chapter 302 of the 2015 Acts of Assembly by changing the term "respiratory care practitioner" to "respiratory therapist."*

CHAPTER 40  
REGULATIONS GOVERNING THE PRACTICE OF  
RESPIRATORY CARE PRACTITIONERS THERAPISTS

Part I  
General Provisions

### **18VAC85-40-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

Board

Qualified medical direction

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

"AARC" means the American Association for Respiratory Care.

"Accredited educational program" means a program accredited by the Commission on Accreditation for Respiratory Care or any other agency approved by the NBRC for its entry level certification examination.

"Active practice" means a minimum of 160 hours of professional practice as a respiratory ~~care practitioner~~ therapist within the 24-month period immediately preceding renewal or application for licensure if previously licensed or certified in another jurisdiction. The active practice of respiratory care may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board on Respiratory Care to the Board of Medicine as specified in § 54.1-2956 of the Code of Virginia.

"NBRC" means the National Board for Respiratory Care, Inc.

"Respiratory ~~care practitioner~~ therapist" means a person as specified in § 54.1-2954 of the Code of Virginia.

Part II

Requirements for Licensure as a Respiratory ~~Care Practitioner~~ Therapist

**18VAC85-40-40. Licensure requirements.**

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-40-35.
2. Verification of professional education in respiratory care as required in 18VAC85-40-45.
3. Verification of practice as required on the application form.
4. Evidence of passage of the national examination as required in 18VAC85-40-50.
5. If licensed or certified in any other jurisdiction, documentation of active practice as a respiratory ~~care practitioner~~ therapist or documentation of 20 hours of continuing education within the 24-month period immediately preceding application and verification that there has been no disciplinary action taken or pending in that jurisdiction.

**18VAC85-40-45. Educational requirements.**

An applicant for licensure shall:

1. Be a graduate of an accredited educational program for respiratory ~~care practitioners~~ therapists; or

2. Hold current credentialing as a Certified Respiratory Therapist (CRT) or a Registered Respiratory Therapist (RRT) from the NBRC or any other credentialing body determined by the board to be equivalent.

**18VAC85-40-50. Examination requirements.**

An applicant for a license to practice as a licensed respiratory ~~care practitioner~~ therapist shall submit to the board evidence that the applicant has passed the NBRC entry level examination for respiratory care, or its equivalent as approved by the board.

**18VAC85-40-55. Registration for voluntary practice by out-of-state licensees.**

Any respiratory ~~care practitioner~~ therapist who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

Part III

Renewal and Reinstatement

**18VAC85-40-60. Renewal of license.**

A. Every licensed respiratory ~~care practitioner~~ therapist intending to continue his licensure shall biennially in each odd-numbered year in his birth month:

1. Register with the board for renewal of his license;
2. Pay the prescribed renewal fee at the time he files for renewal;
3. Attest that he has engaged in active practice as defined in 18VAC85-40-10 or present other documented evidence acceptable to the board that he is prepared to resume practice; and
4. Attest to having met the continuing education requirements of 18VAC85-40-66.

B. A respiratory ~~care practitioner~~ therapist whose licensure has not been renewed by the first day of the month following

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# Regulations

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the month in which renewal is required shall pay a late fee as prescribed in 18VAC85-40-35.

## **18VAC85-40-65. Reactivation or reinstatement.**

A. To reactivate an inactive license or to reinstate a license that has been lapsed for more than two years, a respiratory ~~care practitioner~~ therapist shall submit evidence of competency to return to active practice to include one of the following:

1. Information on continued practice in another jurisdiction during the period in which the license has been inactive or lapsed;
2. Ten hours of continuing education for each year in which the license has been inactive or lapsed, not to exceed three years; or
3. Recertification by passage of an examination from NBRC.

B. To reactivate an inactive license, a respiratory ~~care practitioner~~ therapist shall pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure.

C. To reinstate a license which has been lapsed for more than two years, a respiratory ~~care practitioner~~ therapist shall file an application for reinstatement and pay the fee for reinstatement of his licensure as prescribed in 18VAC85-40-35. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience or reexamination.

D. A respiratory ~~care practitioner~~ therapist whose licensure has been revoked by the board and who wishes to be reinstated shall make a new application to the board, fulfill additional requirements as specified in the order from the board and make payment of the fee for reinstatement of his licensure as prescribed in 18VAC85-40-35 pursuant to § 54.1-2408.2 of the Code of Virginia.

E. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

## **18VAC85-40-66. Continuing education requirements.**

A. In order to renew an active license as a respiratory ~~care practitioner~~ therapist, a licensee shall attest to having completed 20 hours of continuing education as approved and documented by a sponsor recognized by the AARC or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

## **18VAC85-40-67. Restricted volunteer license.**

A. A respiratory ~~care practitioner~~ therapist who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a respiratory ~~care practitioner~~ therapist shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-40-35.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-40-35.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education as approved and documented by a sponsor recognized by the AARC or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.

### Part IV

#### Scope of Practice

## **18VAC85-40-70. Individual responsibilities.**

Practice as a licensed respiratory ~~care practitioner~~ therapist means, upon receipt of written or verbal orders from a qualified practitioner and under qualified medical direction,

the evaluation, care and treatment of patients with deficiencies and abnormalities associated with the cardiopulmonary system. This practice shall include, but not be limited to, ventilatory assistance and support; the insertion of artificial airways without cutting tissue and the maintenance of such airways; the administration of medical gases exclusive of general anesthesia; topical administration of pharmacological agents to the respiratory tract; humidification; and administration of aerosols. The practice of respiratory care shall include such functions shared with other health professionals as cardiopulmonary resuscitation; bronchopulmonary hygiene; respiratory rehabilitation; specific testing techniques required to assist in diagnosis, therapy and research; and invasive and noninvasive cardiopulmonary monitoring.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

## FORMS (18VAC85-40)

~~Instructions and Application for Reinstatement of License to Practice Respiratory Care (rev. 11/10).~~

~~Instructions (rev. 1/09) and Application for a License to Practice as a Respiratory Care Practitioner (rev. 12/07).~~

~~Reinstatement Application Instructions for Respiratory Care Practitioner after Reinstatement Denied or License Revoked (rev. 8/07).~~

~~Reinstatement Application Instructions for Respiratory Care Practitioner after Mandatory Suspension, Suspension or Surrender (rev. 8/07).~~

~~Form A, Claims History Sheet (rev. 8/07).~~

~~Form B, Activity Questionnaire (rev. 8/07).~~

~~Form C, Clearance from Other State Boards (rev. 8/07).~~

~~Form L, Certificate of Professional Education (rev. 1/09).~~

~~Application for Registration for Volunteer Practice (rev. 8/07).~~

[Sponsor Certification for Volunteer Registration \(rev. 8/08\)](#)

[Instructions and Application for a License to Practice as a Respiratory Therapist \(rev. 8/2015\)](#)

[Application for Registration for Volunteer Practice \(undated\)](#)

[Form B, Activity Questionnaire \(rev. 8/2015\)](#)

[Application to reactivate an Inactive License for a Respiratory Therapist \(eff. 8/2015\)](#)

VA.R. Doc. No. R16-4312; Filed August 17, 2015, 2:10 p.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Forms

**REGISTRAR'S NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

**Title of Regulation: 18VAC120-40. Virginia Professional Boxing and Wrestling Events Regulations.**

**Agency Contact:** Kathleen R. Nosbisch, Executive Director, Professional Boxing, Wrestling and Martial Arts Advisory Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email [kate.nosbisch@dpor.virginia.gov](mailto:kate.nosbisch@dpor.virginia.gov).

### FORMS (18VAC120-40)

~~Boxing and Wrestling Nonparticipant License Application, 41NPLIC (rev. 7/05).~~

~~Boxing and Wrestling Event Card Additions and Deletions Form, 41EVCHG (eff. 8/03).~~

~~Boxing and Wrestling Event Surety Bond Form, 41EVBOND (rev. 8/03).~~

~~Boxing and Wrestling Deposit Verification, 41DEPOSIT (rev. 8/03).~~

~~Boxing and Wrestling Promoter's Fee Report, 41PFRFIN (rev. 2/06).~~

~~Boxing Event License Application, 41BEVLIC (rev. 8/06).~~

~~Boxing License Application, 41BOXLIC (rev. 8/06).~~

~~Boxing Promoter License Application, 41BPRLIC (eff. 7/05).~~

~~Promoters Payout Report, 41PQYREP (rev. 4/06).~~

~~Wrestling Event License Application, 41WEVLIC (rev. 8/06).~~

~~Wrestling License Application, 41WLIC (rev. 8/06).~~

~~Wrestling Promoter License Application, 41WPRLIC (eff. 7/05).~~

~~Limited Boxing License Application, 41LTDBOXLIC (eff. 9/05).~~

~~Limited Wrestling License Application, 41LTDWLIC (eff. 9/05).~~

~~Martial Arts Boxing License Application, 41MALIC (eff. 8/06).~~

[Wrestling License Application, A511-4101LIC-v2 \(eff. 1/2015\)](#)

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[Boxing License Application, A511-4102LIC-v2 \(eff. 1/2015\)](#)

[Boxing Manager/Matchmaker License Application, A511-4103\\_04LIC \(eff. 9/2012\)](#)

[Trainer, Second or Cut Man License Application, A511-4105LIC-v2 \(eff. 1/2015\)](#)

[Wrestling Promoter License Application, A511-4106LIC-v2 \(eff. 9/2013\)](#)

[Wrestling Event License Application, A511-4107LIC-v2 \(eff. 1/2014\)](#)

[Boxing Event License Application, A511-4108LIC-v2 \(eff. 1/2014\)](#)

[Boxing Promoter License Application, A511-4110LIC-v1 \(eff. 9/2012\)](#)

[Limited \(Temporary\) Wrestling License Application, A511-4121LIC-v2 \(eff. 1/2015\)](#)

[Limited \(Temporary\) Boxing License Application, A511-4122LIC-v2 \(eff. 1/2015\)](#)

[Martial Arts Boxing License Application, A511-4123LIC-v2 \(eff. 1/2015\)](#)

[Amateur Boxing - Sanctioning Organization Approval Application, A511-4130AB SO-v1 \(eff. 10/2015\)](#)

[Amateur Martial Arts - Sanctioning Organization Approval Application, A511-4130AMA SOA-v1 \(eff. 10/2015\)](#)

[Amateur Event Notification Form, A511-4130EVE-v1 \(eff. 10/2015\)](#)

[Amateur Sanctioning Organization - Experience Verification Form, A511-4130EXP-v1 \(eff. 10/2015\)](#)

[Event Cash Bond Form, A511-41ECBOND \(eff. 9/2012\)](#)

[Event Surety Bond Form, A511-41EVBOND \(eff. 9/2012\)](#)

[Event Card Additions and/or Deletions Form, A511-41EVCHG \(eff. 9/2012\)](#)

[Promoter Payout Report, A511-41PAYREP \(eff. 9/2012\)](#)

[Promoter's Fee Report, A511-41PFR \(eff. 9/2012\)](#)

[Gate Fee Report, A511-41GFR-v2 \(eff. 10/2015\)](#)

[Criminal Conviction Reporting Form, A406-01CCR-v1 \(eff. 5/2015\)](#)

[Disciplinary Action Reporting Form, A406-01DAR-v1 \(eff. 5/2015\)](#)

[Denial of Licensure Reporting Form, A406-01DEN-v1 \(eff. 5/2015\)](#)

VA.R. Doc. No. R16-4486; Filed August 8, 2015,



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Proposed Regulation

**Titles of Regulations:** 22VAC40-72. Standards for Licensed Assisted Living Facilities (repealing 22VAC40-72-10 through 22VAC40-72-1160).

**22VAC40-73. Standards for Licensed Assisted Living Facilities (adding 22VAC40-73-10 through 22VAC40-73-1180).**

**Statutory Authority:** §§ 63.2-217, 63.2-1732, and 63.2-1805 of the Code of Virginia.

**Public Hearing Information:**

October 13, 2015 - 12 p.m. - Department of Social Services, Central Regional Office, 1604 Santa Rosa Road, Richmond, VA 23229

**Public Comment Deadline:** November 6, 2015.

**Agency Contact:** Judith McGreal, Licensing Program Consultant, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, TTY (800) 828-1120, or email [judith.mcgreal@dss.virginia.gov](mailto:judith.mcgreal@dss.virginia.gov).

**Basis:** Section 63.2-217 of the Code of Virginia requires the State Board of Social Services to adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-1721 of the Code of Virginia requires applicants for assisted living facility licensure to undergo a background check; § 63.2-1732 of the Code of Virginia provides the board's overall authority to promulgate regulations for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1802 of the Code of Virginia authorizes assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments due to dementia if they comply with the board's regulations; § 63.2-1803 of the Code of Virginia addresses staffing of assisted living facilities; § 63.2-1805 of the Code of Virginia requires the board to promulgate regulations regarding admission, retention, and discharge of residents; and § 63.2-1808 of the Code of Virginia relates to resident rights. The promulgating entity is the State Board of Social Services.

**Purpose:** This regulatory action is essential to protect the health, safety, and welfare of aged, infirm, or disabled adults who reside in assisted living facilities. The regulatory action is needed to ensure that assisted living facilities provide care, services, and a safe environment for an increasingly vulnerable population. In addition, the assisted living facility regulation provides clear criteria for licensees to follow to obtain and maintain their licensure.

The State Board of Social Services adopted 22VAC40-72 in November 2006 and has amended the regulation five times over the intervening years. Repeal of the existing regulation

and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language to provide increased consistency and clarity. This consistency and clarity will improve both compliance with the regulation and enforcement. It will also allow for a format conducive to the greater protection of residents of the Commonwealth's licensed assisted living facilities, the number of which (both residents and facilities) are expected to significantly increase in upcoming years.

Substance: New substantive provisions in the regulation include:

22VAC40-73-100 provides for the development and implementation of an enhanced infection control program that addresses the surveillance, prevention, and control of disease and infection.

22VAC40-73-160 adds to administrator training requirements that administrators who supervise medication aides, but are not registered medication aides themselves, must have annual training in medication administration.

22VAC40-73-210 increases the annual training hours for direct care staff.

22VAC40-73-220 adds requirements regarding private duty personnel.

22VAC40-73-260 increases the number of staff needed with certification in cardiopulmonary resuscitation to one for every 50 residents.

22VAC40-73-280 changes an exception to the staffing requirement that allows staff to sleep at night under certain circumstances to limit its application to facilities licensed for residential living care only.

22VAC40-73-310 adds to admission and retention requirements additional specifications regarding an agreement between a facility and hospice program when hospice care is provided to a resident.

22VAC40-73-325 adds a requirement for a fall risk assessment for residents who meet the criteria for assisted living care.

22VAC40-73-490 reduces the number of times annually required for health care oversight when a facility employs a full-time licensed health care professional and adds a requirement that all residents be included annually in the health care oversight.

22VAC40-73-540 specifies that visiting hours may not be restricted unless a resident so chooses.

22VAC40-73-620 reduces the number of times annually for oversight of special diets.

22VAC40-73-750 adds a provision that a resident may determine not to have certain furnishings that are otherwise required in his bedroom.

22VAC40-73-880 adds to the standard that in a bedroom with a thermostat where only one resident resides, the resident may choose a temperature other than what is otherwise required.

22VAC40-73-930 adds to the provision for signaling and call systems that for a resident with an inability to use the signaling device, this inability must be included on his individualized service plan with frequency of rounds indicated.

22VAC40-73-980 adds antibiotic cream or ointment and aspirin to first aid kit requirements and eliminates activated charcoal; adds a requirement for flashlight or battery lantern for each employee directly responsible for resident care, not only for those at night; and adds a requirement that 48 hours of emergency food and water supply be on site.

22VAC40-73-1010 removes the exception for facilities licensed for 10 or fewer with no more than three with serious cognitive impairment that currently applies to all requirements for mixed population and makes it applicable only to the staffing requirement.

22VAC40-73-1030 increases the training required in cognitive impairment for direct care staff and other staff, except for the administrator.

22VAC40-73-1120 increases the number of hours per week of activities for residents in a safe, secure environment.

22VAC40-73-1130 specifies that there must be at least two direct care staff members on each floor in each special care unit, rather than in each special care unit.

22VAC40-73-1140 increases the number of hours of training in cognitive impairment for the administrator and changes the time period in which the training must be received for both the administrator and for direct care staff who work in a special care unit, and also increases training in cognitive impairment for others who have contact with residents in a special care unit.

Issues: The primary advantage of the proposed regulatory action to the public and the Commonwealth is the increased protection it provides to residents in assisted living facilities. The action is needed to protect the health, safety, and welfare of an increasingly vulnerable population of aged, infirm, or disabled adults. The regulation addresses the care, services, and environment provided by assisted living facilities.

The new regulation also provides clear criteria for licensees to follow to maintain their licensure and for licensing staff to use in determining compliance with standards and in the implementation of any necessary enforcement action. In the proposed regulatory action, a fair and reasonable balance has been attempted to ensure adequate protection of residents while considering the cost to facilities. Although some requirements have been increased, others have been eliminated or reduced.

Several areas of the proposed regulations have been of particular interest to assisted living facility providers, provider associations, advocacy groups, licensing staff, and the general public. These areas have been addressed and include (i) revising requirements for health care oversight to allow more flexibility, (ii) adding to provisions for signaling

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and call systems to better meet the needs of residents who are unable to use a signaling device, (iii) prohibiting restrictions on visiting hours but allowing for facility guidelines for such purposes as security, (iv) providing for more staff training to better meet the needs of residents, (v) reducing the frequency of oversight of special diets, (vi) providing greater flexibility when residents store cleaning supplies or other hazardous materials in their rooms, (vii) providing more specific requirements regarding fall risk assessment to prevent or reduce falls by residents, and (viii) eliminating some requirements relating to personnel practices that are internal business practices of a facility.

The regulation takes into consideration differences in the levels of care, that is, residential living care and assisted living care, as well as the cost constraints of smaller facilities. The regulation addresses the needs of the mental health population, physically disabled residents, and elderly persons. Because the assisted living facility industry is so diverse in respect to size, population in care, types of services offered, form of sponsorship, etc., the standards must be broad enough to allow for these differences, while at the same time be specific enough so that providers know what is expected of them. The new regulation was revised based on multiple regulatory advisory panel input, recommendations and feedback, public comment, and Assisted Living Facility Advisory Committee recommendations.

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

Governor's Request for Public Comment: I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act as the regulation moves forward, I approve the publication of this proposed regulation to the next stage for the purpose of soliciting public comment. Specifically, I would like public comment on and agency consideration of two possible changes.

First, whether assisted living facilities should be required to have Internet capability for the use of residents. Currently, assisted living facilities are required to provide residents access to a telephone, but these regulations have not been changed for many years. The Internet has become such an integral part of everyday life that it may be time to update these regulations to require assisted living facilities in Virginia to have Internet capability. The benefits to resident quality of life could be substantial; however, more information about both the costs and the benefits is needed. I would like the agency to consider the costs and benefits of requiring Internet capability at assisted living facilities, and I would like public comment on the same. Specific information about cost issues should be included in any public comment that argues the costs of requiring Internet capability are prohibitive.

Second, the proposed regulation amends rules regarding direct care staff based on the number per floor, rather than per

unit. I would like public comment on and agency consideration of any alternative ways to implement a common sense requirement based either on the number of residents or some more flexible measure since assisted living facilities vary in their physical design and space.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to repeal its current regulations that govern standards for licensed assisted living facilities and replace them with revised regulations that contain numerous changes. In addition to clarifying and organizational changes, the Board is proposing various substantive changes as well. The most significant of the changes proposed for these regulations include:

1. The development and implementation of an enhanced infection control program that addresses the surveillance, prevention, and control of disease and infection. Proposed requirements for the enhanced program include that the program be written down, that a licensed health care professional be involved in its development and that a staff person be appointed as a point of contact.
2. Requiring administrators who are not registered medication aides but who supervise medication aides to have annual refresher training in medication administration.
3. Increasing the annual training that direct care staff who work for assisted living facilities are required to complete from 16 hours to 18 hours. Annual training for direct care staff at residential care facilities is proposed to increase from 8 to 14 hours.
4. Increasing the cognitive impairment training required for direct care staff (except for administrators) who work in mixed population facilities from four to six hours to be completed within four months of employment. Non-direct care staff training (again, excepting administrators) must be completed within one month of employment and was increased from one to two hours.
5. Increasing the number of hours of training in cognitive impairment for administrators of facilities with special care units from 10 hours within a year of hiring to 12 hours within 3 months. The time period in which cognitive impairment training must be completed by direct care staff who work in a special care unit is proposed to shorten from within a year of hiring to within four months. Other staff cognitive impairment training is proposed to increase from one to two hours within a month of hiring.
6. Increasing the hours of training that managers of smaller facilities that share an administrator must complete from 16 hours to 20 hours annually. As part of the required annual training, managers of facilities that have residents with mental impairment will have to

complete six hours of training (rather than the four hours required now) specifically geared toward meeting the needs of the mentally impaired. The Board also proposes to newly require two hours of annual training on infection control as part of the 20 hours of proposed required annual training.

7. Requiring direct care staff who work with residential care level residents to meet the same staff qualifications as individuals who work with assisted living level residents. Residential direct care staff will newly be required to complete some sort of approved nurse aide or personal care aide training. The proposed regulations will give these individuals one year from the effective date of these regulations to get the additional training that would be newly required.

8. Adding requirements regarding private duty personnel that would incorporate into the regulation some of the standards that are currently in the Department of Social Services' (DSS) technical assistance document.

9. Increasing the number of staff needed with certification in cardiopulmonary resuscitation from one for every 100 to one for every 50 residents.

10. Changing a staffing requirement exception that allows staff to sleep at night in facilities that house 19 or fewer residents to limit its application to residential living facilities only.

11. Listing additional specifications regarding agreements between facilities and hospice programs when hospice care is provided to a resident.

12. Requiring a fall risk assessment to be conducted for residents who meet the criteria for assisted living care.

13. Reducing the number of health care oversight reviews when a facility employs a full-time licensed health care professional (usually a registered nurse or a licensed practical nurse). For assisted living level residents, the requirement would decrease from four times per year to two times per year. For residential living level residents, the requirement would decrease from twice per year to once per year. The Board also proposes to require that all residents, rather than just a sampling, be included in at least one review annually.

14. Reducing the number of times a review must be conducted to oversee special diets from quarterly to every six months.

15. Requiring that staff at facilities with residents who are unable to use their room's signaling/call systems device have a plan to keep those residents safe. This information would be included on the resident's individualized service plan (ISP). Residents ISP's must also indicate with what frequency rounds will be done.

16. Eliminating activated charcoal and adding antibiotic cream or ointment and aspirin to the list of what first aid kits must contain. This section would also add a

flashlight or battery lantern requirement for each employee who is directly responsible for resident care.

17. Modifying the current requirement to have 96 hours of emergency food and water supply available to include a requirement that 48 hours of the supply be available on-site.

18. Removing the exception for facilities licensed for ten or fewer residents with no more than three individuals with serious cognitive impairments that applied to all requirements for mixed populations so that it only applies to the staffing requirement.

19. Increasing the number of hours per week of activities that must be offered to residents in a safe, secure environment from 16 hours weekly, with not less than one hour each day, to 21 hours weekly, with not less than two hours each day.

20. Specifying that there must be at least two direct care staff members on each floor in each special care unit.

21. Specifying that visiting hours may not be restricted unless a resident chooses.

22. Allowing residents to determine whether they want to have certain furnishings that are otherwise required in their bedrooms.

23. Permitting residents to set the thermostats to a temperature other than what is otherwise required so long as they do not have a roommate.

24. Allowing residents who do not have serious cognitive impairments increased flexibility pertaining to the storage of cleaning supplies and personal care items that could be considered hazardous.

Result of Analysis. Benefits likely outweigh costs for some proposed changes. For other proposed changes, there is insufficient information to ascertain whether benefits will outweigh costs. Costs likely outweigh benefits for one proposed change.

Estimated Economic Impact.

Infection Control:

Current regulations require Licensed Assisted Living Facilities (ALFs) to develop and maintain an infection control program that addresses the surveillance, prevention and control of infections by: 1) training staff and volunteers in hand washing and preventing cross contamination between residents or tasks, 2) prohibiting staff and volunteers with communicable diseases from direct contact with residents or their food and 3) training staff how to properly handle, store and transport linens, supplies, equipment and medical waste so as to not spread infection. Current regulations also require that methods used for infection control be described in a written document.

The Board proposes to amend infection control program requirements so that ALFs will have to develop and write the required infection control programs with input from a

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licensed health care professional (usually a nurse), will have to review their infection control programs at least annually and will have to designate a staff person as point of contact to monitor compliance with the facilities' infection control programs. Board staff reports that some licensed facilities already have a licensed health care professional on staff that will be able to help create or review infection control programs for the facilities in which they work. Where that is true, the costs to facilities on account of the proposed changes to infection control programs will be limited to the opportunity cost of having the health care professional work at this task for however many hours it takes rather than working at some other task(s). For licensed facilities that do not have a health care professional on staff, the costs associated with these proposed changes will include the cost of hiring a health care professional to help with the infection control program. Board staff estimates that a nurse can be hired for approximately \$30 an hour and that it would take approximately eight hours to write an infection control plan. Using these numbers, the costs associated with these changes will be \$240 initially plus the wage costs for other staff that would be involved in writing the plan. Since each facility's infection control program will have to be reviewed annually, and a health care professional will have to be involved each time the program is reviewed, facilities may incur approximately the same costs (~\$240 + the cost for other staff members' time) each year after these proposed regulations are promulgated. While the Board's goal in proposing these changes to infection control programs is presumably to decrease the number of diseases spread in licensed facilities, the magnitude of any future effects from these changes is unknown. Because of this, there is insufficient information to tell whether there will be ameliorative effects on disease control sufficient to justify the costs of these proposed changes to facilities.

### Training Requirements:

Current regulations of the Department of Social Services require assisted living facility administrators who supervise medication aides, but who are not licensed or registered to administer medication themselves, to complete 68 hours of Board of Nursing approved training on administering medication. The Board now proposes to also require affected administrators to complete yearly refresher training. Board staff reports that this training will be approximately four hours in length and will cost approximately \$50 per year per affected administrator plus the implicit cost of administrators' time to take the course. The Board also proposes to increase the amount of annual general continuing education that direct care staff at assisted living level facilities must complete from 16 hours to 18 hours and to increase the annual general continuing education that direct care staff at residential care facilities must complete from 8 hours to 14 hours. Board staff estimates that this training will cost \$20 plus the salary costs for each staff person who is required to train. Board staff

estimates that salary costs will be approximately \$8 per hour of additional training.

Required hours of cognitive impairment training are also proposed to increase over several categories. Direct care staff at facilities with mixed populations will have to complete 6 hours of annual cognitive impairment training rather than the 4 hours they must currently complete. Administrators of facilities with special care units would have to complete 12 hours of initial cognitive impairment training within three months of hire rather than the currently required 10 hours of training within 12 months of hire. Non-direct care staff at mixed population facilities and in special care units would see their annual cognitive impairment training increase from one to two hours. Board staff did not report specifically on how much cognitive impairment training will cost but costs will likely be roughly the same as those for general training for all staff but the administrators (i.e., approximately \$20 for the training itself plus \$8 x the number of additional hours required for each affected staff member). Time costs incurred on account of these proposed training standards will likely be higher for facility administrators since their salaries are likely higher.

Managers at smaller ALFs that share an administrator currently have to complete 16 hours of annual training relating to management or operations of the type of facilities where they are employed with the addendum that managers who work at facilities that have mentally impaired residents must currently complete 4 hours of mental impairment training as part of their 16 hours per year. The Board proposes to increase annual training for managers to 20 hours and increase the mental impairment training for managers who have to complete such training to 6 hours (of the required 20). Additionally, the Board proposes to require that managers complete 2 hours of annual infection control training that can be counted toward their 20 hour total. Additional training for managers will have costs attached that are more in line with the additional training costs for administrators listed above.

For all of the categories of training listed in the three paragraphs above, Board staff reports that training is being increased to address concerns that have arisen on account of complaints to the Board and on account of issues raised during inspections. Since the magnitude of possible benefits of additional training cannot be measured (as they have not happened yet), there is insufficient information to judge whether benefits will outweigh costs for these proposed training increases.

Under current regulations, direct care staff who care for assisted living level residents must meet certain qualifications within two months of employment. They must either 1) have a certification as a nurse aide issued by the Virginia Board of Nursing, 2) have successfully completed a Virginia Board of Nursing approved nursing assistant, geriatric assistant or home health aide education program, 3) have successfully

completed a personal care aide training program approved by the Department of Medical Assistance Services (DMAS), 4) have successfully completed a DSS approved nursing assistant, geriatric assistant or home health aide education program or 5) have successfully completed DSS-approved 40-hour direct care staff training.

The Board now proposes to slightly change the training options available to direct care staff that care for assisted living level residents and to also require direct care staff who care for residential living level residents to meet one of these same criteria within one year of the promulgation of these proposed regulations. Under proposed regulations affected direct care staff must either 1) have a certification as a nurse aide issued by the Virginia Board of Nursing, 2) have successfully completed a Virginia Board of Nursing approved nurse aide education program, 3) have successfully completed a nursing education program preparing for registered nursing licensure or practical nursing licensure, 4) be enrolled in a nursing education program and have completed at least one course that includes 40 hours of direct client care clinical experience, 5) have successfully completed a personal care aide training program approved by DMAS, 6) have successfully completed an education program for geriatric assistants or home health care aides or for nurse aides which is provided by a hospital, nursing facility or educational institution approved by DSS, or 7) have successfully completed DSS-approved 40-hour direct care staff training.

Board staff reports that the lowest cost option for attaining one of the required credentials would be to have a qualified individual who is already employed by a facility or who comes into a facility specifically to teach new direct care staff the department-approved 40-hour direct care staff training program. The costs associated with this credentialing would be the time value of the approximately 40 hours times the instructor's hourly wage plus 40 hours times the wage of the newly hired direct care employee times the number of employees taught at once. So, assuming an hourly wage for the health care professional teaching the class is \$30 per hour and an hourly wage for direct care staff of \$8 per hour, the cost of this instruction would be  $40 \times 30$  or \$1,200 plus  $8 \times 40$  or \$320 per trainee. Since residential living level residents do not require as intense a level of care as assisted living level residents, it is likely that direct care staff for residential living level residents do not need all of the training that direct care staff for assisted living level residents do. Therefore, it is likely that the costs of requiring the same level of training for all direct care staff will likely outweigh the anticipated benefits of doing so.

#### Staffing Requirements:

Current regulations require that there be one staff member trained in cardiopulmonary resuscitation (CPR) on site for every 100 residents in a facility. The Board proposes to amend this standard so that the ratio of CPR trained staff to residents is 1:50. Board staff estimates that the costs

associated with changing this standard will include \$50 for the class in CPR plus  $8 \times 4$  hours of a staff member's time to take the class for each additional trained staff member required. Board staff also reports that 52% of facilities house fewer than 50 residents and would, therefore, be unaffected by this proposed change. Of the remaining facilities, most would have to have only one additional CPR trained staff member on site during each shift. Since the populations served by assisted living facilities and residential care facilities are, by and large, older and more prone to illnesses such as heart attack and stroke that would likely require CPR to be administered, the benefits of this proposed change likely outweighs its costs.

Current requirements that personal care staff hired by residents or their families must meet are located in DSS's technical assistance document. The Board proposes to move these requirements to regulation. Under the proposed regulations, facilities will have to have a written agreement outlining the services to be provided by the private personal care personnel and will also have to ensure that these individuals have a tuberculosis screening and orientation and initial training. Board staff reports that the requirements for private duty personnel in these proposed regulations are less restrictive than those currently enforced so both facilities and families ought to benefit from these proposed changes.

Current regulations allow staff at licensed facilities that house 19 or fewer residents to sleep at night so long as all residents are also asleep and do not need care. The Board proposes to change this allowance so that it only applies to residential living level facilities with 19 or fewer residents. This means that staff at assisted living level facilities will have to remain awake at night. Given that assisted living level residents require a greater level of care, and are likely more prone to needing sudden intervention at any time including the night, the benefits of this change likely outweigh any inconvenience that staff may experience from not being able to sleep during their work hours.

Current regulations require that there be two direct care staff members awake and on duty in each special care unit in a facility. The Board proposes to amend this requirement so that there will have to be two direct care staff members on each floor of a special care unit. This change will significantly increase the number of staff that will be required to be on premises in special care units that are housed on multiple floors of a facility or will require facilities to reconfigure special care units so that they are housed only on one floor. These costs must be weighed against any benefit that might accrue to residents of special care units because of the presence of additional staff. The benefits of this change would likely have to be quite large if they are to outweigh its costs.

#### Other requirements:

The Board proposes to newly require that residents entering assisted living level care undergo a fall risk assessment and

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that this assessment be conducted by the time each resident's ISP is complete. The proposed regulations also require that a resident's fall risk assessment be updated annually or when a resident has a fall or a change in condition. There will be time costs for staff to do fall risk assessments but these costs should be minimal and, in any case, are likely outweighed by the benefits that will likely accrue to residents when direct care staff is more aware of how at risk of falling a resident is.

Current regulations require that assisted living level facilities conduct four health care oversight reviews per year and that residential living level facilities conduct two health care oversight reviews each year. These are general reviews of health outcomes and care at the facility rather than specific reviews of any particular residents. Current regulations also require facilities to conduct a review of how well special dietary needs are being met quarterly. The Board now proposes to reduce the number of health care oversight reviews when a facility employs a full-time licensed health care professional, from four per year to two per year for assisted living level care and from two per year to one per year for residential living level care, and to also reduce the frequency of special dietary oversight reviews from quarterly to every six months. These changes are likely to benefit facilities by reducing the time needed to comply with regulatory requirements each year. There are likely no costs attached to these proposed changes because individual residents' health care and dietary needs are analyzed individually apart from these aggregate reviews.

Current regulations require assisted living facilities to have signaling devices in residents' bedrooms or attached bathrooms that can be pulled or otherwise activated and that alert direct care staff that a resident needs assistance. Some assisted living residents, however, have difficulty reaching or pulling signaling devices. As a consequence, the Board proposes to require facilities to have a plan to monitor residents who cannot use signaling devices and also proposes to require that each such resident have written into his/her ISP the frequency with which staff will be checking in on them. This change may require staff to check in on affected residents more often but the costs of both staff time and keeping records as to how often residents are checked on are likely outweighed by the health benefits that will likely accrue to residents whose acute health issues will likely get a quick response despite them not being able to alert staff that is a distance from them.

Current regulations exempt mixed population facilities with no more than 10 total residents and with no more than three residents with serious cognitive impairments from cognitive impairment safety requirements that larger facilities must adhere to. Currently, facilities that are licensed for more than 10 residents and that have residents with serious cognitive impairments must have some sort of system that monitors such residents so that they do not wander, must have at least two direct care staff on duty and awake in each building of the facility and must have staff provide sight and sound

supervision for impaired residents while on trips away from the facility. The Board proposes to amend these requirements so that facilities licensed for 10 or fewer residents, that house three or fewer residents with serious cognitive impairments, will have to have a security monitoring system of some sort but will not have to meet the additional staffing requirements that larger facilities have to meet.

Board staff reports that affected facilities can install door alarms (estimated cost \$2 to \$40 per door plus the cost of batteries) or they can install a camera system (estimated cost approximately \$300). Facilities may also choose to pay for bracelets that are monitored by the local sheriff's office and that allow residents who wander to be tracked down. The initial cost of bracelets varies from locality to locality (free in some localities and several hundred dollars in other localities); localities may charge a monthly fee of approximately \$10 per bracelet per month for monitoring and tracking, if necessary. Alternately, facilities might choose to install door alarms with keypads (estimated cost \$4,500 to \$5,100) or purchase a ResidentGuard system that has several safety systems for residents (estimated cost \$1,000 to \$2,000). Whatever the safety system chosen, the attendant costs would need to be measured against any benefits in additional safety that might accrue to impaired residents. There is insufficient information at this time to accurately measure costs against benefits.

Current regulations require facilities with special care units to offer 16 hours of planned activities each week with at least one hour of activity each day for these units. The Board proposes to increase the hours of activity required to 21 hours per week with at least two hours of activity being offered each day. This change will likely cost facilities some additional staff time and perhaps some additional cost in activity materials, depending on what kind of activity is being offered. Residents may benefit from additional activities that will likely increase interaction with other residents and staff of the facility and that may slow the degradation of health and mental faculties that may occur in inactive seniors.<sup>1</sup> There is insufficient information to measure the magnitude of costs versus benefits for this proposed incremental change to required planned activity.

The Board proposes a number of other changes to these regulations that will allow residents more autonomy in setting their own environment. For instance, the Board proposes to allow residents who are in single rooms to set the thermostat in their room to some other temperature than what is required now. The Board also proposes to specify that visiting hours may not be restricted unless a resident chooses, to allow residents to remove furniture from their rooms and to allow residents to keep cleaning supplies and personal care chemicals out of sight in their rooms so long as they do not have a serious cognitive impairment. Costs associated with these changes will likely be minimal and might include staff time to move furniture and monitor guests and/or some additional heating and cooling cost for residents that change

their thermostat settings. These costs are likely outweighed by the benefits to residents of having a friendlier more personalized environment that might be individually safer.

**Businesses and Entities Affected.** Board staff reports there are currently 552 licensed assisted living facilities; of these, approximately 12%, or approximately 66 facilities, house only residential living care residents. The remaining facilities house both residential living care residents and assisted living care residents or house only assisted living care residents. Board staff also reports that most of these facilities would qualify as small businesses in the Commonwealth.

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

**Projected Impact on Employment.** Proposed increases in training requirements for staff of ALFs, particularly training that is currently not required of residential care level staff but will be required under these proposed regulations, will increase the costs of being eligible to work in residential care and assisted living care facilities. As a consequence of these increased costs, fewer individuals are likely to seek employment in these facilities; especially if they can earn a comparable wage in another field that does not require training at all or requires less training than this. Facilities may also hire fewer staff and/or take in fewer residents if their costs increase because they have to cover increased training costs directly.

**Effects on the Use and Value of Private Property.** These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Affected small businesses will likely incur costs for hiring health care professionals to perform certain newly required tasks and for additional staff training. Smaller facilities with 19 or fewer residents and with 10 or fewer residents will incur costs to meet regulatory requirements that they are currently exempted from.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The Board may wish to revisit the issue of proposed qualifications for staff that work solely with residential care level residents. Since these residents do not require the same level of care as assisted living level residents, the Board may be able to lessen the adverse impact of these regulations on affected small businesses by not requiring the same staff qualifications for working with residents that require less intervention and care as they do for working with residents that require more.

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14

(10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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.

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<sup>1</sup> <http://www.phac-aspc.gc.ca/cphorsphc-respcacsp/2010/fr-rc/cphorsphc-respcacsp-06-eng.php>

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

**Summary:**

*This proposed regulatory action repeals the existing regulation, 22VAC40-72, and establishes a comprehensive new regulation, 22VAC40-73, for licensed assisted living facilities. The comprehensive new regulation is intended to (i) improve clarity, (ii) incorporate improvements in the language and reflect current federal and state law, (iii) relieve intrusive and burdensome requirements that are not necessary, (iv) provide greater protection for residents in care, and (v) reflect current standards of care.*

*Major components of the new regulation include requirements regarding (i) general provisions; (ii) administration and administrative services and personnel; (iii) staffing and supervision; (iv) admission, retention, and discharge of residents; (v) resident care and related services; (vi) resident accommodations and related provisions; (vii) buildings and grounds; (viii) emergency preparedness; and (ix) additional requirements for facilities that care for adults with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare.*

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## CHAPTER 73 STANDARDS FOR LICENSED ASSISTED LIVING FACILITIES

### Part I General Provisions

#### **22VAC40-73-10. Definitions.**

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating or feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

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

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are

aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm, or disabled adults. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits an individual from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee, or authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet,

and contains a dietary ingredient, (i.e., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities. Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance, and laundry personnel.

"Discharge" means the movement of a resident out of the assisted living facility.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a situation that may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the

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incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility, or institution licensed by this Commonwealth to provide health care or professional services, including but not limited to a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard

deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company, or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument. An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means circumstances that may require the use of a restraint for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

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

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a

resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status, or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric

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rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (e.g., physical therapist, occupational therapist, or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to restore or improve his level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with the activities of daily living. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of aged, infirm, or disabled adults for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and

welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect his own safety and welfare. Serious cognitive impairment involves an assessment by a clinical psychologist licensed to practice in the Commonwealth or by a physician as specified in 22VAC40-73-1090.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope of practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract to provide services for the facility.

"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional, or physical

impairment and cause socially dysfunctional or socially disordering behavior.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system, and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially, one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. This does not include persons who, either as an individual or as part of an organization, present at or facilitate group activities.

**22VAC40-73-20. Requirements of law and applicability.**

A. Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia include requirements of law relating to licensure, including licensure of assisted living facilities.

B. This chapter applies to assisted living facilities as defined in § 63.2-100 of the Code of Virginia and in 22VAC40-73-10.

1. Each assisted living facility shall comply with Parts I (22VAC40-73-10 et seq.) through IX (22VAC40-73-950 et seq.) of this chapter.
2. An assisted living facility that cares for adults with serious cognitive impairments shall also comply with Part X (22VAC40-73-1000 et seq.) of this chapter.

**22VAC40-73-30. Program of care.**

There shall be a program of care that:

1. Meets the resident population's physical, mental, emotional, and psychosocial needs;
2. Provides protection, guidance, and supervision;
3. Promotes a sense of security, self-worth, and independence; and
4. Promotes the resident's involvement with appropriate community resources.

Part II

Administration and Administrative Services

**22VAC40-73-40. Licensee.**

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with relevant federal, state, and local laws; with other relevant regulations; and with the facility's own policies and procedures.

B. The licensee shall:

1. Give evidence of financial responsibility and solvency.
2. Be of good character and reputation in accordance with § 63.2-1702 of the Code of Virginia. Character and reputation investigation includes, but is not limited to, background checks as required by § 63.2-1721 of the Code of Virginia.
3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).
4. Act in accordance with General Procedures and Information for Licensure (22VAC40-80).
5. Protect the physical and mental well-being of residents.
6. Exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, this chapter, and the welfare of the residents.
7. Ensure that he or his relatives, his agents or agents' relatives, the facility administrator or administrator's relatives, or facility staff shall not act as, seek to become, or become the conservator or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Article 1 (§ 64.1-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.
8. Ensure that the current license is posted in the facility in a place conspicuous to the residents and the public.
9. Ensure that the facility keeps and maintains at the facility records, reports, plans, schedules, and other information as required by this chapter for licensed assisted living facilities.
10. Ensure that any document required by this chapter to be posted shall be in at least 12-point type or equivalent size.
11. Make certain that when it is time to discard records, they are disposed of in a manner that ensures confidentiality.
12. Ensure that at all times the department's representative is afforded reasonable opportunity to inspect all of the facility's buildings, books, and records and to interview agents, employees, residents, and any person under its custody, control, direction, or supervision.

C. Upon initial application for an assisted living facility license, any person applying to operate such a facility who

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has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the commissioner.

2. The commissioner may at his discretion also approve for licensure applicants who meet requisite experience criteria as established by the board.

3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.

4. The commissioner may, at his discretion, issue a license conditioned upon the completion by the owner or administrator of the required training.

D. The licensee shall notify in writing the regional licensing office of intent to sell or voluntarily close the facility no less than 60 days prior to the sale date or closure. The following shall apply:

1. No less than 60 days prior to the planned sale date or closure, the licensee shall notify the residents, and as relevant, legal representatives, case managers, eligibility workers, and designated contact persons of the intended sale or closure of the facility and the date for such.

2. If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, case managers, eligibility workers, and designated contact persons as soon as the intent to sell or close the facility is known.

3. If the facility is to be sold, at the time of notification specified in subdivision 1 of this subsection, the licensee shall explain to each resident, his legal representative, case manager, and at least one designated contact person that the resident can choose whether to stay or relocate, unless the new licensee specifies relocation. If a resident chooses to stay, there must be a new resident agreement between the resident and the new licensee that meets the specifications of 22VAC40-73-390.

4. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

## **22VAC40-73-50. Disclosure.**

A. The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;

2. Be provided in advance of admission and prior to signing an admission agreement or contract;

3. Be provided upon request; and

4. Disclose the following information, which shall be kept current:

a. Name of the facility;

b. Name of the licensee;

c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);

d. Description of all accommodations, services, and care that the facility offers;

e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;

f. Criteria for admission to the facility and restrictions on admission;

g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;

h. Criteria for discharge;

i. Categories, frequency, and number of activities provided for residents;

j. General number, position types, and qualifications of staff on each shift;

k. Notation that additional information about the facility that is included in the resident agreement is available upon request; and

l. The department's website address, with a note that additional information about the facility may be obtained from the website, including type of license, capacity, special services, and most recent years' compliance history.

B. Written acknowledgment of the receipt of the disclosure by the resident or his legal representative shall be retained in the resident's record.

C. The disclosure statement shall also be available to the general public, upon request.

## **22VAC40-73-60. Electronic records and signatures.**

A. Use of electronic records or signatures shall comply with the provisions of the Uniform Electronic Transactions Act, §§ 59.1-479 through 59.1-501 of the Code of Virginia.

B. In addition to the requirements of the Uniform Electronic Transactions Act, the use of electronic signatures shall be deemed to constitute a signature and have the same effect as a written signature on a document as long as the licensee:

1. Develops, implements, and maintains specific policies and procedures for the use of electronic signatures;
2. Ensures that each electronic signature identifies the individual signing the document by name and title;
3. Ensures that the document cannot be altered after the signature has been affixed;
4. Ensures that access to the code or key sequence is limited;
5. Ensures that all users have signed statements that they alone have access to and use the key or computer password for their signature and will not share their key or password with others; and
6. Ensures that strong and substantial evidence exists that would make it difficult for the signer or the receiving party to claim the electronic representation is not valid.

C. A back-up and security system shall be utilized for all electronic documents.

### **22VAC40-73-70. Incident reports.**

A. Each facility shall report to the regional licensing office within 24 hours any major incident that has negatively affected or that threatens the life, health, safety, or welfare of any resident.

B. The report required in subsection A of this section shall include (i) the name of the facility, (ii) the name or names of the resident or residents involved in the incident, (iii) the name of the person making the report, (iv) the date of the incident, (v) a description of the incident, and (vi) the actions taken in response to the incident.

C. The facility shall submit a written report of each incident specified in subsection A of this section to the regional licensing office within seven days from the date of the incident. The report shall be signed and dated by the administrator and include the following information:

1. Name and address of the facility;
2. Name of the resident or residents involved in the incident;
3. Date and time of the incident;
4. Description of the incident, the circumstances under which it happened, and when applicable, extent of injury or damage;
5. Location of the incident;
6. Actions taken in response to the incident;
7. Actions to prevent recurrence of the incident, if applicable;
8. Name of staff person in charge at the time of the incident;
9. Names, telephone numbers, and addresses of witnesses to the incident, if any; and

10. Name, title, and signature of the person making the report, if other than the administrator, and date of the completion of the report.

D. The facility shall submit to the regional licensing office amendments to the written report when circumstances require, such as when substantial additional actions are taken, when significant new information becomes available, or there is resolution of the incident after submission of the report.

E. A copy of the written report of each incident shall be maintained by the facility for at least two years.

F. If applicable, the facility shall ensure that there is documentation in the resident's record as required by 22VAC40-73-470 F.

### **22VAC40-73-80. Management and control of resident funds.**

Pursuant to § 63.2-1808 A 3 of the Code of Virginia, the resident shall be free to manage his personal finances and funds regardless of source, unless a committee, conservator, or guardian has been appointed for a resident. However the resident may request that the facility assist with the management of personal funds, and the facility may assist the resident in such management under the following conditions:

1. There shall be documentation of this request and delegation, signed and dated by the resident and the administrator. The documentation shall be maintained in the resident's record.

2. Residents' funds shall be held separately from any other moneys of the facility. Residents' funds shall not be borrowed, used as assets of the facility, or used for purposes of personal interest by the licensee, operator, administrator, or facility staff.

3. The resident shall be given a choice of whether he wishes his funds to be maintained in an individual resident account, which may be interest-bearing, or in a single account for the accumulated funds of multiple residents, which shall not be interest-bearing.

4. For residents who are not recipients of an auxiliary grant, the facility may charge a reasonable amount for administration of the account.

5. The facility shall maintain a written accounting of money received and disbursed by the facility that shows a current balance. The written accounting of the funds shall be made available to the resident at least quarterly and upon request, and a copy shall also be placed in the resident's record.

6. The resident's funds shall be made available to the resident upon request.

### **22VAC40-73-90. Safeguarding residents' funds.**

No facility administrator or staff person shall act as either attorney-in-fact or trustee unless the resident has no other preferred designee and the resident himself expressly requests such service by or through facility personnel. When the

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facility administrator or staff person acts as attorney-in-fact or trustee, the following applies:

1. There shall be documentation that the resident has requested such service and from whom, signed and dated by the resident, the facility administrator, and if a staff person is to provide the service, the staff person. The documentation shall be maintained in the resident's record.
2. The facility administrator or staff person so named attorney-in-fact or trustee shall be accountable at all times in the proper discharge of such fiduciary responsibility as provided under Virginia law.
3. The facility shall maintain a written accounting of money received and disbursed by the facility administrator or staff person that shows a current balance. The written accounting of the funds shall be made available to the resident at least quarterly and upon request, and a copy shall also be placed in the resident's record.
4. The resident's funds shall be made available to the resident upon request.
5. Upon termination of the power of attorney or trust for any reason, the facility administrator or staff person so named attorney-in-fact or trustee shall return all funds and assets, with full accounting, to the resident or to another responsible party expressly designated by the resident.

## **22VAC40-73-100. Infection control program.**

A. The assisted living facility shall develop, in writing, and implement an infection control program addressing the surveillance, prevention, and control of disease and infection that is consistent with the federal Centers for Disease Control and Prevention (CDC) guidelines and the federal Occupational Safety and Health Administration (OSHA) bloodborne pathogens regulations.

1. A licensed health care professional, practicing within the scope of his profession and with training in infection prevention, shall participate in the development of infection prevention policies and procedures and shall assure compliance with applicable guidelines and regulations.
2. The administrator shall ensure at least an annual review of infection prevention policies and procedures for any necessary updates. A licensed health care professional, practicing within the scope of his profession and with training in infection prevention, shall be included in the review to assure compliance with applicable guidelines and regulations. Documentation of the review shall be maintained at the facility.
3. A staff person who has been trained in basic infection prevention shall participate in the annual review and serve as point of contact for the program. This person shall be responsible for on-going monitoring of the implementation of the infection control program.

B. The infection control program shall be applicable to all staff and volunteers and encompass all services as well as the entire physical plant and grounds.

C. The infection control program shall include:

1. Procedures for the implementation of infection prevention measures by staff and volunteers to include:

- a. Use of standard precautions;
- b. Use of personal protective equipment; and
- c. Means to assure hand hygiene.

2. Procedures for other infection prevention measures related to job duties to include, but not be limited to:

- a. Determination of whether prospective or returning residents have acute infectious disease and use of appropriate measures to prevent disease transmission;
- b. Use of safe injection practices and other procedures where the potential for exposure to blood or body fluids exists;
- c. Blood glucose monitoring practices that are consistent with CDC guidelines. When providing assisted blood glucose monitoring, only single-use auto-retractable disposable lancets may be used;
- d. The handling, storing, processing, and transporting of linens, supplies, and equipment in a manner that prevents the spread of infection;
- e. The sanitation of rooms, including cleaning and disinfecting procedures, agents, and schedules;
- f. The sanitation of equipment, including medical equipment that may be used on more than one resident (e.g., blood glucose meters and blood pressure cuffs, including cleaning and disinfecting procedures, agents, and schedules);
- g. The handling, storing, processing, and transporting of medical waste in accordance with applicable regulations; and
- h. Maintenance of an effective pest control program.

3. Readily accessible handwashing equipment and necessary personal protective equipment for staff and volunteers (e.g., soap, alcohol-based hand rubs, disposable towels or hot air dryers, and gloves).

4. Product specific instructions for use of cleaning and disinfecting agents (e.g., dilution, contact time, and management of accidental exposures).

5. Initial training as specified in 22VAC40-73-120 C 4 and annual retraining of staff and volunteers in infection prevention methods, as applicable to job responsibilities.

D. The facility shall have a staff health program that includes:

1. Provision of information on recommended vaccinations, per guidelines from the CDC Advisory Committee on Immunization Practices (ACIP), to facility staff and volunteers who have any potential exposure to residents or

to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air;

2. Assurance that employees with communicable diseases are identified and prevented from work activities that could result in transmission to other personnel or residents;

3. An exposure control plan for bloodborne pathogens;

4. Documentation of screening and immunizations offered to, received by, or declined by employees in accordance with law, regulation, or recommendations of public health authorities, including access to hepatitis B vaccine;

5. Compliance with requirements of the OSHA for reporting of workplace associated injuries or exposure to infection.

E. The facility administrator shall immediately make or cause to be made a report of an outbreak of disease as defined by the State Board of Health. Such report shall be made by rapid means to the local health director or to the Commissioner of the Virginia Department of Health and to the licensing representative of the Department of Social Services in the regional licensing office.

F. When recommendations are made by the Virginia Department of Health to prevent or control transmission of an infectious agent in the facility, the recommendations must be followed.

### Part III Personnel

#### **22VAC40-73-110. Staff general qualifications.**

All staff shall:

1. Be considerate and respectful of the rights, dignity, and sensitivities of persons who are aged, infirm, or disabled;

2. Be able to speak, read, and write in English as necessary to carry out their job responsibilities; and

3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

#### **22VAC40-73-120. Staff orientation and initial training.**

A. The orientation and training required in subsections B and C of this section shall occur within the first seven working days of employment. Until this orientation and training is completed, the staff person may only assume job responsibilities if under the sight supervision of a trained direct care staff person or administrator.

B. All staff shall be oriented to:

1. The purpose of the facility;

2. The facility's organizational structure;

3. The services provided;

4. The daily routines;

5. The facility's policies and procedures;

6. Specific duties and responsibilities of their positions; and

7. Required compliance with regulations for assisted living facilities as it relates to their duties and responsibilities.

C. All staff shall be trained in the relevant laws, regulations, and the facility's policies and procedures sufficiently to implement:

1. Emergency and disaster plans for the facility;

2. Procedures for the handling of resident emergencies;

3. Use of the first aid kit and knowledge of its location;

4. Handwashing techniques, standard precautions, infection risk-reduction behavior, and other infection control measures specified in 22VAC40-73-100;

5. Confidential treatment of personal information;

6. Requirements regarding the rights and responsibilities of residents;

7. Requirements and procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents and for mandated reporters, the consequences for failing to make a required report, as set out in § 63.2-1606 of the Code of Virginia;

8. Procedures for reporting and documenting incidents as required in 22VAC40-73-70;

9. Methods of alleviating common adjustment problems that may occur when a resident moves from one residential environment to another; and

10. For direct care staff, the needs, preferences, and routines of the residents for whom they will provide care.

#### **22VAC40-73-130. Reports of abuse, neglect, or exploitation.**

All staff who are mandated reporters under § 63.2-1606 of the Code of Virginia shall report suspected abuse, neglect, or exploitation of residents in accordance with that section.

#### **22VAC40-73-140. Administrator qualifications.**

A. The administrator shall be at least 21 years of age.

B. The administrator shall be able to read and write, and understand this chapter.

C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.

D. For a facility licensed only for residential living care that does not employ an administrator licensed by the Virginia Board of Long-Term Care Administrators, the administrator shall:

1. Be a high school graduate or shall have a General Education Development (GED) Certificate;

2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a

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combination thereof; (ii) have successfully completed a course of study approved by the department that is specific to the administration of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and

3. Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.

The requirements of this subsection shall not apply to an administrator of an assisted living facility employed prior to the effective date of these regulations, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.

E. For a facility licensed for both residential and assisted living care, the administrator shall be licensed by the Virginia Board of Long-Term Care Administrators as required by § 63.2-1803 of the Code of Virginia.

## **22VAC40-73-150. Administrator provisions and responsibilities.**

A. Each facility shall have an administrator of record.

B. If an administrator dies, resigns, is discharged, or becomes unable to perform his duties, the facility shall immediately employ a new administrator or appoint a qualified acting administrator.

1. The facility shall notify the department's regional licensing office in writing within 14 days of a change in a facility's administrator, including but not limited to the resignation of an administrator, appointment of an acting administrator, and appointment of a new administrator, except that the time period for notification may differ as specified in subdivision 2 of this subsection.

2. A facility licensed for both residential and assisted living care shall comply with the notice requirements set out in § 63.2-1803 B of the Code of Virginia.

3. For a facility licensed for both residential and assisted living care, when an acting administrator is named, he shall meet the qualifications and notice requirements set out in § 63.2-1803 B of the Code of Virginia.

4. A facility licensed only for residential living care may be operated by an acting administrator for no more than 90 days from the last date of employment of the administrator.

5. A facility licensed for both residential and assisted living care may be operated by an acting administrator in accordance with the time frames set out in § 63.2-1803 B and C of the Code of Virginia.

6. A person may not become an acting administrator at any assisted living facility if the Virginia Board of Long-Term Care Administrators has refused to issue or renew, suspended, or revoked his assisted living facility or nursing home administrator license.

7. No assisted living facility shall operate under the supervision of an acting administrator pursuant to §§ 54.1-3103.1 and 63.2-1803 of the Code of Virginia more than one time during any two-year period unless authorized to do so by the department.

C. The administrator shall be responsible for the general administration and management of the facility and shall oversee the day-to-day operation of the facility. This shall include but shall not be limited to responsibility for:

1. Ensuring that care is provided to residents in a manner that protects their health, safety, and well-being;

2. Maintaining compliance with applicable laws and regulations;

3. Developing and implementing all policies, procedures, and services as required by this chapter;

4. Ensuring staff and volunteers comply with residents' rights;

5. Maintaining buildings and grounds;

6. Recruiting, hiring, training, and supervising staff; and

7. Ensuring the development, implementation, and monitoring of an individualized service plan for each resident, except that a plan is not required for a resident with independent living status.

D. The administrator shall report to the Director of the Department of Health Professions information required by and in accordance with § 54.1-2400.6 of the Code of Virginia regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification, or registration. Information required to be reported, under specified circumstances includes but is not limited to substance abuse and unethical or fraudulent conduct.

E. For a facility licensed only for residential living care, either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week with no fewer than 24 of those hours being during the day shift on weekdays.

Exceptions:

1. 22VAC40-73-170 allows a shared administrator for smaller facilities.

2. If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, the provisions regarding the administrator in subsection F of this section apply. When such is the case, there is no requirement for a designated assistant.

F. For a facility licensed for both residential and assisted living care, the administrator shall serve on a full-time basis as the on-site agent of the licensee and shall be responsible

for the day-to-day administration and management of the facility, except as provided in 22VAC40-73-170.

G. The administrator, acting administrator, or as allowed in subsection E of this section, designated assistant administrator, shall not be a resident of the facility.

**22VAC40-73-160. Administrator training.**

A. For a facility licensed only for residential living care that does not employ a licensed administrator, the administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within 12 months from the date of employment and annually thereafter from that date. At least two of the required 20 hours of training shall focus on infection control and prevention, and when adults with mental impairments reside in the facility, at least six of the required 20 hours shall focus on topics related to residents' mental impairments. Documentation of attendance shall be retained at the facility and shall include type of training, name of the entity that provided the training, and date and number of hours of training.

B. All licensed administrators shall meet the continuing education requirements for continued licensure.

C. Any administrator who has not previously undergone the training specified in 22VAC40-73-40 C shall be required to complete that training within two months of employment as administrator of the facility. The training may be counted toward the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. Administrators employed prior to December 28, 2006, are not required to complete this training.

D. Administrators who supervise medication aides, but are not registered medication aides themselves, shall successfully complete a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for such administrators must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration. The training shall be completed prior to supervising medication aides and may be counted toward the annual training requirement in subsection A of this section, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications; or
2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

E. Administrators who have completed the training program specified in subsection D of this section and who supervise

medication aides shall be required to annually have (i) four hours of training in medication administration specific to the facility population or (ii) a refresher course in medication administration offered by a Virginia Board of Nursing approved program. Administrators are exempt from this annual medication training or refresher course during the first year after completion of the training program noted in subsection D of this section. This annual medication administration training or course may not be counted toward the annual training requirement specified in subsection A of this section. For licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements.

F. If a designated assistant administrator, as allowed in 22VAC40-73-150 E supervises medication aides, the requirements of subsections D and E of this section apply to the designated assistant administrator.

**22VAC40-73-170. Shared administrator for smaller facilities.**

A. An administrator who is not licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators is allowed to be present at a facility for fewer than the required minimum 40 hours per week in order to serve multiple facilities, without a designated assistant, under the following conditions:

1. The administrator shall serve no more than four facilities.
2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.
3. The administrator shall be awake and on duty on the premises of each facility served for at least 10 hours a week.
4. The administrator shall serve as a full-time administrator (i.e., shall be awake and on duty on the premises of all facilities served for a combined total of at least 40 hours a week).
5. Each of the facilities served shall be within a 30-minute average one-way travel time of the other facilities.
6. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices.
7. A designated assistant may act in place of the administrator during the required minimum of 40 hours only if the administrator is ill or on vacation and for a period of time that shall not exceed four consecutive weeks. The designated assistant shall meet the qualifications of the administrator.
8. Each of the facilities served shall have a manager, designated and supervised by the administrator. The manager shall be awake and on duty on the premises of the facility for the remaining part of the 40 required hours per

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week when the administrator or designated assistant is not present at the facility. The manager shall meet the following qualifications and requirements:

- a. The manager shall be at least 21 years of age.
- b. The manager shall be able to read and write, and understand this chapter.
- c. The manager shall be able to perform the duties and to carry out the responsibilities of his position.
- d. The manager shall:

(1) Be a high school graduate or have a General Education Development (GED) Certificate;

(2) (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a combination thereof; (ii) have successfully completed a course of study of 40 or more hours approved by the department that is specific to the management of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and

(3) Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.

e. Subdivision 8 d of this subsection does not apply to a manager of an assisted living facility employed prior to the effective date of this chapter who met the requirements in effect when employed and who has been continuously employed as an assisted living facility manager.

f. The manager shall not be a resident of the facility.

g. The manager shall complete the training specified in 22VAC40-73-40 C within two months of employment as manager. The training may be counted toward the annual training requirement for the first year.

Exception: A manager employed prior to December 28, 2006, who met the requirements in effect when employed and who has been continuously employed as a manager.

h. The manager shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least six of the required 20 hours of training shall focus on topics related to residents' mental impairments and at least two of the required 20 hours on infection control and prevention. Documentation of attendance shall be retained at the facility and shall include title of course, name of the entity that provided the training, and date and number of hours of training.

9. There shall be a written management plan for each facility that describes how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility.

10. The minimum of 40 hours per week required for the administrator or manager to be awake and on duty on the premises of a facility shall include at least 24 hours during the day shift on weekdays.

B. An administrator, who is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, may be responsible for the day-to-day administration and management of multiple facilities under the following conditions:

1. The administrator shall serve no more than four facilities.

2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.

3. The administrator shall serve on a full-time basis as the on-site agent of the licensee or licensees, proportioning his time among all the facilities served in order to ensure that he provides sufficient administrative and management functions to each facility.

4. Each of the facilities served shall be within a 30-minute average one-way travel time of the other facilities.

5. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices.

6. Each of the facilities served shall have a manager, designated and supervised by the administrator, to assist the administrator in overseeing the care and supervision of the residents and the day-to-day operation of the facility. The majority of the time, the administrator and the manager shall be present at a facility at different times to ensure appropriate oversight of the facility. The manager shall meet the qualifications and requirements specified in subdivision A 8 of this section.

Exception: In regard to subdivision A 8 of this section, the reference to 40 hours is not relevant to a facility to which this subsection applies (i.e., a facility with a licensed administrator).

7. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and supervision of the residents and the day-to-day operation of the facility.

C. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home as provided for in 22VAC40-73-180.

**22VAC40-73-180. Administrator of both assisted living facility and nursing home.**

A. Any person meeting the qualifications for a licensed nursing home administrator pursuant to § 54.1-3103 of the Code of Virginia may serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. Whenever an assisted living facility and a licensed nursing home have a single administrator, there shall be a written management plan that addresses the care and supervision of the assisted living facility residents. The management plan shall include, but not be limited to, the following:

1. Written policies and procedures that describe how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility.
2. If the administrator does not provide the direct management of the assisted living facility or only provides a portion thereof, the plan shall specify a designated individual who shall serve as manager and who shall be supervised by the administrator.
3. The manager referred to in subdivision 2 of this subsection shall be on site and meet the qualifications and requirements of 22VAC40-73-170 A 8, A 9, and A 10.

**22VAC40-73-190. Designated direct care staff person in charge.**

A. When the administrator, the designated assistant, or the manager is not awake and on duty on the premises, there shall be a designated direct care staff member in charge on the premises. However, when no residents are present at the facility, the designated staff person in charge does not have to be on the premises.

B. The specific duties and responsibilities of the designated direct care staff member in charge shall be determined by the administrator.

C. Prior to being placed in charge, the staff member shall be informed of and receive training on his duties and responsibilities and provided written documentation of such duties and responsibilities.

D. The staff member shall be awake and on duty on the premises while in charge.

E. The staff member in charge shall be capable of protecting the physical and mental well-being of the residents.

F. The administrator shall ensure that the staff member in charge is prepared to carry out his duties and responsibilities and respond appropriately in case of an emergency.

G. The staff member in charge shall not be a resident of the facility.

**22VAC40-73-200. Direct care staff qualifications.**

A. Direct care staff shall be at least 18 years of age unless certified in Virginia as a nurse aide.

B. Direct care staff who are responsible for caring for residents with special health care needs shall only provide services within the scope of their practice and training.

C. Direct care staff shall meet one of the requirements in this subsection. If the staff does not meet the requirement at the time of employment, he shall successfully meet one of the requirements in this subsection within two months of employment. Licensed health care professionals practicing within the scope of their profession are not required to complete the training in this subsection.

1. Certification as a nurse aide issued by the Virginia Board of Nursing.
2. Successful completion of a Virginia Board of Nursing-approved nurse aide education program.
3. Successful completion of a nursing education program preparing for registered nurse licensure or practical nurse licensure.
4. Current enrollment in a nursing education program preparing for registered nurse or practical nurse licensure and completion of at least one clinical course in the nursing program that includes at least 40 hours of direct client care clinical experience.
5. Successful completion of a personal care aide training program approved by the Virginia Department of Medical Assistance Services.
6. Successful completion of an educational program for geriatric assistant or home health aide or for nurse aide that is not covered under subdivision 2 of this subsection. The program shall be provided by a hospital, nursing facility, or educational institution and may include out-of-state training. The program must be approved by the department. To obtain department approval:
 
  - a. The facility shall provide to the department's representative an outline of course content, dates and hours of instruction received, the name of the entity that provided the training, and other pertinent information.
  - b. The department will make a determination based on the information in subdivision 6 a of this subsection and provide written confirmation to the facility when the educational program meets department requirements.
7. Successful completion of the department-approved 40-hour direct care staff training provided by a registered nurse or licensed practical nurse.
8. Direct care staff employed prior to the effective date of this chapter who did not care for residents meeting the criteria for assisted living care, and who were therefore not required to meet this subsection at that time, shall successfully complete a training program consistent with department requirements no later than one year after the effective date of this chapter, except that direct care staff of the facility employed prior to February 1, 1996, shall not be required to complete the training in this subsection if they (i) have been continuously employed as direct care

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staff in the facility since then and (ii) have demonstrated competency on a skills checklist dated and signed no later than February 1, 1997, by a licensed health care professional practicing within the scope of his profession.

D. The facility shall obtain a copy of the certificate issued or other documentation indicating that the person has met one of the requirements of subsection C of this section, which shall be part of the staff member's record in accordance with 22VAC40-73-250.

E. The administrator shall develop and implement a written plan for supervision of direct care staff who have not yet met the requirements as allowed for in subsection C of this section.

## **22VAC40-73-210. Direct care staff training.**

A. In a facility licensed only for residential living care, all direct care staff shall attend at least 14 hours of training annually.

B. In a facility licensed for both residential and assisted living care, all direct care staff shall attend at least 18 hours of training annually.

C. Training for the first year shall commence no later than 60 days after employment.

D. The training shall be in addition to (i) required first aid training; (ii) CPR training, if taken; and (iii) for medication aides, continuing education required by the Virginia Board of Nursing.

E. The training shall be relevant to the population in care and shall be provided by a qualified individual through in-service training programs or institutes, workshops, classes, or conferences.

F. At least two of the required hours of training shall focus on infection control and prevention. When adults with mental impairments reside in the facility, at least four of the required hours shall focus on topics related to residents' mental impairments.

G. Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the facility in a manner that allows for identification by individual staff person and is considered part of the staff member's record.

Exception: Direct care staff who are licensed health care professionals or certified nurse aides shall attend at least 12 hours of annual training.

## **22VAC40-73-220. Private duty personnel.**

A. When private duty personnel from licensed home care organizations provide direct care or companion services to residents in an assisted living facility, the following applies:

1. Before direct care or companion services are initiated, the facility shall obtain, in writing, information on the type and frequency of the services to be delivered to the resident by private duty personnel, review the information to

determine if it is acceptable, and provide notification to the home care organization regarding any needed changes.

2. The direct care or companion services provided by private duty personnel to meet identified needs shall be reflected on the resident's individualized service plan.

3. The facility shall ensure that the requirements of 22VAC40-73-250 D 1 through D 4 regarding tuberculosis are applied to private duty personnel and that the required reports are maintained by the facility or the licensed home care organization, based on written agreement between the two.

4. The facility shall provide orientation and training to private duty personnel regarding the facility's policies and procedures related to the duties of private duty personnel.

5. The facility shall ensure that documentation of resident care required by this chapter is maintained.

6. The facility shall monitor the delivery of direct care and companion services to the resident by private duty personnel.

B. When private duty personnel who are not employees of a licensed home care organization provide direct care or companion services to residents in an assisted living facility, the requirements listed under subdivisions 2 through 6 in subsection A of this section apply. In addition, before direct care or companion services are initiated, the facility shall:

1. Obtain, in writing, information on the type and frequency of the services to be delivered to the resident by private duty personnel, review the information to determine if it is acceptable, and provide notification to whomever has hired the private duty personnel regarding any needed changes.

2. Ensure that private duty personnel are qualified for the types of direct care or companion services they are responsible for providing to residents and maintain documentation of the qualifications.

C. The requirements of subsections A and B of this section shall not apply to private duty personnel who only provide skilled nursing treatments as specified in 22VAC40-73-470 B. However, depending upon the circumstances, there may be other sections of this chapter that apply in such cases (e.g., inclusion on the resident's individualized service plan).

## **22VAC40-73-230. Staff duties performed by residents.**

A. Any resident who performs any staff duties shall meet the personnel and health requirements for that position.

B. There shall be a written agreement between the facility and any resident who performs staff duties.

1. The agreement shall specify duties, hours of work, and compensation.

2. The agreement shall not be a condition for admission or continued residence.

3. The resident shall enter into such an agreement voluntarily.

## **22VAC40-73-240. Volunteers.**

### A. Any volunteers used shall:

1. Have qualifications appropriate to the services they render; and
2. Be subject to laws and regulations governing confidential treatment of personal information.

B. No volunteer shall be permitted to serve in an assisted living facility without the permission of or unless under the supervision of a person who has received a criminal record clearance pursuant to § 63.2-1720 of the Code of Virginia.

### C. The facility shall maintain the following documentation on volunteers:

1. Name.
2. Address.
3. Telephone number.
4. Emergency contact information.
5. Information on any qualifications, orientation, training, and education required by this chapter, including any specified relevant information.

D. Duties and responsibilities of all volunteers shall be clearly differentiated from those of persons regularly filling staff positions.

E. At least one staff person shall be assigned responsibility for coordinating volunteer services, including overall selection, supervision, and orientation of volunteers.

F. Prior to beginning volunteer service, all volunteers shall attend an orientation including information on their duties and responsibilities, resident rights, confidentiality, emergency procedures, infection control, the name of their supervisor, and reporting requirements and sign and date a statement that they have received and understood this information.

G. All volunteers shall be under the supervision of a designated staff person when residents are present.

## **22VAC40-73-250. Staff records and health requirements.**

A. A record shall be established for each staff person. It shall not be destroyed until at least two years after employment is terminated.

B. All staff records shall be retained at the facility, treated confidentially, and kept in a locked area.

Exception: Emergency contact information required by subdivision C 9 of this section shall also be kept in an easily accessible place.

C. Personal and social data to be maintained on staff and included in the staff record are as follows:

1. Name;
2. Birth date;
3. Current address and telephone number;
4. Position title and date employed;

5. Verification that the staff person has received a copy of his current job description;

6. An original criminal record report and a sworn disclosure statement;

7. Documentation of qualifications for employment related to the staff person's position, including any specified relevant information;

8. Verification of current professional license, certification, registration, medication aide provisional authorization, or completion of a required approved training course;

9. Name and telephone number of person to contact in an emergency;

10. Documentation of orientation, training, and education required by this chapter, including any specified relevant information; and

11. Date of termination of employment.

D. Health information required by these standards shall be maintained at the facility and be included in the staff record for each staff person, and also shall be maintained at the facility for each household member who comes in contact with residents.

### 1. Initial tuberculosis examination and report.

a. Each staff person on or within seven days prior to the first day of work at the facility and each household member prior to coming in contact with residents shall submit the results of a risk assessment, documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

b. The risk assessment shall be no older than 30 days.

### 2. Subsequent tuberculosis evaluations and reports.

a. Any staff person or household member required to be evaluated who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

b. Any staff person or household member required to be evaluated who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

c. Each staff person or household member required to be evaluated shall annually submit the results of a risk assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

3. Any individual suspected to have infectious tuberculosis shall not be allowed to return to work or have any contact with the residents and personnel of the facility until a

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physician has determined that the individual is free of infectious tuberculosis.

4. The facility shall report any active case of tuberculosis developed by a staff person or household member required to be evaluated to the local health department.

E. Record of any vaccinations and immunizations received as noted in 22VAC40-73-100 D.

F. At the request of the administrator of the facility or the department, a report of examination by a licensed physician shall be obtained when there are indications that the safety of residents in care may be jeopardized by the physical or mental health of a staff person or household member.

G. Any staff person or household member who, upon examination or as a result of tests, shows indication of a physical or mental condition that may jeopardize the safety of residents in care or that would prevent performance of duties:

1. Shall be removed immediately from contact with residents; and

2. Shall not be allowed contact with residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

## **22VAC40-73-260. First aid and CPR certification.**

### **A. First aid.**

1. Each direct care staff member who does not have current certification in first aid as specified in subdivision 2 of this subsection shall receive certification in first aid within 60 days of employment from the American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute, community college, hospital, volunteer rescue squad, or fire department. The certification must either be in adult first aid or include adult first aid.

2. Each direct care staff member shall maintain current certification in first aid from an organization listed in subdivision 1 of this subsection. To be considered current, first aid certification from community colleges, hospitals, volunteer rescue squads, or fire departments shall have been issued within the past three years. The certification must either be in adult first aid or include adult first aid.

3. A direct care staff member who is a registered nurse or licensed practical nurse does not have to meet the requirements of subdivisions 1 and 2 of this subsection.

4. There shall be at least one staff person on the premises at all times who has current certification in first aid that meets the specifications of this section, unless the facility has an on-duty registered nurse or licensed practical nurse.

### **B. Cardiopulmonary resuscitation (CPR).**

1. There shall be at least one staff person on the premises at all times who has current certification in CPR from the American Red Cross, American Heart Association, National Safety Council, American Safety and Health

Institute, or who has current CPR certification issued within the past two years by a community college, hospital, volunteer rescue squad, or fire department. The certification must either be in adult CPR or include adult CPR.

2. In facilities licensed for over 50 residents, at least one additional staff person who meets the requirements of subdivision 1 of this subsection shall be available for every 50 residents, or portion thereof. More staff persons who meet the requirements in subdivision 1 of this subsection shall be available if necessary to assure quick access to residents in the event of the need for CPR.

C. A listing of all staff who have current certification in first aid or CPR, in conformance with subsections A and B of this section, shall be posted in the facility so that the information is readily available to all staff at all times. The listing must indicate by staff person whether the certification is in first aid or CPR or both and must be kept up to date.

D. A staff person with current certification in first aid and CPR shall be present for the duration of facility-sponsored activities off the facility premises, when facility staff are responsible for oversight of one or more residents during the activity.

## **22VAC40-73-270. Direct care staff training when aggressive or restrained residents are in care.**

The following training is required for staff in assisted living facilities that accept, or have in care, residents who are or who may be aggressive or restrained:

### 1. Aggressive residents.

a. Direct care staff shall be trained in methods of dealing with residents who have a history of aggressive behavior or of dangerously agitated states prior to being involved in the care of such residents.

b. This training shall include, at a minimum, information, demonstration, and practical experience in self-protection and in the prevention and de-escalation of aggressive behavior.

### 2. Restrained residents.

a. Prior to being involved in the care of residents in restraints, direct care staff shall be appropriately trained in caring for the health needs of such residents.

b. This training shall include, at a minimum, information, demonstration, and experience in:

(1) The proper techniques for applying and monitoring restraints;

(2) Skin care appropriate to prevent redness, breakdown, and decubiti;

(3) Active and active assisted range of motion to prevent contractures;

(4) Assessment of blood circulation to prevent obstruction of blood flow and promote adequate blood circulation to all extremities;

- (5) Turning and positioning to prevent skin breakdown and keep the lungs clear;
  - (6) Provision of sufficient bed clothing and covering to maintain a normal body temperature;
  - (7) Provision of additional attention to meet the physical, mental, emotional, and social needs of the restrained resident; and
  - (8) Awareness of possible risks associated with restraint use and methods of reducing or eliminating such risks.
3. The training described in subdivisions 1 and 2 of this section shall meet the following criteria:
- a. Training shall be provided by a qualified health professional.
  - b. A written description of the content of this training, a notation of the entity providing the training, and the names of direct care staff receiving the training shall be maintained by the facility except that, if the training is provided by the department, only a listing of direct care staff trained and the date of training are required.
4. Refresher training for all direct care staff shall be provided at least annually or more often as needed.
- a. The refresher training shall encompass the techniques described in subdivision 1 or 2 of this section, or both.
  - b. A record of the refresher training and a description of the content of the training shall be maintained by the facility.

Part IV  
Staffing and Supervision

**22VAC40-73-280. Staffing.**

- A. The assisted living facility shall have staff adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental, and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to assure compliance with this chapter.
  - B. The assisted living facility shall maintain a written plan that specifies the number and type of direct care staff required to meet the day-to-day, routine direct care needs and any identified special needs for the residents in care. This plan shall be directly related to actual resident acuity levels and individualized care needs.
  - C. An adequate number of staff persons shall be on the premises at all times to implement the approved fire and emergency evacuation plan.
  - D. At least one direct care staff member shall be awake and on duty at all times in each building when at least one resident is present.
- Exception: For a facility licensed for residential living care only, in buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if (i) none of the residents have care needs that

require a staff member awake at night and (ii) the facility ensures compliance with the requirements of 22VAC40-73-930 C.

**22VAC40-73-290. Work schedule and posting.**

A. The facility shall maintain a written work schedule that includes the names and job classifications of all staff working each shift, with an indication of whomever is in charge at any given time.

- 1. Any absences, substitutions, or other changes shall be noted on the schedule.
- 2. The facility shall maintain a copy of the schedule for two years.

B. The facility shall develop and implement a procedure for posting the name of the current on-site person in charge, as provided for in this chapter, in a place in the facility that is conspicuous to the residents and the public.

**22VAC40-73-300. Communication among staff.**

A. Procedures shall be established and reviewed with staff for communication among administrators, designated assistant administrators, managers, and designated staff persons in charge, as applicable to a facility, to ensure stable operations and sound transitions.

B. A method of written communication shall be utilized as a means of keeping direct care staff on all shifts informed of significant happenings or problems experienced by residents, including complaints and incidents or injuries related to physical or mental conditions.

- 1. A record shall be kept of the written communication for at least the past two years.
- 2. The information shall be included in the records of the involved residents.

Part V  
Admission, Retention, and Discharge of Residents

**22VAC40-73-310. Admission and retention of residents.**

A. No resident shall be admitted or retained:

- 1. For whom the facility cannot provide or secure appropriate care;
- 2. Who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide; or
- 3. If the facility does not have staff appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon the following information at a minimum:

- 1. The completed UAI.
- 2. The physical examination report.

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3. A documented interview between the administrator or a designee responsible for admission and retention decisions, the resident, and his legal representative, if any. In some cases, medical conditions may create special circumstances that make it necessary to hold the interview on the date of admission.

4. A mental health screening in accordance with 22VAC40-73-330 A.

C. An assisted living facility shall only admit or retain residents as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory or nonambulatory status, as defined in 22VAC40-73-10, of an individual is based upon:

1. Information contained in the physical examination report; and

2. Information contained in the most recent UAI.

D. Based upon review of the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the legal representative and case manager, if any, and a copy signed by the resident or his legal representative shall be kept in the resident's record.

E. All residents shall be 18 years of age or older.

F. No person shall be admitted without his consent and agreement, or that of his legal representative with demonstrated legal authority to give such consent on his behalf.

G. The facility shall not require a person to relinquish the rights specified in § 63.2-1808 of the Code of Virginia as a condition of admission or retention.

H. In accordance with § 63.2-1805 D of the Code of Virginia, assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;

2. Dermal ulcers III and IV except those stage III ulcers that are determined by an independent physician to be healing;

3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia except as permitted in subsection K of this section;

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;

5. Psychotropic medications without appropriate diagnosis and treatment plans;

6. Nasogastric tubes;

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection K of this section;

8. Individuals presenting an imminent physical threat or danger to self or others;

9. Individuals requiring continuous licensed nursing care;

10. Individuals whose physician certifies that placement is no longer appropriate;

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance Program (12VAC30-10); or

12. Individuals whose physical or mental health care needs cannot be met in the specific assisted living facility as determined by the facility.

I. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's or other prescriber's treatment plan.

J. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's or other prescriber's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

K. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, care for the conditions or care needs (i) specified in subdivisions G 3 and G 7 of this section may be provided to the resident by a physician licensed in Virginia, a nurse licensed in Virginia or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) specified in subdivision G 7 of this section may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18VAC90-20-420 through 18VAC90-20-460, and 22VAC40-73-470 E. This standard does not apply to recipients of auxiliary grants.

L. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility direct care staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency. This training is required prior to direct care staff assuming such duties. Updated training shall be provided as needed. The training shall include content based on the resident's specific needs.

M. Notwithstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia if the hospice program determines that such program is appropriate for the resident. If hospice care is provided, there shall be a written agreement between the assisted living facility and any hospice program that provides care in the facility. The agreement shall include:

1. Policies and procedures to ensure appropriate communication and coordination between the facility and the hospice program;
2. Specification of the roles and responsibilities of each entity, including listing of the services that will generally be provided by the facility and the services that will generally be provided by the hospice program;
3. Acknowledgment that the services provided to each resident shall be reflected on the individualized service plan as required in 22VAC40-73-450 D; and
4. Signatures of an authorized representative of the facility and an authorized representative of the hospice program.

**22VAC40-73-320. Physical examination and report.**

A. Within the 30 days preceding admission, a person shall have a physical examination by an independent physician. The report of such examination shall be on file at the assisted living facility and shall contain the following:

1. The date of the physical examination;
2. Height, weight, and blood pressure;
3. Significant medical history;
4. General physical condition, including a systems review as is medically indicated;
5. Any diagnosis or significant problems;
6. Any known allergies and description of the person's reactions;
7. Any recommendations for care including medication, diet, and therapy;
8. Results of a risk assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it;
9. A statement that the individual does not have any of the conditions or care needs prohibited by 22VAC40-73-310 H;
10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory;
11. A statement that specifies whether the individual is or is not capable of self-administering medication; and
12. The signature of the examining physician or his designee.

B. Subsequent tuberculosis evaluations.

1. A risk assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.
2. Any resident who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.
3. Any resident who develops respiratory symptoms of three or more weeks duration with no medical explanation shall be referred for evaluation for the presence of infectious tuberculosis.
4. If a resident develops an active case of tuberculosis, the facility shall report this information to the local health department.

C. As necessary to determine whether a resident's needs can continue to be met in the assisted living facility, the department may request a current physical examination or psychiatric evaluation, including diagnosis and assessments.

**22VAC40-73-325. Fall risk assessment.**

A. For residents who meet the criteria for assisted living care, by the time the comprehensive ISP is completed, a fall risk assessment shall be conducted.

B. The fall risk assessment shall be reviewed and updated:

1. At least annually;
2. When the condition of the resident changes; and
3. After a fall.

C. Should a resident fall, the facility must show documentation of an analysis of the circumstances of the fall and interventions that were initiated to prevent or reduce additional falls.

**22VAC40-73-330. Mental health screening.**

A. A mental health screening shall be conducted prior to admission if behaviors or patterns of behavior occurred within the previous six months that were indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders and that caused, or continue to cause, concern for the health, safety, or welfare either of that individual or others who could be placed at risk of harm by that individual.

Exceptions:

1. If it is not possible for the screening to be conducted prior to admission, the individual may be admitted if all other admission requirements are met. The reason for the delay shall be documented and the screening shall be conducted as soon as possible, but no later than 30 days after admission.
2. The screening shall not be required for individuals under the care of a qualified mental health professional immediately prior to admission, as long as there is

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documentation of the person's psychosocial and behavioral functioning as specified in 22VAC40-73-340 A 1.

B. A mental health screening shall be conducted when a resident displays behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders that cause concern for the health, safety, or welfare of either that individual or others who could be placed at risk of harm by the individual.

C. The mental health screening shall be conducted by a qualified mental health professional having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.

D. A copy of the screening shall be filed in the resident's record.

E. If the screening indicates a need for mental health, intellectual disability, substance abuse, or behavioral disorder services for the resident, the facility shall provide:

1. Notification of the resident's need for such services to the community services board, behavioral health authority, or other appropriate licensed provider identified by the resident or his legal representative; and

2. Notification to the resident, authorized contact person of record, and physician of record that mental health services have been recommended for the resident.

## **22VAC40-73-340. Psychosocial and behavioral history.**

A. When determining appropriateness of admission for an individual with mental illness, intellectual disability, substance abuse, or behavioral disorders, the following information shall be obtained by the facility:

1. If the prospective resident is referred by a state or private hospital, community services board, behavioral health authority, or long-term care facility, documentation of the individual's psychosocial and behavioral functioning shall be acquired.

2. If the prospective resident is coming from a private residence, information about the individual's psychosocial and behavioral functioning shall be gathered from primary sources, such as family members or friends. Although there is no requirement for written information from primary sources, the facility must document the source and content of the information that was obtained.

B. The administrator or his designee shall document that the individual's psychosocial and behavioral history were reviewed and used to help determine the appropriateness of the admission.

C. If the individual is admitted, the psychosocial and behavioral history shall be used in the development of the person's individualized service plan and documentation of the history shall be filed in the record.

## **22VAC40-73-350. Sex offender information.**

A. The assisted living facility shall register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the facility is located, pursuant to § 9.1-914 of the Code of Virginia.

B. The assisted living facility shall ascertain, prior to admission, whether a potential resident is a registered sex offender if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days and shall document in the resident's record that this was ascertained and the date the information was obtained.

C. The assisted living facility shall ensure that each resident or his legal representative is fully informed, prior to or at the time of admission and annually, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ 9.1-900 et. seq.) of Title 9.1 of the Code of Virginia, including how to obtain such information. Written acknowledgment of having been so informed shall be provided by the resident or his legal representative and shall be maintained in the resident's record.

D. At the same time that the person is informed as required in subsection C of this section, the assisted living facility shall provide notification that, upon request, the facility shall:

1. Assist the resident, prospective resident, or his legal representative in accessing the information on registered sex offenders; and

2. Provide the resident, prospective resident, or his legal representative with printed copies of the information on registered sex offenders.

## **22VAC40-73-360. Emergency placement.**

A. An emergency placement shall occur only when the emergency is documented and approved by (i) an adult protective services worker for public pay individuals or (ii) an independent physician or an adult protective services worker for private pay individuals.

B. When an emergency placement occurs, the person shall remain in the assisted living facility no longer than seven days unless all the requirements for admission have been met and the person has been admitted.

C. The facility shall obtain sufficient information on the person to protect the health, safety, and welfare of the individual while he remains at the facility as allowed by subsection B of this section.

## **22VAC40-73-370. Respite care.**

If an assisted living facility provides respite care as defined in 22VAC40-73-10, the requirements of this chapter apply to the respite care, except as follows:

1. For individuals in respite care, the ISP shall be completed prior to the person participating in respite care and need not include expected outcome.

2. Each time an individual returns for respite care, the facility shall reevaluate the person's condition and as needed, ensure that the uniform assessment instrument and the individualized service plan are updated. The reevaluation shall include, but not be limited to, observation of the person; interviews with the individual and his legal representative, if any; and consultation with others knowledgeable about the person, as appropriate.

3. If the period of time between respite care stays is six months or longer, a new physical examination report shall be required prior to the individual returning for respite care. The examination shall take place within 30 days prior to the person's return for respite care.

4. The record for the individual in respite care shall include the dates of respite care.

5. The medication review required by 22VAC40-73-690 does not apply to individuals in respite care.

**22VAC40-73-380. Resident personal and social information.**

A. Prior to or at the time of admission to an assisted living facility, the following personal and social information on a person shall be obtained:

1. Name;

2. Last home address, and address from which resident was received, if different;

3. Date of admission;

4. Birth date or if unknown, estimated age;

5. Birthplace, if known;

6. Marital status, if known;

7. Name, address, and telephone number of all legal representatives, if any;

8. If there is a legal representative, copies of current legal documents that show proof of each legal representative's authority to act on behalf of the resident and that specify the scope of the representative's authority to make decisions and to perform other functions;

9. Name, address, and telephone number of next of kin, if known (two preferred);

10. Name, address, and telephone number of designated contact person authorized by the resident or legal representative, if appropriate, for notification purposes, including emergency notification and notification of the need for mental health, intellectual disability, substance abuse, or behavioral disorder services - if the resident or legal representative is willing to designate an authorized contact person. There may be more than one designated contact person. The designated contact person may also be

listed under another category, such as next of kin or legal representative;

11. Name, address, and telephone number of the responsible individual stipulated in 22VAC40-73-550 H, if needed;

12. Name, address, and telephone number of personal physician, if known;

13. Name, address, and telephone number of personal dentist, if known;

14. Name, address, and telephone number of clergyman and place of worship, if applicable;

15. Name, address, and telephone number of local department of social services or any other agency, if applicable, and the name of the assigned case manager or caseworker;

16. Service in the armed forces, if applicable;

17. Lifetime vocation, career, or primary role;

18. Special interests and hobbies;

19. Known allergies, if any;

20. Information concerning advance directives, Do Not Resuscitate (DNR) Orders, or organ donation, if applicable; and

21. For residents who meet the criteria for assisted living care, the additional information in subdivisions a, b, and c of this subdivision 21:

a. Previous mental health or intellectual disability services history, if any, and if applicable for care or services;

b. Current behavioral and social functioning including strengths and problems; and

c. Any substance abuse history if applicable for care or services.

B. The personal and social information required in subsection A of this section shall be placed in the individual's record.

**22VAC40-73-390. Resident agreement with facility.**

A. At or prior to the time of admission, there shall be a written agreement or written acknowledgment of notification dated and signed by the resident or applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services, and care that specifies:

a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

b. Description of all accommodations, services, and care that the facility offers and any related charges;

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c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;

d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment, except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;

e. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

f. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and

g. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.

3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

4. Signed acknowledgments that:

a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or his legal representative;

b. The resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility;

c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;

d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;

e. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has reviewed § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him;

f. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia, including the grievance policy and the transfer or discharge policy;

g. The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);

h. The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy (See 22VAC40-73-420 B);

i. The resident has been informed of the policy or guidelines regarding visiting in the facility, if the facility has such a policy or guidelines (See 22VAC40-73-540 C);

j. The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including but not limited to that which is required by 22VAC40-73-820;

k. The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements; and

l. The resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-73-310 D.

B. Copies of the signed agreement or acknowledgment of notification shall be provided to the resident and, as appropriate, his legal representative and shall be retained in the resident's record.

C. The original agreement shall be updated whenever there are changes in financial arrangements, accommodations, services, care provided by the facility, requirements governing the resident's conduct, other restrictions, or special conditions, and signed by the licensee or administrator and the resident or his legal representative. If the original agreement provides for specific changes in any of these items, this standard does not apply to those changes.

## **22VAC40-73-400. Monthly statement of charges and payments.**

The facility shall provide to each resident or the resident's legal representative, if one has been appointed, a monthly statement that itemizes any charges made by the facility and any payments received from the resident or on behalf of the resident during the previous calendar month and shall show the balance due or any credits for overpayment. The facility shall also place a copy of the monthly statement in the resident's record.

## **22VAC40-73-410. Orientation and related information for residents.**

A. Upon admission, the assisted living facility shall provide an orientation for new residents and their legal representatives, including but not limited to, emergency response procedures, mealtimes, and use of the call system. If needed, the orientation shall be modified as appropriate for residents with cognitive impairments. Acknowledgment of having received the orientation shall be signed and dated by the resident and, as appropriate, his legal representative, and such documentation shall be kept in the resident's record.

B. Upon admission and upon request, the assisted living facility shall provide to the resident and, if appropriate, his legal representative, a written description of the types of staff persons working in the facility and the services provided, including the hours such services are available.

**22VAC40-73-420. Acceptance back in facility.**

A. An assisted living facility shall establish procedures to ensure that any resident detained by a temporary detention order pursuant to §§ 37.2-809 through 37.2-813 of the Code of Virginia is accepted back in the assisted living facility if the resident is not involuntarily committed pursuant to §§ 37.2-814 through 37.2-819 of the Code of Virginia. The procedures shall include, but not be limited to:

1. Obtaining written recommendations from a qualified mental health professional regarding supportive services necessary to address the mental health needs of the resident returning to the facility;
2. Documenting whether the recommendations specified in subdivision 1 of this subsection can be implemented based on facility or community resources and whether the resident can be retained at the facility or would need to be discharged;
3. Updating the resident's individualized service plan, as needed; and
4. Ensuring that direct care staff involved in the care and supervision of the resident receive clear and timely communication regarding their responsibilities in respect to the mental health needs of the resident and behavioral or emotional indicators of possible crisis situations.

B. If an assisted living facility allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes, but is not limited to, the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held.

**22VAC40-73-430. Discharge of residents.**

A. When actions, circumstances, conditions, or care needs occur that will result in the discharge of a resident, discharge planning shall begin immediately, and there shall be documentation of such, including the beginning date of discharge planning. The resident shall be moved within 30 days, except that if persistent efforts have been made and the time frame is not met, the facility shall document the reason and the efforts that have been made.

B. As soon as discharge planning begins, the assisted living facility shall notify the resident, the resident's legal representative and designated contact person if any, of the planned discharge, the reason for the discharge, and that the resident will be moved within 30 days unless there are extenuating circumstances relating to inability to place the resident in another setting within the time frame referenced in subsection A of this section. Written notification of the actual discharge date and place of discharge shall be given to the

resident, the resident's legal representative and contact person, if any, and additionally for public pay residents, the eligibility worker and assessor, at least 14 days prior to the date that the resident will be discharged.

C. The assisted living facility shall adopt and conform to a written policy regarding the number of days' notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 30 days.

D. The facility shall assist the resident and his legal representative, if any, in the discharge or transfer process. The facility shall help the resident prepare for relocation, including discussing the resident's destination. Primary responsibility for transporting the resident and his possessions rests with the resident or his legal representative.

E. When a resident's condition presents an immediate and serious risk to the health, safety, or welfare of the resident or others and emergency discharge is necessary, 14-day notification of planned discharge does not apply, although the reason for the relocation shall be discussed with the resident and, when possible, his legal representative prior to the move.

F. Under emergency conditions, the resident's legal representative, designated contact person, family, caseworker, social worker, or any other persons, as appropriate, shall be informed as rapidly as possible, but by the close of the day following discharge, of the reasons for the move. For public pay residents, the eligibility worker and assessor shall also be so informed within the same time frame. No later than five days after discharge, the information shall be provided in writing to all those notified.

G. For public pay residents, in the event of a resident's death, the assisted living facility shall provide written notification to the eligibility worker and assessor within five days after the resident's death.

**H. Discharge statement.**

1. At the time of discharge, the assisted living facility shall provide to the resident and, as appropriate, his legal representative and designated contact person a dated statement signed by the licensee or administrator that contains the following information:

- a. The date on which the resident, his legal representative, or designated contact person was notified of the planned discharge and the name of the legal representative or designated contact person who was notified;
- b. The reason or reasons for the discharge;
- c. The actions taken by the facility to assist the resident in the discharge and relocation process; and
- d. The date of the actual discharge from the facility and the resident's destination.

2. When the termination of care is due to emergency conditions, the dated statement shall contain the

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information in subdivisions 1 a through 1 d of this subsection as appropriate and shall be provided or mailed to the resident, his legal representative, or designated contact person within 48 hours from the time of the decision to discharge.

3. A copy of the written statement shall be retained in the resident's record.

I. When the resident is discharged and moves to another caregiving facility, the assisted living facility shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be maintained by the assisted living facility from which the resident was discharged. The assisted living facility shall maintain a listing of all information shared with the receiving facility.

J. Within 60 days of the date of discharge, each resident or his legal representative shall be given a final statement of account, any refunds due, and return of any money, property, or things of value held in trust or custody by the facility.

## Part VI

### Resident Care and Related Services

#### **22VAC40-73-440. Uniform assessment instrument (UAI).**

A. All residents of and applicants to assisted living facilities shall be assessed face to face using the uniform assessment instrument in accordance with Assessment in Assisted Living Facilities (22VAC30-110). The UAI shall be completed prior to admission, at least annually, and whenever there is a significant change in the resident's condition.

B. The UAI shall be completed within 90 days prior to admission to the assisted living facility, except that if there has been a change in the resident's condition since the completion of the UAI that would affect the admission, a new UAI shall be completed.

C. When a resident moves to an assisted living facility from another assisted living facility or other long-term care setting that uses the UAI, if there is a completed UAI on record, another UAI does not have to be completed except that a new UAI shall be completed whenever:

1. There is a significant change in the resident's condition;  
or
2. The previous assessment is more than 12 months old.

D. Annual reassessments and reassessments due to a significant change in the resident's condition, using the UAI, shall be utilized to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interest of the resident.

E. During an inspection or review, staff from the department, the Department of Medical Assistance Services, or the local department of social services may initiate a change in level of care for any assisted living facility resident

for whom it is determined that the resident's UAI is not reflective of the resident's current status.

F. At the request of the assisted living facility, the resident's legal representative, the resident's physician, the department, or the local department of social services an independent assessment using the UAI shall be completed to determine whether the resident's care needs are being met in the assisted living facility. The assisted living facility shall assist in obtaining the independent assessment as requested. An independent assessment is one that is completed by a qualified entity other than the original assessor.

G. For private pay individuals, the assisted living facility shall ensure that the uniform assessment instrument is completed as required by 22VAC30-110.

H. For a private pay resident, if the UAI is completed by an independent physician or a qualified human services agency assessor, the assisted living facility shall be responsible for coordinating with the physician or the agency assessor to ensure that the UAI is completed as required.

I. The assisted living facility shall be in compliance with the requirements set forth in 22VAC30-110.

J. The facility shall maintain the completed UAI in the resident's record.

#### **22VAC40-73-450. Individualized service plans.**

A. On the day of admission, unless a comprehensive individualized service plan is completed during that time, a preliminary plan of care shall be developed to address the basic needs of the resident, which adequately protects his health, safety, and welfare. The preliminary plan shall be developed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident, and, as appropriate, other individuals noted in subdivision B 1 of this section.

B. The licensee, administrator, or his designee who has successfully completed the department-approved individualized service plan (ISP) training, provided by a licensed health care professional practicing within the scope of his profession, shall develop a comprehensive ISP to meet the resident's service needs. An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

1. The licensee, administrator, or designee shall develop the ISP in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff members, case manager, health care providers, qualified mental health professionals, or other persons.

2. The plan shall reflect the resident's assessed needs and support the principles of individuality, personal dignity, freedom of choice, and home-like environment and shall include other formal and informal supports that may participate in the delivery of services. Whenever possible,

residents shall be given a choice of options regarding the type and delivery of services.

3. The plan shall be designed to maximize the resident's level of functional ability.

C. The comprehensive individualized service plan shall be completed within 30 days after admission and shall include the following:

1. Description of identified needs and date identified based upon the (i) UAI; (ii) admission physical examination; (iii) interview with resident; (iv) fall risk assessment, if appropriate; (v) assessment of psychological, behavioral, and emotional functioning, if appropriate; and (vi) other sources;

2. A written description of what services will be provided to address identified needs, and if applicable, other services, and who will provide them;

3. When and where the services will be provided;

4. The expected outcome and time frame for expected outcome;

5. Date outcome achieved; and

6. For a facility licensed for residential living care only, if a resident lives in a building housing 19 or fewer residents, a statement that specifies whether the person does need or does not need to have a staff member awake and on duty at night.

D. When hospice care is provided to a resident, the assisted living facility and the licensed hospice organization shall communicate and establish and agree upon a coordinated plan of care for the resident. The services provided by each shall be included on the individualized service plan.

E. The individualized service plan shall be signed and dated by the licensee, administrator, or his designee, (i.e., the person who has developed the plan), and by the resident or his legal representative. The plan shall also indicate any other individuals who contributed to the development of the plan, with a notation of the date of contribution. The title or relationship to the resident of each person who was involved in the development of the plan shall be so noted. These requirements shall also apply to reviews and updates of the plan.

F. Individualized service plans shall be reviewed and updated at least once every 12 months and as needed as the condition of the resident changes. The review and update shall be performed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff, case manager, health care providers, qualified mental health professionals, or other persons.

G. The master service plan shall be filed in the resident's record. A current copy shall be provided to the resident and shall also be maintained in a location accessible at all times to

direct care staff, but that protects the confidentiality of the contents of the service plan. Extracts from the plan may be filed in locations specifically identified for their retention.

H. The facility shall ensure that the care and services specified in the individualized service plan are provided to each resident, except that:

1. There may be a deviation from the plan when mutually agreed upon between the facility and the resident or the resident's legal representative at the time the care or services are scheduled or when there is an emergency that prevents the care or services from being provided.

2. Deviation from the plan shall be documented in writing, including a description of the circumstances, the date it occurred, and the signatures of the parties involved, and the documentation shall be retained in the resident's record.

3. The facility may not start, change, or discontinue medications, dietary supplements, diets, medical procedures, or treatments without an order from a physician or other prescriber.

## **22VAC40-73-460. Personal care services and general supervision and care.**

A. The facility shall assume general responsibility for the health, safety, and well-being of the residents.

B. Care provision and service delivery shall be resident-centered to the maximum extent possible and include:

1. Resident participation in decisions regarding the care and services provided to him;

2. Personalization of care and services tailored to the resident's circumstances and preferences; and

3. Prompt response by staff to resident needs as reasonable to the circumstances.

C. Care shall be furnished in a way that fosters the independence of each resident and enables him to fulfill his potential.

D. The facility shall provide supervision of resident schedules, care, and activities, including attention to specialized needs, such as prevention of falls and wandering from the premises.

E. The facility shall regularly observe each resident for changes in physical, mental, emotional, and social functioning.

1. Any notable change in a resident's condition or functioning, including illness, injury, or altered behavior, and action taken shall be documented in the resident's record.

2. The facility shall provide appropriate assistance when observation reveals unmet needs.

F. The facility shall notify the next of kin, legal representative, designated contact person, or, if applicable, any responsible social agency of any incident of a resident falling or wandering from the premises, whether or not it

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results in injury. This notification shall occur as soon as possible but at least within 24 hours from the time of initial discovery or knowledge of the incident. The resident's record shall include documentation of the notification, including date, time, caller, and person or agency notified.

Exception: If the whereabouts of a resident are unknown and there is reason to be concerned about his safety, the facility shall immediately notify the appropriate law-enforcement agency. The facility shall also immediately notify the resident's next of kin, legal representative, designated contact person, or, if applicable, any responsible social agency.

G. The facility shall provide care and services to each resident by staff who are able to communicate with the resident in a language the resident understands or shall make provisions for communications between staff and residents to ensure an accurate exchange of information.

H. The facility shall ensure that personal assistance and care are provided to each resident as necessary so that the needs of the resident are met, including but not limited to assistance or care with:

1. The activities of daily living:

- a. Bathing - at least twice a week, but more often if needed or desired;
- b. Dressing;
- c. Toileting;
- d. Transferring;
- e. Bowel control;
- f. Bladder control; and
- g. Eating or feeding;

2. The instrumental activities of daily living:

- a. Meal preparation;
- b. Housekeeping;
- c. Laundry; and
- d. Managing money;

3. Ambulation;

4. Hygiene and grooming:

- a. Shampooing, combing, and brushing hair;
- b. Shaving;
- c. Trimming fingernails and toenails (certain medical conditions necessitate that this be done by a licensed health care professional);
- d. Daily tooth brushing and denture care; and
- e. Skin care at least twice daily for those with limited mobility; and

5. Functions and tasks:

- a. Arrangements for transportation;
- b. Arrangements for shopping;

c. Use of the telephone; and

d. Correspondence.

I. Each resident shall be dressed in clean clothing and be free of odors related to hygiene. Each resident shall be encouraged to wear day clothing when out of bed.

J. Residents who are incontinent shall have a full or partial bath and clean clothing and linens each time their clothing or bed linen is soiled or wet.

K. The facility shall ensure each resident is able to obtain individually preferred personal care items when:

- 1. The preferred personal care items are reasonably available; and
- 2. The resident is willing and able to pay for the preferred items.

**22VAC40-73-470. Health care services.**

A. The facility shall ensure, either directly or indirectly, that the health care service needs of residents are met. The ways in which the needs may be met include, but are not limited to:

- 1. Staff of the facility providing health care services;
- 2. Persons employed by a resident providing health care services; or
- 3. The facility assisting residents in making appropriate arrangements for health care services.

a. When a resident is unable to participate in making appropriate arrangements, the resident's family, legal representative, designated contact person, cooperating social agency, or personal physician shall be notified of the need.

b. When mental health care is needed or desired by a resident, this assistance shall include securing the services of the local community services board, state or federal mental health clinic, or similar facility or agent in the private sector.

B. A resident's need for skilled nursing treatments within the facility shall be met by the facility's employment of a licensed nurse or contractual agreement with a licensed nurse, or by a home health agency or by a private duty licensed nurse.

C. Services shall be provided to prevent clinically avoidable complications, including but not limited to:

- 1. Pressure ulcer development or worsening of an ulcer;
- 2. Contracture;
- 3. Loss of continence;
- 4. Dehydration; and
- 5. Malnutrition.

D. The facility shall develop and implement a written policy to ensure that staff are made aware of any life-threatening conditions of residents, including but not limited to allergic reactions, and actions that staff may need to take.

E. When care for gastric tubes is provided to a resident by unlicensed direct care facility staff as allowed in clause (ii) of 22VAC40-73-310 K, the following criteria shall be met:

1. Prior to the care being provided, the facility shall obtain an informed consent, signed by the resident or his legal representative, that includes at a minimum acknowledgment that:

a. An unlicensed person will routinely be providing the gastric tube care and feedings under the delegation of a registered nurse (RN) who has assessed the resident's care needs and the unlicensed person's ability to safely and adequately meet those needs;

b. Delegation means the RN need not be present in the facility during routine gastric tube care and feedings;

c. Registered medication aides are prohibited from administering medications via gastric tubes and medications may only be administered by licensed personnel (e.g., a licensed practical nurse (LPN) or RN);

d. The tube care and feedings provided to the resident and the supervisory oversight provided by the delegating RN will be reflected on the individualized service plan as required in 22VAC40-73-450; and

e. The signed consent shall be maintained in the resident's record.

2. Only those direct care staff with written approval from the delegating nurse may provide the tube care and feedings. In addition to the approval, the RN shall document:

a. The general and resident-specific instructions he provided to the staff person; and

b. The staff person's successful demonstration of competency in tube care.

3. The delegating RN shall be employed by or under contract with the licensed assisted living facility and shall have supervisory authority over the direct care staff being approved to provide gastric tube care and feedings.

4. The supervisory responsibilities of the delegating nurse include, but are not limited to:

a. Monitoring the direct care staff performance related to the delegated tasks;

b. Evaluating the outcomes for the resident;

c. Ensuring appropriate documentation; and

d. Documenting relevant findings and recommendations.

5. The delegating RN shall schedule supervisory oversight based upon the following criteria:

a. The stability and condition of the resident;

b. The experience and competency of the unlicensed direct care staff person;

c. The nature of the tasks or procedures being delegated; and

d. The proximity and availability of the delegating nurse to the unlicensed direct care staff person when the nursing tasks will be performed.

6. Prior to allowing direct care staff to independently perform care for gastric tubes as provided for in this subsection, each person must be able to successfully demonstrate performance of the entire procedure correctly while under direct observation of the delegating RN. Subsequently, each person shall be directly observed no less than monthly for at least three consecutive months, after which direct observation shall be conducted no less than every six months or more often if indicated. The delegating RN shall retain documentation at the facility of all supervisory activities and direct observations of staff.

7. Contact information for the delegating RN shall be readily available to all staff responsible for tube feedings when an RN or LPN is not present in the facility.

8. Written protocols that encompass the basic policies and procedures for the performance of gastric tube feedings, as well as any resident-specific instructions, shall be available to any direct care staff member responsible for tube feedings.

9. The facility shall have a written back-up plan to ensure that a person who is qualified as specified in this subsection is available if the direct care staff member who usually provides the care is absent.

F. When the resident suffers serious accident, injury, illness, or medical condition, or there is reason to suspect that such has occurred, medical attention from a licensed health care professional shall be secured immediately. The circumstances involved and the medical attention received or refused shall be documented in the resident's record. The date and time of occurrence, as well as the personnel involved shall be included in the documentation.

1. The resident's physician, if not already involved, next of kin, legal representative, designated contact person, case manager, and any responsible social agency, as appropriate, shall be notified as soon as possible but at least within 24 hours of the situation and action taken, or if applicable, the resident's refusal of medical attention. If a resident refuses medical attention, the resident's physician shall be notified immediately.

2. A notation shall be made in the resident's record of such notice, including the date, time, caller, and person notified.

G. If a resident refuses medical attention, the facility shall assess whether it can continue to meet the resident's needs.

**22VAC40-73-480. Restorative, habilitative, and rehabilitative services.**

A. Facilities shall assure that all restorative care and habilitative service needs of the residents are met. Facilities shall coordinate with appropriate professional service providers and ensure that any facility staff who assist with support for these service needs are trained by and receive

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direction from qualified professionals. Restorative and habilitative care includes, but is not limited to, range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

B. In the provision of restorative and habilitative care, staff shall emphasize services such as the following:

1. Making every effort to keep residents active, within the limitations set by physicians' or other prescribers' orders;
2. Encouraging residents to achieve independence in the activities of daily living;
3. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if they are no longer able to maintain past involvement in particular activities;
4. Assisting residents to carry out prescribed physical therapy exercises between appointments with the physical therapist; and
5. Maintaining a bowel and bladder training program.

C. Facilities shall arrange for specialized rehabilitative services by qualified personnel as needed by the resident. Rehabilitative services include physical therapy, occupational therapy, and speech-language pathology services. Rehabilitative services may be indicated when the resident has lost or has shown a change in his ability to respond to or perform a given task and requires professional rehabilitative services in an effort to regain lost function. Rehabilitative services may also be indicated to evaluate the appropriateness and individual response to the use of assistive technology.

D. All rehabilitative services rendered by a rehabilitative professional shall be performed only upon written medical referral by a physician or other qualified health care professional.

E. The physician's or other prescriber's orders, services provided, evaluations of progress, and other pertinent information regarding the rehabilitative services shall be recorded in the resident's record.

F. Direct care staff who are involved in the care of residents using assistive devices shall know how to operate and utilize the devices.

## **22VAC40-73-490. Health care oversight.**

A. Each assisted living facility shall retain a licensed health care professional who has at least two years of experience as a health care professional in an adult residential facility, adult day care center, acute care facility, nursing home, or licensed home care or hospice organization, either by direct employment or on a contractual basis, to provide on-site health care oversight.

1. For residents who meet the criteria for residential living care:
  - a. The licensed health care professional, practicing within the scope of his profession, shall provide the health care

oversight at least every six months, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition; or

b. If the facility employs a licensed health care professional who is on site on a full-time basis, the licensed health care professional, practicing within the scope of his profession, shall provide the health care oversight at least annually, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

2. For residents who meet the criteria for assisted living care:

a. The licensed health care professional, practicing within the scope of his profession, shall provide the health care oversight at least every three months, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or stability of a resident's condition; or

b. If the facility employs a licensed health care professional who is on site on a full-time basis, the licensed health care professional, practicing within the scope of his profession, shall provide the health care oversight at least every six months, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

3. All residents shall be included at least annually in the health care oversight.

B. While on site, as specified in subsection A of this section, the licensed health care professional shall provide health care oversight of the following and make recommendations for change as needed:

1. Ascertain whether a resident's service plan appropriately addresses the current health care needs of the resident.
2. Monitor direct care staff performance of health-related activities.
3. Evaluate the need for staff training.
4. Provide consultation and technical assistance to staff as needed.
5. Review documentation regarding health care services, including medication and treatment records, to assess that services are being provided in accordance with physicians' or other prescribers' orders.
6. Monitor conformance to the facility's medication management plan and the maintenance of required medication reference materials.
7. Observe infection control measures and consistency with the infection control program of the facility.
8. Review the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination.

a. The licensed health care professional shall be at a minimum a registered nurse.

b. The licensed health care professional providing the oversight for this subdivision shall also provide the oversight for subdivisions 1 through 7 of this subsection for restrained residents.

c. The health care oversight for all restrained residents shall be provided at least every three months.

d. The oversight provided shall be a holistic review of the physical, emotional, and mental health of the resident and identification of any unmet needs.

e. The oversight shall include review of physician's orders for restraints to determine whether orders are no older than three months, as required by 22VAC40-73-710 C 2.

f. The oversight shall include an evaluation of whether direct care staff have received the restraint training required by 22VAC40-73-270 and whether the facility is meeting the requirements of 22VAC40-73-710 regarding the use of restraints.

9. Certify that the requirements of subdivisions 1 through 8 of this subsection were met, including the dates of the health care oversight. The specific residents for whom the oversight was provided must be identified. The administrator shall be advised of the findings of the health care oversight and any recommendations. All of the requirements of this subdivision shall be (i) in writing, (ii) signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the oversight, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

10. Action taken in response to the recommendations noted in subdivision 9 of this subsection shall be documented in the resident's record if resident specific, and if otherwise, in the facility files.

**22VAC40-73-500. Access by community services boards, certain local government departments, and behavioral health authorities.**

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards, local government departments with policy-advisory community services boards, or behavioral health authorities as defined in § 37.2-100 of the Code of Virginia for the purposes of:

1. Assessing or evaluating clients residing in the facility;
2. Providing case management or other services or assistance to clients residing in the facility; or
3. Monitoring the care of clients residing in the facility.

Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

**22VAC40-73-510. Mental health services coordination and support.**

A. For each resident requiring mental health services, the services of the local community services board, or a public or private mental health clinic, rehabilitative services agency, treatment facility or agent, or qualified health care professional shall be secured as appropriate based on the resident's current evaluation and to the extent possible, the resident's preference for service provider. The assisted living facility shall assist the resident in obtaining the services. If the services are not able to be secured, the facility shall document the reason for such and the efforts made to obtain the services. If the resident has a legal representative, the representative shall be notified of failure to obtain services and the notification shall be documented.

B. Written procedures to ensure communication and coordination between the assisted living facility and the mental health service provider shall be established to assure that the mental health needs of the resident are addressed.

C. Efforts, which must be documented, shall be made by the assisted living facility to assist in ensuring that prescribed interventions are implemented, monitored, and evaluated for their effectiveness in addressing the resident's mental health needs.

D. If efforts to obtain the recommended services are unsuccessful, the facility must document:

1. Whether it can continue to meet all other needs of the resident.
2. How it plans to ensure that the failure to obtain the recommended services will not compromise the health, safety, or rights of the resident and others who come in contact with the resident.
3. Details of additional steps the facility will take to find alternative providers to meet the resident's needs.

**22VAC40-73-520. Activity and recreational requirements.**

A. Activities for residents shall:

1. Support the skills and abilities of residents in order to promote or maintain their highest level of independence or functioning;
2. Accommodate individual differences by providing a variety of types of activities and levels of involvement; and
3. Offer residents a varied mix of activities weekly including, but not limited to, those that are physical; social; cognitive, intellectual, or creative; productive; sensory; reflective or contemplative; nature or the natural world; and weather permitting, outdoor. Any given activity may involve more than one of these. Community resources as well as facility resources may be used to provide activities.

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## B. Resident participation in activities.

1. Residents shall be encouraged but not forced to participate in activity programs offered by the facility and the community.

2. During an activity, each resident shall be encouraged but not coerced to join in at his level of functioning, to include observing.

3. Any restrictions on participation imposed by a physician shall be documented in the resident's record.

C. Activities shall be planned under the supervision of the administrator or other qualified staff person who shall encourage involvement of residents and staff in the planning.

D. In a facility licensed for residential living care only, there shall be at least 11 hours of scheduled activities available to the residents each week for no less than one hour each day.

E. In a facility licensed for both residential and assisted living care, there shall be at least 14 hours of scheduled activities available to the residents each week for no less than one hour each day.

F. During an activity, when needed to ensure that each of the following is adequately accomplished, there shall be staff persons or volunteers to:

1. Lead the activity;

2. Assist the residents with the activity;

3. Supervise the general area;

4. Redirect any individuals who require different activities; and

5. Protect the health, safety, and welfare of the residents participating in the activity.

G. The staff person or volunteer leading the activity shall have a general understanding of the following:

1. Attention spans and functional levels of the residents in the group;

2. Methods to adapt the activity to meet the needs and abilities of the residents;

3. Various methods of engaging and motivating individuals to participate; and

4. The importance of providing appropriate instruction, education, and guidance throughout the activity.

H. Adequate supplies and equipment appropriate for the program activities shall be available in the facility.

I. There shall be a written schedule of activities that meets the following criteria:

1. The schedule of activities shall be developed at least monthly.

2. The schedule shall include:

a. Group activities for all residents or small groups of residents; and

b. The name, if any, and the type, date, and hour of the activity.

3. If one activity is substituted for another, the change shall be noted on the schedule.

4. The current month's schedule shall be posted in a conspicuous location in the facility or otherwise be made available to residents and their families.

5. The schedule of activities for the past two years shall be kept at the facility.

6. If a resident requires an individual schedule of activities, that schedule shall be a part of the individualized service plan.

J. The facility shall promote access to the outdoors.

K. In addition to the required scheduled activities, there shall be unscheduled staff and resident interaction throughout the day that fosters an environment that promotes socialization opportunities for residents.

## **22VAC40-73-530. Freedom of movement.**

A. Any resident who does not have a serious cognitive impairment shall be allowed to freely leave the facility. A resident who has a serious cognitive impairment shall be subject to the provisions set forth in 22VAC40-73-1040 A or 22VAC40-73-1150 A.

B. Doors leading to the outside shall not be locked from the inside or secured from the inside in any manner that amounts to a lock, except that doors may be locked or secured in a manner that amounts to a lock in special care units as provided in 22VAC40-73-1150 A. Any devices used to lock or secure doors in any manner must be in accordance with applicable building and fire codes.

C. The facility shall provide freedom of movement for the residents to common areas and to their personal spaces. The facility shall not lock residents out of or inside their rooms.

## **22VAC40-73-540. Visiting in the facility.**

A. Daily visits to residents in the facility shall be permitted.

B. Visiting hours shall not be restricted, except by a resident when it is the resident's choice.

C. The facility may establish a policy or guidelines so that visiting is not disruptive to other residents and facility security is not compromised. However, daily visits and visiting hours shall not be restricted as provided in subsections A and B of this section.

D. The facility shall encourage regular family involvement with the resident and shall provide ample opportunities for family participation in activities at the facility.

## **22VAC40-73-550. Resident rights.**

A. The resident shall be encouraged and informed of appropriate means as necessary to exercise his rights as a resident and a citizen throughout the period of his stay at the facility.

B. The resident has the right to voice or file grievances, or both, with the facility and to make recommendations for changes in the policies and services of the facility. The

residents shall be protected by the licensee or administrator, or both, from any form of coercion, discrimination, threats, or reprisal for having voiced or filed such grievances.

C. Any resident of an assisted living facility has the rights and responsibilities as provided in § 63.2-1808 of the Code of Virginia and this chapter.

D. The operator or administrator of an assisted living facility shall establish written policies and procedures for implementing § 63.2-1808 of the Code of Virginia.

E. The facility shall make its policies and procedures for implementing § 63.2-1808 of the Code of Virginia available and accessible to residents, relatives, agencies, and the general public.

F. The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the appropriate regional licensing supervisor of the department, the Adult Protective Services' toll-free telephone number, the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any substate (i.e., local) ombudsman program serving the area, and the toll-free telephone number of the Virginia Office for Protection and Advocacy.

G. The rights and responsibilities of residents in assisted living facilities shall be reviewed annually with each resident or his legal representative or responsible individual as stipulated in subsection H of this section and each staff person. Evidence of this review shall be the resident's, his legal representative's or responsible individual's, or staff person's written acknowledgment of having been so informed, which shall include the date of the review and shall be filed in the resident's or staff person's record.

H. If a resident is unable to fully understand and exercise the rights and responsibilities contained in § 63.2-1808 of the Code of Virginia, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record annually be made aware of each item in § 63.2-1808 and the decisions that affect the resident or relate to specific items in § 63.2-1808.

1. A resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

2. The facility shall seek a determination and reasons for the determination from a resident's physician regarding the resident's capability to understand and exercise these rights when there is reason to believe that the resident may not be capable of such.

## **22VAC40-73-560. Resident records.**

A. The facility shall establish written policy and procedures for documentation and recordkeeping to ensure that the

information in resident records is accurate and clear and that the records are well-organized.

B. Resident records shall be identified and easily located by resident name, including when a resident's record is kept in more than one place. This shall apply to both electronic and hard copy material.

C. Any physician's notes and progress reports in the possession of the facility shall be retained in the resident's record.

D. Copies of all agreements between the facility and the resident and official acknowledgment of required notifications, signed by all parties involved, shall be retained in the resident's record. Copies shall be provided to the resident and to persons whose signatures appear on the document.

E. All resident records shall be kept current, retained at the facility, and kept in a locked area, except that information shall be made available as noted in subsection F of this section.

F. The licensee shall assure that all records are treated confidentially and that information shall be made available only when needed for care of the resident. All records shall be made available for inspection by the department's representative.

G. Residents shall be allowed access to their own records. A legal representative of a resident shall be provided access to the resident's record or part of the record as allowed by the scope of his legal authority.

H. The complete resident record shall be retained for at least two years after the resident leaves the facility.

1. For at least the first year, the record shall be retained at the facility.

2. After the first year, the record may be retained off site in a safe, secure area. The record must be available at the facility within 48 hours.

I. A current picture of each resident shall be readily available for identification purposes or, if the resident refuses to consent to a picture, there shall be a narrative physical description, which is annually updated, maintained in his file.

## **22VAC40-73-570. Release of information from resident's record.**

A. The resident or the appropriate legal representative has the right to release information from the resident's record to persons or agencies outside the facility.

B. The licensee is responsible for making available to residents and legal representatives a form which they may use to grant their written permission for the facility to release information to persons or agencies outside the facility. The facility shall retain a copy of any signed release of information form in the resident's record.

C. Only under the following circumstances is a facility permitted to release information from the resident's records or

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information regarding the resident's personal affairs without the written permission of the resident or his legal representative, where appropriate:

1. When records have been properly subpoenaed;
2. When the resident is in need of emergency medical care and is unable or unwilling to grant permission to release information or his legal representative is not available to grant permission;
3. When the resident moves to another caregiving facility;
4. To representatives of the department; or
5. As otherwise required by law.

D. When a resident is hospitalized or transported by emergency medical personnel, information necessary to the care of the resident shall be furnished by the facility to the hospital or emergency medical personnel. Examples of such information include medications, a Do Not Resuscitate (DNR) Order, advance directives, and organ donation information. The facility shall also provide the name, address, and telephone number of the resident's designated contact person to the hospital or emergency medical personnel.

## **22VAC40-73-580. Food service and nutrition.**

A. When any portion of an assisted living facility is subject to inspection by the Virginia Department of Health, the facility shall be in compliance with those regulations, as evidenced by an initial and subsequent annual reports from the Virginia Department of Health. The report shall be retained at the facility for a period of at least two years.

B. All meals shall be served in the dining area as designated by the facility, except that:

1. If the facility, through its policies and procedures, offers routine or regular room service, residents shall be given the option of having meals in the dining area or in their rooms, provided that:
  - a. There is a written agreement to this effect, signed and dated by both the resident and the licensee or administrator and filed in the resident's record.
  - b. If a resident's individualized service plan, physical examination report, mental health status report, or any other document indicates that the resident has a psychiatric condition that contributes to self-isolation, a qualified mental health professional shall make a determination in writing whether the person should have the option of having meals in his room. If the determination is made that the resident should not have this option, then the resident shall have his meals in the dining area.
2. Under special circumstances, such as temporary illness, temporary incapacity, temporary agitation of a resident with cognitive impairment, or occasional, infrequent requests due to a resident's personal preference, meals may be served in a resident's room.

3. When meals are served in a resident's room, a sturdy table must be used.

C. Personnel shall be available to help any resident who may need assistance in reaching the dining room or when eating.

D. A minimum of 45 minutes shall be allowed for each resident to complete a meal. If a resident has been assessed on the UAI as dependent in eating or feeding, his individualized service plan shall indicate an approximate amount of time needed for meals to ensure needs are met.

E. Facilities shall develop and implement a policy to monitor each resident for:

1. Warning signs of changes in physical or mental status related to nutrition; and
2. Compliance with any needs determined by the resident's individualized service plan or prescribed by a physician or other prescriber, nutritionist, or health care professional.

F. Facilities shall implement interventions as soon as a nutritional problem is suspected. These interventions shall include, but are not limited to the following:

1. Weighing residents at least monthly to determine whether the resident has significant weight loss (i.e., 5.0% weight loss in one month, 7.5% in three months, or 10% in six months); and
2. Notifying the attending physician if a significant weight loss is identified in any resident who is not on a physician-approved weight reduction program and obtaining, documenting, and following the physician's instructions regarding nutritional care.

G. Residents with independent living status who have kitchens equipped with stove, refrigerator, and sink within their individual apartments may have the option of obtaining meals from the facility or from another source. If meals are obtained from another source, the facility must ensure availability of meals when the resident is sick or temporarily unable to prepare meals for himself.

## **22VAC40-73-590. Number of meals and availability of snacks.**

A. At least three well-balanced meals, served at regular intervals, shall be provided daily to each resident, unless contraindicated as documented by the attending physician in the resident's record or as provided for in 22VAC40-73-580 G.

B. Bedtime and between meal snacks shall be made available for all residents desiring them or in accordance with their physician's or other prescriber's orders.

1. Appropriate adjustments in the provision of snacks to a resident shall be made when orders from the resident's physician or other prescriber in the resident's record limits the receipt or type of snacks.
2. Vending machines shall not be used as the only source for snacks.

## **22VAC40-73-600. Time interval between meals.**

A. Time between the evening meal and breakfast the following morning shall not exceed 15 hours.

B. There shall be at least four hours between breakfast and lunch and at least four hours between lunch and supper.

C. When multiple seatings are required due to limited dining space, scheduling shall ensure that these time intervals are met for all residents. Schedules shall be made available to residents, legal representatives, staff, volunteers, and any other persons responsible for assisting residents in the dining process.

## **22VAC40-73-610. Menus for meals and snacks.**

A. Food preferences of residents shall be considered when menus are planned.

B. Menus for meals and snacks for the current week shall be dated and posted in an area conspicuous to residents.

1. Any menu substitutions or additions shall be recorded on the posted menu.

2. A record shall be kept of the menus served for two years.

C. Minimum daily menu.

1. Unless otherwise ordered in writing by the resident's physician or other prescriber, the daily menu, including snacks, for each resident shall meet the current guidelines of the U.S. Department of Agriculture's food guidance system or the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, taking into consideration the age, sex, and activity of the resident.

2. Other foods may be added.

3. Second servings and snacks shall be available at no additional charge.

4. At least one meal each day shall include a hot main dish.

D. When a diet is prescribed for a resident by his physician or other prescriber, it shall be prepared and served according to the physician's or other prescriber's orders.

E. A copy of a diet manual containing acceptable practices and standards for nutrition shall be kept current and on file in the dietary department.

F. The facility shall make drinking water readily available to all residents. Direct care staff shall know which residents need help getting water or other fluids and drinking from a cup or glass. Direct care staff shall encourage and assist residents who do not have medical conditions with physician or other prescriber ordered fluid restrictions to drink water or other beverages frequently.

## **22VAC40-73-620. Oversight of special diets.**

A. There shall be oversight at least every six months of special diets by a dietitian or nutritionist for each resident who has such a diet. Special diets may also be referred to using terms such as medical nutrition therapy or diet therapy.

The dietitian or nutritionist must meet the requirements of § 54.1-2731 of the Code of Virginia and 18VAC75-30, Regulations Governing Standards for Dietitians and Nutritionists.

B. The oversight specified in subsection A of this section shall be on site and include the following:

1. A review of the physician's or other prescriber's order and the preparation and delivery of the special diet.

2. An evaluation of the adequacy of the resident's special diet and the resident's acceptance of the diet.

3. Certification that the requirements of this subsection were met, including the date of the oversight and identification of the residents for whom the oversight was provided. The administrator shall be advised of the findings of the oversight and any recommendations. All of the requirements of this subdivision shall be (i) in writing, (ii) signed and dated by the dietitian or nutritionist, (iii) provided to the administrator within 10 days of the completion of the oversight, and (iv) maintained in the files at the facility for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

4. Upon receipt of recommendations noted in subdivision 3 of this subsection, the administrator or the dietitian or nutritionist shall report them to the resident's physician. Documentation of the report shall be maintained in the resident's record.

5. Action taken in response to the recommendations noted in subdivision 3 of this subsection shall be documented in the resident's record.

## **22VAC40-73-630. Observance of religious dietary practices.**

A. The resident's religious dietary practices shall be respected.

B. Religious dietary practices of the administrator or licensee shall not be imposed upon residents unless mutually agreed upon in the admission agreement between administrator or licensee and resident.

## **22VAC40-73-640. Medication management plan and reference materials.**

A. The facility shall have, keep current, and implement a written plan for medication management. The facility's medication plan shall address procedures for administering medication and shall include:

1. Methods to ensure an understanding of the responsibilities associated with medication management;

2. Standard operating procedures, including but not limited to the facility's standard dosing schedule and any general restrictions specific to the facility;

3. Methods to prevent the use of outdated, damaged, or contaminated medications;

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4. Methods to ensure that each resident's prescription medications and any over-the-counter drugs and supplements ordered for the resident are filled and refilled in a timely manner to avoid missed dosages;

5. Methods for verifying that medication orders have been accurately transcribed to medication administration records (MARs), including within 24 hours of receipt of a new order or change in an order;

6. Methods for monitoring medication administration and the effective use of the MARs for documentation;

7. Methods to ensure accurate counts of all controlled substances whenever assigned medication administration staff changes;

8. Methods to ensure that staff who are responsible for administering medications meet the qualification requirements of 22VAC40-73-670;

9. Methods to ensure that staff who are responsible for administering medications are adequately supervised, including periodic direct observation of medication administration;

10. A plan for proper disposal of medication;

11. Methods to ensure that residents do not receive medications or dietary supplements to which they have known allergies;

12. Identification of the medication aide or the person licensed to administer drugs responsible for routinely communicating issues or observations related to medication administration to the prescribing physician or other prescriber;

13. Methods to ensure that staff who are responsible for administering medications are trained on the facility's medication management plan; and

14. Procedures for internal monitoring of the facility's conformance to the medication management plan.

B. The facility's written medication management plan requires approval by the department.

C. Subsequent changes shall be reviewed as part of the department's regular inspection process.

D. In addition to the facility's written medication management plan, the facility shall maintain, as reference materials for medication aides, at least one pharmacy reference book, drug guide, or medication handbook for nurses that is no more than two years old.

## **22VAC40-73-650. Physician's or other prescriber's order.**

A. No medication, dietary supplement, diet, medical procedure, or treatment shall be started, changed, or discontinued by the facility without a valid order from a physician or other prescriber. Medications include prescription, over-the-counter, and sample medications.

B. Physician or other prescriber orders, both written and oral, for administration of all prescription and over-the-

counter medications and dietary supplements shall include the name of the resident, the date of the order, the name of the drug, route, dosage, strength, how often medication is to be given, and identify the diagnosis, condition, or specific indications for administering each drug.

C. Physician's or other prescriber's oral orders shall:

1. Be charted by the individual who takes the order. That individual must be one of the following:

a. A licensed health care professional practicing within the scope of his profession; or

b. A medication aide.

2. Be reviewed and signed by a physician or other prescriber within 14 days.

D. Medication aides may not transmit an oral order to a pharmacy.

E. The resident's record shall contain the physician's or other prescriber's signed written order or a dated notation of the physician's or other prescriber's oral order. Orders shall be organized chronologically in the resident's record.

F. Whenever a resident is admitted to a hospital for treatment of any condition, the facility shall obtain new orders for all medications and treatments prior to or at the time of the resident's return to the facility. The facility shall ensure that the primary physician is aware of all medication orders and has documented any contact with the physician regarding the new orders.

## **22VAC40-73-660. Storage of medications.**

A. A medicine cabinet, container, or compartment shall be used for storage of medications and dietary supplements prescribed for residents when such medications and dietary supplements are administered by the facility. Medications shall be stored in a manner consistent with current standards of practice.

1. The storage area shall be locked.

2. Schedule II drugs and any other drugs subject to abuse must be kept in a separate locked storage compartment (e.g., a locked cabinet within a locked storage area or a locked container within a locked cabinet or cart).

3. The individual responsible for medication administration shall keep the keys to the storage area on his person.

4. When in use, the storage area shall have adequate illumination in order to read container labels.

5. The storage area shall not be located in the kitchen or bathroom, but in an area free of dampness or abnormal temperatures unless the medication requires refrigeration.

6. When required, medications shall be refrigerated.

a. It is permissible to store dietary supplements and foods and liquids used for medication administration in a refrigerator that is dedicated to medication storage if the refrigerator is in a locked storage area.

b. When it is necessary to store medications in a refrigerator that is routinely used for food storage, the medications shall be stored together in a locked container in a clearly defined area.

7. Single-use and dedicated medical supplies and equipment shall be appropriately labeled and stored. Medical equipment suitable for multi-use shall be stored to prevent cross-contamination.

B. A resident may be permitted to keep his own medication in an out-of-sight place in his room if the UAI has indicated that the resident is capable of self-administering medication. The medication and any dietary supplements shall be stored so that they are not accessible to other residents. This does not prohibit the facility from storing or administering all medication and dietary supplements.

Exception: If the facility has no residents with serious cognitive impairments, the facility may determine that the out-of-sight and inaccessibility safeguards specified in this subsection do not apply.

### **22VAC40-73-670. Qualifications and supervision of staff administering medications.**

When staff administers medications to residents, the following standards shall apply:

1. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Virginia Drug Control Act. All staff responsible for medication administration shall:

a. Be licensed by the Commonwealth of Virginia to administer medications; or

b. Be registered with the Virginia Board of Nursing as a medication aide, except as specified in subdivision 2 of this section.

2. Any applicant for registration as a medication aide who has provided to the Virginia Board of Nursing evidence of successful completion of the education or training course required for registration may act as a medication aide on a provisional basis for no more than 120 days before successfully completing any required competency evaluation. However, upon notification of failure to successfully complete the written examination after three attempts, an applicant shall immediately cease acting as a medication aide.

3. Medication aides shall be supervised by one of the following:

a. An individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications;

b. The administrator who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for

administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training but need not include the prerequisite for the program or the written examination for registration. The administrator must also meet the requirements of 22VAC40-73-160 E; or

c. For a facility licensed for residential living care only, the designated assistant administrator, as specified in 22VAC40-73-150 E, who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for designated assistant administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training but need not include the prerequisite for the program or the written examination for registration. The designated assistant administrator must also meet the requirements of 22VAC40-73-160 E.

### **22VAC40-73-680. Administration of medications and related provisions.**

A. Staff who are licensed, registered, or acting as medication aides on a provisional basis as specified in 22VAC40-73-670 shall administer drugs to those residents who are dependent on medication administration as documented on the UAI.

B. Medications shall be removed from the pharmacy container, or the container shall be opened, by a staff person licensed, registered, or acting as a medication aide on a provisional basis as specified in 22VAC40-73-670 and administered to the resident by the same staff person. Medications shall remain in the pharmacy issued container, with the prescription label or direction label attached, until administered to the resident.

C. Medications shall be administered not earlier than one hour before and not later than one hour after the facility's standard dosing schedule, except those drugs that are ordered for specific times, such as before, after, or with meals.

D. Medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the standards of practice outlined in the current registered medication aide curriculum approved by the Virginia Board of Nursing.

E. Medical procedures or treatments ordered by a physician or other prescriber shall be provided according to his instructions.

F. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the resident's name, the name of the medication, the strength, dosage, and route and frequency of administration, until administered.

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G. Over-the-counter medication shall remain in the original container, labeled with the resident's name, or in a pharmacy-issued container, until administered.

H. At the time the medication is administered, the facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the-counter medications and dietary supplements.

I. The MAR shall include:

1. Name of the resident;
2. Date prescribed;
3. Drug product name;
4. Strength of the drug;
5. Dosage;
6. Diagnosis, condition, or specific indications for administering the drug or supplement;
7. Route (e.g., by mouth);
8. How often medication is to be taken;
9. Date and time given and initials of direct care staff administering the medication;
10. Dates the medication is discontinued or changed;
11. Any medication errors or omissions;
12. Description of significant adverse effects suffered by the resident;
13. For "as needed" (PRN) medications:
  - a. Symptoms for which medication was given;
  - b. Exact dosage given; and
  - c. Effectiveness; and
14. The name, signature, and initials of all staff administering medications.

J. In the event of an adverse drug reaction or a medication error, the following applies:

1. Action shall be taken as directed by a physician, pharmacist, or a poison control center;
2. The resident's physician of record and family member or other responsible person shall be notified as soon as possible; and
3. Medication administration staff shall document actions taken in the resident's record.

K. The performance of all medical procedures and treatments ordered by a physician or other prescriber shall be documented, and the documentation shall be retained in the resident's record.

L. The use of PRN medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;
2. Licensed health care professionals administer the PRN medication; or

3. Medication aides administer the PRN medication when the facility has obtained from the resident's physician or other prescriber a detailed medication order. The order shall include symptoms that indicate the use of the medication, exact dosage, the exact time frames the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

M. In order for drugs in a hospice comfort kit to be administered, the requirements specified in subsection L of this section must be met, and each medication in the kit must have a prescription label attached by the pharmacy.

N. Medications ordered for PRN administration shall be available, properly labeled for the specific resident, and properly stored at the facility.

O. Stat-drug boxes may only be used when the following conditions are met:

1. There is an order from the prescriber for any drug removed from the stat-drug box; and
2. The drug is removed from the stat-drug box and administered by a nurse, pharmacist or prescriber licensed to administer medications.
3. Registered medication aides are not permitted to either remove or administer medications from the stat-drug box.

## **22VAC40-73-690. Medication review.**

A. For each resident assessed for residential living care, except for those who self-administer all of their medications, a licensed health care professional, practicing within the scope of his profession, shall perform an annual review of all the medications of the resident.

B. For each resident assessed for assisted living care, except for those who self-administer all of their medications, a licensed health care professional, practicing within the scope of his profession, shall perform a review every six months of all the medications of the resident.

C. The medication review shall include prescription drugs, over-the-counter medications, and dietary supplements ordered for the resident.

D. If deemed appropriate by the licensed health care professional, the review shall include observation of the resident or interview with the resident or staff.

E. The review shall include, but not be limited to, the following:

1. All medications that the resident is taking and medications that he could be taking if needed (PRNs).
2. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.
3. Documentation of actual and consideration of potential interactions of drugs with one another.
4. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.

5. Documentation of actual and consideration of potential negative effects of drugs resulting from a resident's medical condition other than the one the drug is treating.

6. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

7. Consideration of whether the resident needs additional monitoring or testing.

8. Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.

9. Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.

10. The health care professional shall notify the resident's attending physician of any concerns or problems and document the notification.

F. The licensed health care professional shall certify that the requirements of subdivisions E 1 through E 10 of this section were met, including the dates of the medication review. The administrator shall be advised of the findings of the medication review and any recommendations. All of the requirements of this subdivision shall be (i) in writing, (ii) signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the review, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

G. Action taken in response to the recommendations noted in subsection F of this section shall be documented in the resident's record.

### **22VAC40-73-700. Oxygen therapy.**

When oxygen therapy is provided, the following safety precautions shall be met and maintained:

1. The facility shall have a valid physician's or other prescriber's order that includes the following:

a. The oxygen source, such as compressed gas or concentrators;

b. The delivery device, such as nasal cannula, reservoir nasal cannulas, or masks; and

c. The flow rate deemed therapeutic for the resident.

2. The facility shall post "No Smoking-Oxygen in Use" signs and enforce the smoking prohibition in any room of a building where oxygen is in use.

3. The facility shall ensure that only oxygen from a portable source shall be used by residents when they are outside their rooms. The use of long plastic tether lines to the source of oxygen outside their rooms is not permitted.

4. The facility shall make available to staff the emergency numbers to contact the resident's physician or other prescriber and the oxygen vendor for emergency service or replacement.

5. The facility shall demonstrate that all direct care staff responsible for assisting residents who use oxygen supplies have had training or instruction in the use and maintenance of resident-specific equipment.

6. The facility shall include in its disaster preparedness plan a checklist of information required to meet the identified needs of those individuals who require oxygen therapy including, but not limited to, the following:

a. Whether the facility has on-site, emergency generator capacity sufficient to safely operate oxygen concentrators efficiently.

b. Whether in the absence of on-site generators the facility has agreements with vendors to provide emergency generators, including whether those generators will support oxygen concentrators.

c. Where the facility maintains chart copies of each resident's agreement, including emergency preparedness and back-up plans, with his oxygen equipment and supply vendor for ready access in any emergency situation.

d. How equipment and supplies will be transported in the event that residents must be evacuated to another location.

### **22VAC40-73-710. Restraints.**

A. The use of chemical restraints is prohibited.

B. Physical restraints shall not be used for purposes of discipline or convenience. Restraints may only be used to treat a resident's medical symptoms or symptoms from mental illness or intellectual disability.

C. The facility may only impose physical restraints when the resident's medical symptoms or symptoms from mental illness or intellectual disability warrant the use of restraints. The restraint must:

1. Be necessary to ensure the physical safety of the resident or others;

2. Be imposed in accordance with a physician's written order, which must be no older than three months, that specifies the condition, circumstances, and duration under which the restraint is to be used, except in emergency circumstances until such an order can reasonably be obtained; and

3. Not be ordered on a standing, blanket, or "as needed" (PRN) basis.

D. Whenever physical restraints are used, the following conditions shall be met:

1. A restraint shall be used only to the minimum extent necessary to protect the resident or others;

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2. Restraints shall only be applied by direct care staff who have received training in their use as specified by subdivision 2 of 22VAC40-73-270;

3. The facility shall closely monitor the resident's condition, which includes checking on the resident at least every 30 minutes;

4. The facility shall assist the resident as often as necessary, but no less than 10 minutes every hour, for his hydration, safety, comfort, range of motion, exercise, elimination, and other needs;

5. The facility shall release the resident from the restraint as quickly as possible;

6. Direct care staff shall keep a record of restraint usage, outcomes, checks, and any assistance required in subdivision 4 of this subsection and shall note any unusual occurrences or problems;

7. In nonemergencies, as defined in 22VAC40-73-10:

a. Restraints shall be used as a last resort and only if the facility, after completing, implementing, and evaluating the resident's comprehensive assessment and service plan, determines and documents that less restrictive means have failed;

b. Restraints shall be used in accordance with the resident's service plan, which documents the need for the restraint and includes a schedule or plan of rehabilitation training enabling the progressive removal or the progressive use of less restrictive restraints when appropriate;

c. The facility shall explain the use of the restraint and potential negative outcomes to the resident or his legal representative and the resident's right to refuse the restraint and shall obtain the written consent of the resident or his legal representative;

d. Restraints shall be applied so as to cause no physical injury and the least possible discomfort; and

e. The facility shall notify the resident's legal representative or designated contact person as soon as practicable, but no later than 24 hours after the initial administration of a nonemergency restraint. The facility shall keep the legal representative or designated contact person informed about any changes in restraint usage. A notation shall be made in the resident's record of such notice, including the date, time, caller, and person notified.

8. In emergencies, as defined in 22VAC40-73-10:

a. Restraints shall not be used unless they are necessary to alleviate an unanticipated immediate and serious danger to the resident or other individuals in the facility;

b. An oral or written order shall be obtained from a physician within one hour of administration of the emergency restraint and the order shall be documented;

c. In the case of an oral order, a written order shall be obtained from the physician as soon as possible;

d. The resident shall be within sight and sound of direct care staff at all times;

e. If the emergency restraint is necessary for longer than two hours, the resident shall be transferred to a medical or psychiatric inpatient facility or monitored in the facility by a mental health crisis team until his condition has stabilized to the point that the attending physician documents that restraints are not necessary; and

f. The facility shall notify the resident's legal representative or designated contact person as soon as practicable, but no later than 12 hours after administration of an emergency restraint. A notation shall be made in the resident's record of such notice, including the date, time, caller and person notified.

## **22VAC40-73-720. Do Not Resuscitate Orders.**

A. Do Not Resuscitate (DNR) Orders for withholding cardiopulmonary resuscitation from an individual in the event of cardiac or respiratory arrest may only be carried out in a licensed assisted living facility when:

1. A valid written order has been issued by the resident's attending physician; and

2. The written order is included in the individualized service plan;

B. The facility shall have a system to ensure that all staff are aware of residents who have a valid DNR Order.

C. The DNR Order shall be readily available to other authorized persons, such as emergency medical technicians (EMTs), when necessary.

D. Durable DNR Orders shall not authorize the assisted living facility or its staff to withhold other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

E. Section 63.2-1807 of the Code of Virginia states that the owners or operators of any assisted living facility may provide that their staff who are certified in CPR shall not be required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the resident's attending physician and has been included in the resident's individualized service plan.

F. If the owner or operator of a facility has determined that DNR Orders will not be honored, the facility shall have a policy specifying this and, prior to admission, the resident or his legal guardian shall be notified of the policy and sign an acknowledgment of the notification.

## **22VAC40-73-730. Advance directives.**

A. Upon admission or while residing in the facility, whenever the resident has established advance directives, such as a living will or a durable power of attorney for health

care, to the extent available, the facility shall obtain the following:

1. The name of and contact information for the individual or individuals who has the document or documents;
2. The location of the documents;
3. Either the advance directives or the content of the advance directives; and
4. The name of and contact information for any designated agent, as related to the development and modification of the individualized service plan.

B. If the facility is unable to obtain any of the information or documents as noted in subdivisions 1 through 4 of subsection A of this section, the efforts made to do so shall be documented in the resident's record.

C. The information regarding advance directives shall be readily available to other authorized persons, such as emergency medical technicians (EMTs), when necessary.

D. A resident requesting assistance with establishing advance directives shall be referred to his primary health care provider or attorney.

## Part VII

### Resident Accommodations and Related Provisions

#### **22VAC40-73-740. Personal possessions.**

A. Each resident shall be permitted to keep reasonable personal property in his possession at a facility in order to maintain individuality and personal dignity.

B. A facility shall ensure that each resident has his own clothing.

1. The use of a common clothing pool is prohibited.
2. If necessary, resident's clothing shall be inconspicuously marked with his name to avoid getting mixed with others.
3. Residents shall be allowed and encouraged to select their daily clothing and wear clothing to suit their activities and appropriate to weather conditions.

C. Each resident shall have his own personal care items.

D. Each facility shall develop and implement a written policy regarding procedures to be followed when a resident's clothing or other personal possessions, such as jewelry, television, radio, or other durable property, are reported missing. Attempts shall be made to determine the reason for the loss and any reasonable actions shall be taken to recover the item and to prevent or discourage future losses. The results of the investigation shall be reported in writing to the resident. Documentation shall be maintained for at least two years regarding items that were reported missing and resulting actions that were taken.

#### **22VAC40-73-750. Resident rooms.**

A. The resident shall be encouraged to furnish or decorate his room as space and safety considerations permit and in accordance with this chapter.

B. Bedrooms shall contain the following items, except as provided for in subsection C of this section:

1. A separate bed with comfortable mattress, springs, and pillow for each resident. Provisions for a double bed for a married couple shall be optional;
2. A table or its equivalent accessible to each bed;
3. An operable bed lamp or bedside light accessible to each resident;
4. A sturdy chair for each resident;
5. Drawer space for clothing and other personal items. If more than one resident occupies a room, ample drawer space shall be assigned to each individual;
6. At least one mirror - if the resident has an individual adjoining bathroom, the mirror may be in the bathroom; and
7. Window coverings for privacy.

C. If a resident specifies in writing that he does not wish to have an item or items listed in subsection B of this section and understands that he may decide otherwise at any time, the resident's bedroom is not required to contain those specified items. The written specification shall be maintained in the resident's record.

D. Adequate and accessible closet or wardrobe space shall be provided for each resident. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, the closet or wardrobe space shall be in the resident's bedroom.

E. The facility shall have sufficient bed and bath linens in good repair so that residents always have clean:

1. Sheets;
2. Pillowcases;
3. Blankets;
4. Bedspreads;
5. Towels;
6. Washcloths; and
7. Waterproof mattress covers when needed.

#### **22VAC40-73-760. Living room or multipurpose room.**

A. Sitting rooms or recreation areas or both shall be equipped with:

1. Comfortable chairs (e.g., overstuffed, straight-backed, and rockers);
2. Tables;
3. Lamps;
4. Television, if not available in other areas of the facility;
5. Radio, if not available in other areas of the facility; and
6. Current newspaper.

B. Space other than sleeping areas shall be provided for residents for sitting, for visiting with one another or with

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guests, for social and recreational activities, and for dining. These areas may be used interchangeably.

## **22VAC40-73-770. Dining areas.**

Dining areas shall have a sufficient number of sturdy dining tables and chairs to serve all residents, either all at one time or in reasonable shifts.

## **22VAC40-73-780. Laundry and linens.**

A. Residents' clothing shall be kept clean and in good repair.

B. Bed and bath linens shall be changed at least every seven days and more often if needed. In facilities with common bathing areas, bath linens shall be changed after each use.

C. When the facility provides laundry service for residents' clothing or personal linens, the clean items shall be sorted by individual resident.

D. Table coverings and napkins shall be clean at all times.

E. Table and kitchen linens shall be laundered separately from other washable goods.

F. When bed, bath, table, and kitchen linens are washed, the water shall be above 140°F or the dryer shall heat the linens above 140°F as verified by the manufacturer or a sanitizing agent shall be used according to the manufacturer's instructions.

## **22VAC40-73-790. Transportation.**

The resident shall be assisted in making arrangements for transportation as necessary.

## **22VAC40-73-800. Incoming and outgoing mail.**

A. Incoming and outgoing mail shall not be censored.

B. Incoming mail shall be delivered promptly.

C. Mail shall not be opened by staff or volunteers except upon request of the resident and in his presence or written request of the legal representative.

## **22VAC40-73-810. Telephones.**

A. Each building shall have at least one operable, nonpay telephone easily accessible to staff. There shall be additional telephones or extensions as may be needed to summon help in an emergency.

B. The resident shall have reasonable access to a nonpay telephone on the premises.

C. Privacy shall be provided for residents to use a telephone.

## **22VAC40-73-820. Smoking.**

A. Smoking by residents, staff, volunteers, and visitors shall be done only in areas designated by the facility and approved by the State Fire Marshal or local fire official. Smoking shall not be allowed in a kitchen or food preparation areas. A facility may prohibit smoking on its premises.

B. All designated smoking areas shall be provided with suitable ashtrays.

C. Residents shall not be permitted to smoke in or on their beds.

D. All common areas shall have smoke-free areas designated for nonsmokers.

## **22VAC40-73-830. Resident councils.**

A. The facility shall permit and encourage the formation of a resident council by residents and shall assist the residents in its establishment.

B. The purposes of the resident council shall be to:

1. Work with the administration in improving the quality of life for all residents;

2. Discuss the services offered by the facility and make recommendations for resolution of identified problems or concerns; and

3. Perform other functions as determined by the council.

C. The resident council shall be composed of residents of the facility and the council may extend membership to family members, advocates, friends, and others. Residents shall be encouraged but shall not be compelled to attend meetings.

D. The facility shall assist residents in maintaining the resident council, including, but not limited to:

1. Scheduling regular meetings;

2. Providing space for meetings;

3. Posting notice for meetings;

4. Providing assistance in attending meetings for those residents who request it; and

5. Preparing written reports of meetings as requested by the council for dissemination to all residents.

E. The facility shall provide a written response to the council prior to the next meeting regarding any recommendations made by the council for resolution of problems or concerns.

F. In order to promote a free exchange of ideas, the presence of any facility personnel shall be only at the request of the council.

G. If there is no council, the facility shall annually remind residents that they may establish a resident council and that the facility would assist in its formation and maintenance. The general purpose of the council shall also be explained at this time.

## **22VAC40-73-840. Pets living in the assisted living facility.**

A. Each assisted living facility shall develop and implement a written policy regarding pets living on the premises that will ensure the safety and well-being of all residents and staff.

B. If a facility allows pets to live on the premises, the following applies:

1. The policy specified in subsection A of this section shall include:

a. The types of pets that are permitted in the assisted living facility; and

b. The conditions under which pets may be in the assisted living facility.

2. Before being allowed to live on the premises, pets shall have had all recommended or required immunizations and shall be certified by a licensed veterinarian to be free of diseases transmittable to humans.

3. Pets living on the assisted living facility premises:

a. Shall have regular examinations and immunizations, appropriate for the species, by a licensed veterinarian; and

b. Shall be restricted from central food preparation areas.

4. Documentation of examinations and immunizations shall be maintained at the facility.

5. Pets shall be well-treated and cared for in compliance with state regulations and local ordinances.

6. Any resident's rights, preferences, and medical needs shall not be compromised by the presence of a pet.

7. Any pet living on the premises shall have a suitable temperament, be healthy, and otherwise pose no significant health or safety risks to residents, staff, volunteers, or visitors.

**22VAC40-73-850. Pets visiting the assisted living facility.**

If an assisted living facility allows pets to visit the premises, the following shall apply:

1. Any pet present at the facility shall be in good health and show no evidence of carrying any disease;

2. Any resident's rights, preferences, and medical needs shall not be compromised by the presence of a pet; and

3. Any pet shall be well-treated while visiting on the premises, have a suitable temperament, and otherwise pose no significant health or safety risks to residents, staff, volunteers, or visitors.

**Part VIII**  
**Buildings and Grounds**

**22VAC40-73-860. General requirements.**

A. Buildings licensed for ambulatory residents or nonambulatory residents shall be classified by and meet the specifications for the proper use and occupancy classification as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Documentation completed and signed by the building official shall be obtained as evidence of compliance with the applicable edition of the Virginia Uniform Statewide Building Code.

C. Before construction begins or contracts are awarded for any new construction, remodeling, or alterations, plans shall be submitted to the department for review.

D. Doors and windows.

1. All doors shall open and close readily and effectively.

2. Any doorway that is used for ventilation shall be effectively screened.

3. Any operable window (i.e., a window that may be opened) shall be effectively screened.

E. There shall be enclosed walkways between residents' rooms and dining and sitting areas that are adequately lighted, heated, and ventilated.

F. There shall be an ample supply of hot and cold water from an approved source available to the residents at all times.

G. Hot water at taps available to residents shall be maintained within a range of 105°F to 120°F.

H. Where there is an outdoor area accessible to residents, such as a porch or lawn, it shall be equipped with furniture in season.

I. Each facility shall store cleaning supplies and other hazardous materials in a locked area, except as noted in subsection J of this section.

J. A resident may be permitted to keep his own cleaning supplies or other hazardous materials in an out-of-sight place in his room if the resident does not have a serious cognitive impairment. The cleaning supplies or other hazardous materials shall be stored so that they are not accessible to other residents.

Exception: When a resident keeps his own cleaning supplies or other hazardous materials in his room, if the facility has no residents with serious cognitive impairments, the facility may determine that the out-of-sight and inaccessibility safeguards specified in this subsection do not apply, unless mandated by the Virginia Uniform Statewide Building Code or Virginia Statewide Fire Prevention Code (13VAC5-51).

K. Each facility shall develop and implement a written policy regarding weapons on the premises of the facility that will ensure the safety and well-being of all residents and staff.

**22VAC40-73-870. Maintenance of buildings and grounds.**

A. The interior and exterior of all buildings shall be maintained in good repair and kept clean and free of rubbish.

B. All buildings shall be well-ventilated and free from foul, stale, and musty odors.

C. Adequate provisions for the collection and legal disposal of garbage, ashes, and waste material shall be made.

D. Buildings shall be kept free of infestations of insects and vermin. The grounds shall be kept free of their breeding places.

E. All furnishings, fixtures, and equipment, including, but not limited to, furniture, window coverings, sinks, toilets, bathtubs, and showers, shall be kept clean and in good repair and condition, except that furnishings and equipment owned by a resident shall be, at a minimum, in safe condition and not soiled in a manner that presents a health hazard.

F. All inside and outside steps, stairways, and ramps shall have nonslip surfaces.

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G. Grounds shall be properly maintained to include mowing of grass and removal of snow and ice.

H. Handrails shall be provided on all stairways, ramps, elevators, and at changes of floor level.

I. Elevators, where used, shall be kept in good running condition and shall be inspected at least annually. Elevators shall be inspected in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The signed and dated certificate of inspection issued by the local authority shall be evidence of such inspection.

## **22VAC40-73-880. Heating, ventilation, and cooling.**

A. At least one movable thermometer shall be available in each building for measuring temperatures in individual rooms that do not have a fixed thermostat that shows the temperature in the room.

### **B. Heating.**

1. Heat shall be supplied from a central heating plant or an electrical heating system in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63).

2. Provided their installation or operation has been approved by the state or local building or fire authorities, space heaters, such as but not limited to, wood burning stoves, coal burning stoves, and oil heaters, or portable heating units either vented or unvented, may be used only to provide or supplement heat in the event of a power failure or similar emergency. These appliances shall be used in accordance with the manufacturer's instructions.

3. A temperature of at least 72°F shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours, when residents are asleep, a temperature of at least 68°F shall be maintained. This standard applies unless otherwise mandated by federal or state authorities.

Exception: The facility may allow the temperature in a bedroom in which only one resident resides, which has a thermostat in the room, to be controlled by the resident as long as the temperature does not endanger the health, safety, or welfare of the resident.

### **C. Cooling.**

1. The facility shall provide in all buildings an air conditioning system for all areas used by residents, including residents' bedrooms and common areas. Temperatures in all areas used by residents shall not exceed 80°F.

Exception: The facility may allow the temperature in a bedroom in which only one resident resides, which has a thermostat in the room, to be controlled by the resident as long as the temperature does not endanger the health, safety, or welfare of the resident.

2. Any electric fans shall be screened and placed for the protection of the residents.

D. The facility shall develop and implement a plan to protect residents from heat-related and cold-related illnesses in the event of loss of air-conditioning or heat due to emergency situations or malfunctioning or broken equipment.

## **22VAC40-73-890. Lighting and lighting fixtures.**

A. Artificial lighting shall be by electricity.

B. All interior and exterior areas shall be adequately lighted for the safety and comfort of residents and staff.

C. Glare shall be kept at a minimum in rooms used by residents. When necessary to reduce glare, coverings shall be used for windows and lights.

D. If used, fluorescent lights shall be replaced if they flicker or make noise.

## **22VAC40-73-900. Sleeping areas.**

Resident sleeping quarters shall provide:

1. For not less than 450 cubic feet of air space per resident;

2. For square footage as provided in this subdivision:

a. As of February 1, 1996, all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), shall have not less than 100 square feet of floor area in bedrooms accommodating one resident; otherwise not less than 80 square feet of floor area in bedrooms accommodating one resident shall be required.

b. As of February 1, 1996, all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code, shall have not less than 80 square feet of floor area per person in bedrooms accommodating two or more residents; otherwise not less than 60 square feet of floor area per person in bedrooms accommodating two or more persons shall be required;

3. For ceilings at least 7-1/2 feet in height;

4. For window areas as provided in this subdivision:

a. There shall be at least eight square feet of glazed window area in a room housing one person; and

b. There shall be at least six square feet of glazed window area per person in rooms occupied by two or more persons;

5. For occupancy as provided in this subdivision:

a. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), there shall be no more than two residents residing in a bedroom.

b. Unless the provisions of subdivision 5 a of this subsection apply, there shall be no more than four residents residing in a bedroom;

6. For at least three feet of space between sides and ends of beds that are placed in the same room;

7. That no bedroom shall be used as a corridor to any other room;

8. That all beds shall be placed only in bedrooms; and

9. That household members and staff shall not share bedrooms with residents.

**22VAC40-73-910. Common rooms.**

As of October 9, 2001, buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), shall have a glazed window area above ground level in at least one of the common rooms (e.g., living room, multipurpose room, or dining room). The square footage of the glazed window area shall be at least 8.0% of the square footage of the floor area of the common room.

**22VAC40-73-920. Toilet, face/hand washing, and bathing facilities.**

A. In determining the number of toilets, face/hand washing sinks, bathtubs, or showers required, the total number of persons residing on the premises shall be considered. Unless there are separate facilities for household members or staff, they shall be counted in determining the required number of fixtures, except that for bathtubs or showers, the staff count shall include only live-in staff.

1. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), on each floor where there are residents' bedrooms, there shall be:

a. At least one toilet for each four persons, or portion thereof;

b. At least one face/hand washing sink for each four persons, or portion thereof;

c. At least one bathtub or shower for each seven persons, or portion thereof;

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than four persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

2. Unless the provisions of subdivision 1 of this subsection apply, on each floor where there are residents' bedrooms, there shall be:

a. At least one toilet for each seven persons, or portion thereof;

b. At least one face/hand washing sink for each seven persons, or portion thereof;

c. At least one bathtub or shower for each 10 persons, or portion thereof;

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than seven persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

3. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code, when residents' rooms are located on the same floor as the main living or dining area, in addition to the requirements of subdivision 1 of this subsection, there shall be at least one more toilet and face/hand washing sink, which is available for common use. The provisions of subdivision 4 c of this subsection shall also apply.

4. On floors used by residents where there are no residents' bedrooms, there shall be:

a. At least one toilet;

b. At least one face/hand washing sink;

c. Toilets and face/hand washing sinks in separate rooms for men and women in facilities where there are 10 or more residents. Bathrooms equipped to accommodate more than one person at a time shall be designated by gender. Gender designation of bathrooms must remain constant during the course of a day.

B. Bathrooms shall provide for privacy for such activities as bathing, toileting, and dressing.

C. There shall be ventilation to the outside in order to eliminate foul odors.

D. The following sturdy safeguards shall be provided, with installation in compliance with the Virginia Uniform Statewide Building Code:

1. Handrails by bathtubs;

2. Grab bars by toilets; and

3. Handrails inside and stools available to stall showers.

Exception: These safeguards shall be optional for individuals with independent living status.

E. Bathtubs and showers shall have nonskid surfacing or strips.

F. The face/hand washing sink shall be in the same room as the toilet or in an adjacent private area that is not part of a common use area of the assisted living facility.

G. The assisted living facility shall provide private or common use toilet, face/hand washing, and bathing facilities to meet the needs of each resident.

**22VAC40-73-925. Toilet, face/hand washing, and bathing supplies.**

A. The facility shall have an adequate supply of toilet tissue and soap. Toilet tissue shall be accessible to each commode

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and soap shall be accessible to each face/hand washing sink and each bathtub or shower.

B. Common face/hand washing sinks shall have paper towels or an air dryer and liquid soap for hand washing.

C. Residents may not share bar soap.

D. The facility may not charge an additional amount for toilet paper, soap, paper towels, or use of an air dryer at common sinks and commodes.

## **22VAC40-73-930. Provisions for signaling and call systems.**

A. All assisted living facilities shall have a signaling device that is easily accessible to the resident in his bedroom or in a connecting bathroom that alerts the direct care staff that the resident needs assistance.

B. In buildings licensed to care for 20 or more residents under one roof, there shall be a signaling device that terminates at a central location that is continuously staffed and permits staff to determine the origin of the signal or is audible and visible in a manner that permits staff to determine the origin of the signal.

C. In buildings licensed to care for 19 or fewer residents under one roof, if the signaling device does not permit staff to determine the origin of the signal as specified in subsection B of this section, direct care staff shall make rounds at least once each hour to monitor for emergencies or other unanticipated resident needs. These rounds shall begin when the majority of the residents have gone to bed each evening and shall terminate when the majority of the residents have arisen each morning, and shall be documented as follows:

1. A written log shall be maintained showing the date and time rounds were made and the signature of the direct care staff member who made rounds.

2. Logs for the past two years shall be retained.

D. For each resident with an inability to use the signaling device, this inability shall be included in the resident's individualized service plan, indicating the need for monitoring for emergencies and other unanticipated needs. In addition to any other services, the plan shall specify a minimal frequency of rounds to be made by direct care staff and the method used to document that such rounds were made. Documentation of rounds shall be retained for two years.

## **22VAC40-73-940. Fire safety: compliance with state regulations and local fire ordinances.**

A. An assisted living facility shall comply with the Virginia Statewide Fire Prevention Code (13VAC5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the inspections shall be retained at the facility for at least two years.

B. An assisted living facility shall comply with any local fire ordinance.

## Part IX Emergency Preparedness

### **22VAC40-73-950. Emergency preparedness and response plan.**

A. The facility shall develop a written emergency preparedness and response plan that shall address:

1. Documentation of initial and annual contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency.

2. Analysis of the facility's potential hazards, including severe weather, fire, loss of utilities, flooding, work place violence or terrorism, severe injuries, or other emergencies that would disrupt normal operation of the facility.

3. Written emergency management policies and procedures for provision of:

a. Administrative direction and management of response activities;

b. Coordination of logistics during the emergency;

c. Communications;

d. Life safety of residents, staff, volunteers, and visitors;

e. Property protection;

f. Continued services to residents;

g. Community resource accessibility; and

h. Recovery and restoration.

4. Written emergency response procedures for assessing the situation; protecting residents, staff, volunteers, visitors, equipment, medications, and vital records; and restoring services. Emergency procedures shall address:

a. Alerting emergency personnel and facility staff;

b. Warning and notification of residents, including sounding of alarms when appropriate;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations and sheltering in place, as appropriate, and accounting for all residents;

e. Locating and shutting off utilities when necessary;

f. Maintaining and operating emergency equipment effectively and safely;

g. Communicating with staff and community emergency responders during the emergency; and

h. Conducting relocations to emergency shelters or alternative sites when necessary and accounting for all residents.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, memoranda of

understanding with relocation sites, and list of major resources such as suppliers of emergency equipment.

B. Staff and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

C. The facility shall develop and implement an orientation and quarterly review on the emergency preparedness and response plan for all staff, residents, and volunteers, with emphasis placed on an individual's respective responsibilities. The orientation and review shall cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation, shelter in place, and relocation procedures;
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency medical information, equipment, and medications for residents;
5. Locating and shutting off utilities; and
6. Utilizing community support services.

D. The facility shall review the emergency preparedness plan annually or more often as needed and make necessary revisions. Such revisions shall be communicated to staff, residents, and volunteers and incorporated into the orientation and quarterly review for staff, residents, and volunteers.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the facility shall take appropriate action to protect the health, safety, and welfare of the residents and take appropriate actions to remedy the conditions as soon as possible.

F. After the disaster or emergency is stabilized, the facility shall:

1. Notify family members and legal representatives; and
2. Report the disaster or emergency to the regional licensing office by the next day as specified in 22VAC40-73-70.

**22VAC40-73-960. Fire and emergency evacuation plan.**

A. Assisted living facilities shall have a written plan for fire and emergency evacuation that is to be followed in the event of a fire or other emergency. The plan shall be approved by the appropriate fire official.

B. A fire and emergency evacuation drawing shall be posted in a conspicuous place on each floor of each building used by residents. The drawing shall show primary and secondary escape routes, areas of refuge, assembly areas, telephones, fire alarm boxes, and fire extinguishers, as appropriate.

C. The telephone numbers for the fire department, rescue squad or ambulance, police, and Poison Control Center shall be posted by each telephone shown on the fire and emergency evacuation plan.

D. In assisted living facilities where all outgoing telephone calls must be placed through a central switchboard located on the premises, the information required in subsection C of this section may be posted by the switchboard rather than by each telephone, provided this switchboard is manned 24 hours each day.

E. Staff and volunteers shall be fully informed of the approved fire and emergency evacuation plan, including their duties, and the location and operation of fire extinguishers, fire alarm boxes, and any other available emergency equipment.

**22VAC40-73-970. Fire and emergency evacuation drills.**

A. Fire and emergency evacuation drill frequency and participation shall be in accordance with the current edition of the Virginia Statewide Fire Prevention Code (13VAC5-51). The drills required for each shift in a quarter shall not be conducted in the same month.

B. Additional fire and emergency evacuation drills may be held at the discretion of the administrator or licensing inspector and must be held when there is any reason to question whether the requirements of the approved fire and emergency evacuation plan can be met.

C. Each required fire and emergency evacuation drill shall be unannounced.

D. Immediately following each required fire and emergency evacuation drill, there shall be an evaluation of the drill by the staff in order to determine the effectiveness of the drill. The licensee or administrator shall immediately correct any problems identified in the evaluation and document the corrective action taken.

E. A record of the required fire and emergency evacuation drills shall be kept in the facility for two years. Such record shall include:

1. Identity of the person conducting the drill;
2. The date and time of the drill;
3. The method used for notification of the drill;
4. The number of staff participating;
5. The number of residents participating;
6. Any special conditions simulated;
7. The time it took to complete the drill;
8. Weather conditions; and
9. Problems encountered, if any.

**22VAC40-73-980. Emergency equipment and supplies.**

A. A complete first aid kit shall be on hand at the facility, located in a designated place that is easily accessible to staff but not to residents. Items with expiration dates must not have dates that have already passed. The kit shall include, but not be limited to, the following items:

1. Adhesive tape;
2. Antibiotic cream or ointment packets;

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3. Antiseptic wipes or ointment;
4. Band-aids, in assorted sizes;
5. Blankets, either disposable or other;
6. Disposable single-use breathing barriers or shields for use with rescue breathing or CPR (e.g., CPR mask or other type);
7. Cold pack;
8. Disposable single-use waterproof gloves;
9. Gauze pads and roller gauze, in assorted sizes;
10. Hand cleaner (e.g., waterless hand sanitizer or antiseptic towelettes);
11. Plastic bags;
12. Scissors;
13. Small flashlight and extra batteries;
14. Thermometer;
15. Triangular bandages;
16. Tweezers;
17. 81-milligram aspirin in single packets or small bottle; and
18. The first aid instructional manual.

B. In facilities that have a motor vehicle that is used to transport residents and in a motor vehicle used for a field trip, there shall be a first aid kit on the vehicle, located in a designated place that is accessible to staff but not residents that includes items as specified in subsection A of this section.

C. First aid kits shall be checked at least monthly to assure that all items are present and items with expiration dates are not past their expiration date.

D. Each facility with six or more residents shall be equipped with a permanent connection able to connect to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The connection shall be of the size that is capable of providing power to required circuits when connected and that is sufficient to implement the emergency preparedness and response plan. The installation of a connection for temporary electric power shall be in compliance with the Virginia Uniform Statewide Building Code (13VAC5-63) and approved by the local building official. Permanent installations of emergency power systems shall be acceptable when installed in accordance with the Uniform Statewide Building Code and approved by the local building official.

E. The following emergency lighting shall be available:

1. Flashlights or battery lanterns for general use.
2. One flashlight or battery lantern for each employee directly responsible for resident care.
3. One flashlight or battery lantern for each bedroom used by residents and for the living and dining area unless there

is a provision for emergency lighting in the adjoining hallways.

4. The use of open flame lighting is prohibited.

F. There shall be two forms of communication for use in an emergency.

G. The facility shall ensure the availability of a 96-hour supply of emergency food and drinking water. At least 48 hours of the supply must be on site at any given time.

## **22VAC40-73-990. Plan for resident emergencies and practice exercise.**

A. Assisted living facilities shall have a written plan for resident emergencies that includes:

1. Procedures for handling medical emergencies, including identifying the staff person responsible for (i) calling the rescue squad, ambulance service, resident's physician, or Poison Control Center; and (ii) providing first aid and CPR, when indicated.

2. Procedures for handling mental health emergencies such as, but not limited to, catastrophic reaction or the need for a temporary detention order.

3. Procedures for making pertinent medical information and history available to the rescue squad and hospital, including but not limited to, information on medications and advance directives.

4. Procedures to be followed in the event that a resident is missing, including but not limited to (i) involvement of facility staff, appropriate law-enforcement agency, and others as needed; (ii) areas to be searched; (iii) expectations upon locating the resident; and (iv) documentation of the event.

5. Procedures for notifying the resident's family, legal representative, designated contact person, and any responsible social agency.

6. Procedures for notifying the regional licensing office as specified in 22VAC40-73-70.

B. At least once every six months, all staff on each shift shall participate in an exercise in which the procedures for resident emergencies are practiced. Documentation of each exercise shall be maintained in the facility for at least two years.

C. The plan for resident emergencies shall be readily available to all staff.

### Part X

#### Additional Requirements for Facilities that Care for Adults with Serious Cognitive Impairments

##### Article 1 Subjectivity

### **22VAC40-73-1000. Subjectivity.**

All facilities that care for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own

safety and welfare shall be subject to either Article 2 (22VAC40-73-1010 et seq.) or Article 3 (22VAC40-73-1080 et seq.) of this part. All facilities that care for residents with serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare shall be subject to Article 2 of this part.

Article 2  
Mixed Population

**22VAC40-73-1010. Applicability.**

The requirements in this article apply when there is a mixed population consisting of any combination of (i) residents who have serious cognitive impairments due to a primary psychiatric diagnosis of dementia who are unable to recognize danger or protect their own safety and welfare and who are not in a special care unit as provided for in Article 3 (22VAC40-73-1080 et seq.) of this part; (ii) residents who have serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare; and (iii) other residents. The requirements in this article also apply when all the residents have serious cognitive impairments due to any diagnosis other than a primary psychiatric diagnosis of dementia and cannot recognize danger or protect their own safety and welfare. Except for special care units covered by Article 3 of this part, these requirements apply to the entire facility unless specified otherwise.

**22VAC40-73-1020. Staffing.**

A. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each building who shall be responsible for the care and supervision of the residents.

B. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

Exception: The requirements of subsections A and B of this section do not apply when facilities are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments. Each prospective resident or his legal representative shall be notified of this exception prior to admission.

**22VAC40-73-1030. Staff training.**

A. Commencing immediately upon employment and within three months, the administrator shall attend 12 hours of training in working with individuals who have a cognitive impairment, and the training shall meet the requirements of subsection C of this section.

1. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable and counts toward the required 12 hours if there is documentation of the training.

2. Whether the training counts toward continuing education for administrator licensure and for what period of time depends upon the licensure requirements of the Virginia Board of Long-Term Care Administrators.

B. Commencing immediately upon employment and within four months, direct care staff shall attend six hours of training in working with individuals who have a cognitive impairment, and the training shall meet the requirements of subsection C of this section.

1. The six-hour training received within the first four months of employment is counted toward the annual training requirement for the first year.
2. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training.
3. The documented previous cognitive impairment training referenced in subdivision 2 of this subsection is counted toward the required six hours but not toward the annual training requirement.

C. Curriculum for the training in cognitive impairment for direct care staff and administrators shall be developed by a qualified health professional or by a licensed social worker, shall be relevant to the population in care, shall maximize the level of a resident's functional ability, and shall include, but need not be limited to:

1. Information about cognitive impairment, including areas such as cause, progression, behaviors, and management of the condition;
2. Communicating with the resident;
3. Resident care techniques for persons with physical, cognitive, behavioral, and social disabilities;
4. Managing dysfunctional behavior;
5. Creating a therapeutic environment;
6. Planning and facilitating activities appropriate for each resident; and
7. Identifying and alleviating safety risks to residents with cognitive impairment.

D. Within the first month of employment, staff, other than the administrator and direct care staff, shall complete two hours of training on the nature and needs of residents with cognitive impairments relevant to the population in care.

**22VAC40-73-1040. Doors and windows.**

A. Doors leading to the outside shall have a system of security monitoring of residents with serious cognitive impairments, such as door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, or delayed egress mechanisms. Residents with serious cognitive impairments may be limited but not prohibited from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for

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determining that the resident has a serious cognitive impairment and cannot recognize danger or protect his own safety and welfare.

B. There shall be protective devices on the bedroom and the bathroom windows of residents with serious cognitive impairments and on windows in common areas accessible to these residents to prevent the windows from being opened wide enough for a resident to crawl through. The protective devices on the windows shall be in conformance with the Virginia Uniform Statewide Building Code (13VAC5-63).

## **22VAC40-73-1050. Outdoor access.**

A. The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents with serious cognitive impairments are outside.

B. Weather permitting, residents with serious cognitive impairments shall be reminded of the opportunity to be outdoors on a daily basis.

## **22VAC40-73-1060. Indoor walking area.**

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

## **22VAC40-73-1070. Environmental precautions.**

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents with serious cognitive impairments. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident with a serious cognitive impairment, these materials or objects shall be inaccessible to the resident except under staff supervision.

### Article 3

#### Safe, Secure Environment

## **22VAC40-73-1080. Applicability.**

A. In order to be admitted or retained in a safe, secure environment as defined in 22VAC40-73-10, except as provided in subsection B of this section, a resident must have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and be unable to recognize danger or protect his own safety and welfare. The requirements in this article apply when such residents reside in a safe, secure environment. These requirements apply only to the safe, secure environment.

B. A resident's spouse, parent, adult sibling, or adult child who otherwise would not meet the criteria to reside in a safe, secure environment may reside in the special care unit if the spouse, parent, sibling, or child so requests in writing, the facility agrees in writing, and the resident, if capable of making the decision, agrees in writing. The written request and agreements must be maintained in the resident's file. The spouse, parent, sibling, or child is considered a resident of the facility and as such this chapter applies. The requirements of

this article do not apply for the spouse, parent, adult sibling, or adult child since the individual does not have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare.

## **22VAC40-73-1090. Assessment.**

A. Prior to his admission to a safe, secure environment, the resident shall have been assessed by an independent clinical psychologist licensed to practice in the Commonwealth or by an independent physician as having a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare. The physician shall be board certified or board eligible in a specialty or subspecialty relevant to the diagnosis and treatment of serious cognitive impairments (e.g., family practice, geriatrics, internal medicine, neurology, neurosurgery, or psychiatry). The assessment shall be in writing and shall include, but not be limited to the following areas:

1. Cognitive functions (e.g., orientation, comprehension, problem-solving, attention and concentration, memory, intelligence, abstract reasoning, judgment, and insight);
2. Thought and perception (e.g., process and content);
3. Mood/affect;
4. Behavior/psychomotor;
5. Speech/language; and
6. Appearance.

B. The assessment required in subsection A of this section shall be maintained in the resident's record.

## **22VAC40-73-1100. Approval.**

A. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, the facility shall obtain the written approval of one of the following persons, in the following order of priority:

1. The resident, if capable of making an informed decision;
2. A guardian or other legal representative for the resident if one has been appointed;
3. A relative who is willing and able to take responsibility to act as the resident's representative, in the following specified order: (i) spouse, (ii) adult child, (iii) parent, (iv) adult sibling, (v) adult grandchild, (vi) adult niece or nephew, (vii) aunt or uncle; or
4. If the resident is not capable of making an informed decision and a guardian, legal representative, or relative is unavailable, an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia.

B. The obtained written approval shall be retained in the resident's file.

C. The facility shall document that the order of priority specified in subsection A of this section was followed, and the documentation shall be retained in the resident's file.

D. As soon as one of the persons in the order as prioritized in subsection A of this section disapproves of placement or retention in the safe, secure environment, then the assisted living facility shall not place or retain the resident or prospective resident in the special care unit. If the resident is not to be retained in the unit, the discharge requirements specified in 22VAC40-73-430 apply.

**22VAC40-73-1110. Appropriateness of placement and continued residence.**

A. Prior to admitting a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia to a safe, secure environment, the licensee, administrator, or designee shall determine whether placement in the special care unit is appropriate. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

B. Six months after placement of the resident in the safe, secure environment and annually thereafter, the licensee, administrator, or designee shall perform a review of the appropriateness of each resident's continued residence in the special care unit.

C. Whenever warranted by a change in a resident's condition, the licensee, administrator, or designee shall also perform a review of the appropriateness of continued residence in the unit.

D. The reviews specified in subsections B and C of this section shall be performed in consultation with the following persons, as appropriate:

1. The resident;
2. A responsible family member;
3. A guardian or other legal representative;
4. A designated contact person;
5. Direct care staff who provide care and supervision to the resident;
6. The resident's mental health provider;
7. The licensed health care professional required in 22VAC40-73-490;
8. The resident's physician; and
9. Any other professional involved with the resident.

E. The licensee, administrator, or designee shall make a determination as to whether continued residence in the special care unit is appropriate at the time of each review required by subsections B and C of this section. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

**22VAC40-73-1120. Activities.**

A. In addition to the requirements of this section, all the requirements of 22VAC40-73-520 apply to safe, secure environments, except for 22VAC40-73-520 C and E.

B. There shall be at least 21 hours of scheduled activities available to the residents each week for no less than two hours each day.

C. If appropriate to meet the needs of the resident with a short attention span, there shall be multiple short activities.

D. Staff shall regularly encourage residents to participate in activities and provide guidance and assistance, as needed.

E. As appropriate, residents shall be encouraged to participate in supervised activities or programs outside the special care unit.

F. There shall be a designated staff person responsible for managing or coordinating the structured activities program. This staff person shall be on site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or an activities professional;
2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
3. Have one year full-time work experience within the last five years in an activities program in an adult care setting;
4. Be a qualified occupational therapist or an occupational therapy assistant; or
5. Prior to or within six months of employment, have successfully completed 40 hours of department-approved training in adult group activities and in recognizing and assessing the activity needs of residents.

The required 20 hours on site does not have to be devoted solely to managing or coordinating activities; neither is it required that the person responsible for managing or coordinating the activities program conduct the activities.

**22VAC40-73-1130. Staffing.**

A. When residents are present, there shall be at least two direct care staff members awake and on duty at all times on each floor in each special care unit who shall be responsible for the care and supervision of the residents, except as provided in subsection B of this section. This requirement is independent of 22VAC40-73-280 D and 22VAC40-73-1020 A.

B. Only one direct care staff member has to be awake and on duty in the unit if sufficient to meet the needs of the residents, if (i) there are no more than five residents present in the unit and (ii) there are at least two other direct care staff members in the building, one of whom is readily available to assist with emergencies in the special care unit, provided that

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# Regulations

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supervision necessary to ensure the health, safety, and welfare of residents throughout the building is not compromised.

C. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to residents.

## **22VAC40-73-1140. Staff training.**

A. Commencing immediately upon employment and within three months, the administrator shall attend at least 12 hours of training in cognitive impairment that meets the requirements of subsection C of this section.

1. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable and counts toward the required 12 hours if there is documentation of the training.

2. Whether the training counts toward continuing education for administrator licensure and for what period of time depends upon the licensure requirements of the Virginia Board of Long-Term Care Administrators.

B. Commencing immediately upon employment in the safe, secure environment and within four months, direct care staff shall attend at least 10 hours of training in cognitive impairment that meets the requirements of subsection C of this section.

1. The training is counted toward the annual training requirement for the first year.

2. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training.

3. The documented previous cognitive impairment training referenced in subdivision 2 of this subsection is counted toward the required 10 hours but not toward the annual training requirement.

C. The training in cognitive impairment required by subsections A and B of this section shall be relevant to the population in care, shall maximize the level of a resident's functional ability, and shall include, but not be limited to, the following topics:

1. Information about cognitive impairment, including areas such as cause, progression, behaviors, and management of the condition;

2. Communicating with the resident;

3. Resident care techniques for persons with physical, cognitive, behavioral, and social disabilities;

4. Managing dysfunctional behavior;

5. Creating a therapeutic environment;

6. Planning and facilitating activities appropriate for each resident; and

7. Identifying and alleviating safety risks to residents with cognitive impairment.

D. The training specified in subsection C of this section shall be developed and provided by:

1. A licensed health care professional practicing within the scope of his profession who has at least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or

2. A person who has been approved by the department to develop or provide the training.

E. Within the first month of employment, staff, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete two hours of training on the nature and needs of residents with cognitive impairments due to dementia.

## **22VAC40-73-1150. Doors and windows.**

A. Doors that lead to unprotected areas shall be monitored or secured through devices that conform to applicable building and fire codes, including but not limited to, door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices, or perimeter fence gates. Residents who reside in safe, secure environments may be prohibited from exiting the facility or the special care unit, if applicable building and fire codes are met.

B. There shall be protective devices on the bedroom and bathroom windows of residents and on windows in common areas accessible to residents to prevent the windows from being opened wide enough for a resident to crawl through. The protective devices on the windows shall be in conformance with the Virginia Uniform Statewide Building Code (13VAC5-63).

## **22VAC40-73-1160. Outdoor access.**

A. The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents are outside.

B. Residents shall be given the opportunity to be outdoors on a daily basis, weather permitting.

## **22VAC40-73-1170. Indoor walking area.**

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

## **22VAC40-73-1180. Environmental precautions.**

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, high visual contrast between floors and walls, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident, these materials or objects shall be inaccessible to the resident except under staff supervision.

C. Special environmental enhancements, tailored to the population in care, shall be provided by the facility to enable residents to maximize their independence and to promote their dignity in comfortable surroundings. Examples of environmental enhancements include memory boxes, activity centers, rocking chairs, and visual contrast between plates and eating utensils and the table.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (22VAC40-73)

[Report of Tuberculosis Screening](#)

[Virginia Department of Health Report of Tuberculosis Screening Form \(eff. 3/2011\)](#)

[Virginia Department of Health TB Control Program TB Risk Assessment Form, TB 512 \(eff. 5/2011\)](#)

VA.R. Doc. No. R12-3227; Filed August 5, 2015, 1:42 p.m.

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# GENERAL NOTICES/ERRATA

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## AIR POLLUTION CONTROL BOARD

### State Implementation Plan Revision Major New Source Review Program Regulations (9VAC5-80, Revision D14)

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 to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (9VAC5-80-1605 et seq.) and Article 9, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80, Permits for Stationary Sources, (Revision D14).

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

Public comment period: [30 Day Comment Forum](#) September 7, 2015, through midnight on October 7, 2015.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed at the end of this notice. 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 amendments have been adopted and are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The purpose of the action is to amend the major new source review (NSR) program regulations such that certain provisions are consistent with EPA regulations. These amendments are needed in order for the program to operate more effectively and to encourage the implementation of projects that are more protective of air quality. The following specific changes have been made: (i) The definition of "baseline actual emissions" was amended to extend the lookback period from five to 10 years. (ii) The definition of "baseline actual emissions" was amended to

enable different lookback periods for different regulated NSR pollutants. (iii) The regulations were amended to increase the plantwide applicability limit (PAL) effective period from five to 10 years. (iv) The definitions of "emissions unit" were amended and a definition of "replacement unit" was added in order to enable use of the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit.

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 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 supporting documents are available on the DEQ Air Public Notices for Plans website at <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, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 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 (434) 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 Boulevard, 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, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

### **BOARD FOR BARBERS AND COSMETOLOGY**

#### **Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Barbers and Cosmetology is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

#### **18VAC41-11, Public Participation Guidelines**

#### **18VAC41-20, Barbering and Cosmetology**

#### **18VAC41-40, Wax Technician Regulations**

#### **18VAC41-50, Tattooing Regulations**

#### **18VAC41-60, Body-Piercing Regulations**

#### **18VAC41-70, Esthetics Regulations**

The comment period begins September 7, 2015, and ends September 28, 2015.

Agency Contact: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

### **DEPARTMENT OF ENVIRONMENTAL QUALITY**

#### **Notice of Public Comment Period Regarding the Clean Power Plan**

The Department of Environmental Quality (DEQ) is announcing an informal public comment period on the U.S. Environmental Protection Agency (EPA) Clean Power Plan. The plan has been established to cut carbon emissions (greenhouse gases) from existing power plants that generate

electricity from fossil fuels. These new EPA rules may have a significant impact on the Commonwealth. Therefore, prior to taking any formal action, DEQ is gathering general input from the public to help inform the Commonwealth's review and implementation of EPA's final rules for existing power plants (see implement EPA's emission guidelines for existing power plants on EPA's website at <http://www2.epa.gov/carbon-pollution-standards>).

In addition to receiving general input from the public, the Commonwealth is also interested in identifying and collecting input from vulnerable and overburdened communities. These communities include low-income communities, communities of color, areas where people are most vulnerable to climate change, and communities where economies may be affected by changes in the utility power and related sectors.

How to comment to DEQ: Email written comments to [ghg@deq.virginia.gov](mailto:ghg@deq.virginia.gov), send a FAX to (804) 698-4510, or send postal mail to the Air Division, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from August 13, 2015, to October 13, 2015. Please provide your full name, address, and telephone number. Note that there is no formal Commonwealth proposal available for comment at this time, and DEQ will not be preparing a response to comments.

Public listening sessions: DEQ will meet informally with the public to receive public input on the best way for Virginia to implement EPA's carbon reduction plan for existing power plants at a series of listening sessions around the state. The only topic under consideration will be the plan for existing power plants. These listening sessions are only for receiving input from the public, and there will be no formal presentations from DEQ. The dates and times of these listening sessions will be announced shortly.

Federal information: EPA has also issued two other rules for the control of carbon dioxide (CO<sub>2</sub>) from power plants:

- Final new source performance standard for new power plants.
- Proposed federal plan and model rule for existing power plants. This rule is open for public comment; follow EPA's instructions in the preamble to the rule.

Learn more about these rules on EPA's website at <http://www2.epa.gov/carbon-pollution-standards>.

Virginia information: DEQ has established a web page with information about Virginia's actions for meeting the federal requirements at <http://www.deq.virginia.gov/Programs/Air/GreenhouseGasPlan.aspx>. This page will be updated periodically as new information and opportunities for public comment become available.

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## General Notices/Errata

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Contact Information: Air Division, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, email [ghg@deq.virginia.gov](mailto:ghg@deq.virginia.gov), FAX (804) 698-4510.

### **STATE BOARD OF HEALTH AND DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

#### **Notice of Request for Certificate of Public Need Applications for Development of Additional Nursing Home Beds Planning Target Year 2017**

Legal Notice of Request for Certificate of Public Need Applications: Pursuant to the authority vested in the State Board of Health (board) and the Department of Medical Assistance Services (DMAS) by § 32.1-102.3:2 of the Code of Virginia, notice is hereby given of the proposed issuance of a request for applications (RFA). This RFA would be a request for certificate of public need (COPN) applications for projects that would result in an increase in the number of beds in which nursing home services are provided in the Commonwealth of Virginia. The RFA process is outlined in 12VAC5-220-335 of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

Eligible Planning District and Total Nursing Home Beds Available for Authorization: In the review cycle that would be established by this RFA upon issuance of the final notice, the State Health Commissioner will consider requests for COPNs that propose an increase in nursing home beds in the planning district (PD) identified below and that propose an increase in beds no greater than the number of available beds shown below for that planning district. COPN requests that propose an increase in nursing home beds in any other planning district not identified below or propose an increase in beds greater than the number of available beds shown below for the eligible planning district will not be accepted for review.

Planning District 18, also known as the Middle Peninsula Planning District, consisting of the Counties of Essex, Gloucester, King and Queen, King William, Matthews, and Middlesex.

Total nursing home beds available for authorization: 30.

Evaluation of Need for Additional Nursing Home Beds: The "Nursing Facilities" component of the Virginia State Medical Facilities Plan (SMFP) contains a nursing home bed need forecasting method (12VAC5-230-610). This method has been employed by the Virginia Department of Health to compute a forecast of needed nursing home beds in 2017 in each of Virginia's 22 planning districts.<sup>1</sup>

Consistent with the Virginia State Medical Facilities Plan (12VAC5-230-610 A), no planning district is considered to have a need for additional nursing home beds unless the average annual occupancy of all existing Medicaid-certified nursing home beds in the planning district was at least 93%,

excluding the bed inventory and utilization of the Virginia Veterans Care Centers. For purposes of this document, the annual occupancy of Medicaid-certified nursing home beds was determined from filings with Virginia Health Information made by Virginia nursing homes covering their fiscal year ending in 2012.

Also, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted new nursing home beds, for which Medicaid certification will be sought, that were authorized for the planning district within the three years prior to this notice of a proposed RFA. The following table displays, by planning district, the nursing home gross bed need forecast for 2017, the current licensed bed inventory plus uncompleted COPN-authorized additions of nursing home beds, and the net bed need forecast for 2017.

The table also shows the average annual occupancy rate of Medicaid-certified nursing home beds for each planning district for the 2012 reporting year and identifies the status of each planning district with respect to authorized but uncompleted new nursing home beds that are expected to be Medicaid-certified. The final column of the table states whether the planning district qualifies for additional nursing home (NH) beds for 2017.

Nursing Home Bed Need Forecast and  
Whether a Planning District Qualifies for Additional Nursing Home Beds for 2017

Planning District	Gross Bed Need Forecast for 2017	Existing Plus Authorized Beds	Projected Net Bed Need in 2017	Average Occupancy Medicaid Beds 2012	Authorized but Uncompleted New Medicaid Beds	Planning District Qualifies for Additional NH Beds
1	503	641	(138)	87.0%	No	no--no need
2	426	539	(113)	77.6%	No	no--no need
3	1,460	1,525	(65)	83.0%	No	no--no need
4	898	788	110	87.3%	No	no--low occu.
5	2,151	2,285	(134)	89.7%	No	no--no need
6	1,898	1,516	382	90.5%	No	no--low occu.
7	1,035	992	43	90.2%	No	no--low occu.
8	5,454	4,478	976	87.8%	Yes	no--low occu.
9	871	806	65	90.2%	Yes	no--low occu.
10	1,279	1,037	242	91.7%	Yes	no--low occu.
11	1,663	1,596	67	89.4%	No	no--low occu.
12	2,218	1,929	289	90.3%	No	no--low occu.
13	943	881	62	87.2%	No	no--low occu.
14	628	670	(42)	88.8%	No	no--no need
15	4,421	4,059	362	91.3%	No	no--low occu.
16	896	785	111	83.9%	No	no--low occu.
17	339	308	31	91.3%	No	no--low occu.
18	576	540	36	93.0%	No	yes--30 beds
19	1,114	1,055	59	87.8%	No	no--low occu.
20	4,843	4,393	450	88.2%	No	no--low occu.
21	2,270	1,867	403	89.7%	No	no--low occu.
22	345	376	(31)	84.5%	No	no--no need
Total VA	36,231	33,066	3,165	88.6%		

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# General Notices/Errata

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Sources: State Medical Facilities Plan (12VAC5-230-610)

University of Virginia Weldon Cooper Center (population projections, 2012 edition)

2006 Virginia Nursing Home Patient Survey, Health Systems Agency of Northern Virginia (for age-specific nursing home use rates)

Office of Licensure and Certification, VDH (for bed inventory).

Basis for Review: The State Health Commissioner, in her review of COPN requests submitted pursuant to this RFA, will consider each of the eight factors enumerated in § 32.1-102.3 B of the Code of Virginia, as applicable. She will also consider applicable standards of the State Medical Facilities Plan (12VAC5-230-600 et. seq.).

Projection of Potential Fiscal Impact: The Department of Medical Assistance Services projects total additional expenditures for medical services provided to Medicaid recipients of approximately \$0.824 million (\$0.412 million of Commonwealth general funds) for the fiscal year (FY) ending June 30, 2017, if all 30 beds included in this RFA are authorized and available for occupancy by July 1, 2016. This projection is based on the following principal assumptions:

Average proportion of beds filled during FY 2017	89%
Assumed Medicaid proportion of bed-days of service	62%
Average estimated payment rate per day (net of patient copayments)	\$136

Schedule for Review: COPN requests filed in response to this RFA must be filed in accordance with the provisions of 12VAC5-220-355. The review schedules shown below will apply. Letters of intent and applications must be received by the Virginia Department of Health Division of COPN by the dates shown below in order to qualify for consideration in the specified review cycle.

Letter of intent must be received by November 2, 2015.

Application must be received by December 1, 2015.

Review cycle will begin on January 10, 2016.

Application Fees: The Virginia Department of Health shall collect fees for COPN applications filed in response to this RFA. No application may be deemed to be complete for review until the required application fee is paid. The fee is one percent of the proposed capital expenditure for the project, but not less than \$1,000 or more than \$20,000.

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<sup>1</sup> For conduct of the certificate of public need program, the Virginia Department of Health continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than Planning District 23, Hampton Roads, which combined the former PD 20 and PD 21.

## DEPARTMENT OF PLANNING AND BUDGET

### Commercial Activities List – Public Comments and Recommendations

Pursuant to § 2.2-1501.1 of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) has developed the Commercial Activities List (CAL). The CAL is posted on the DPB website at <https://www.dpb.virginia.gov> under Documents, Instructions and Publications.

DPB is seeking written comments on the CAL and invites recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector. The public comment period will begin September 7, 2015, and end September 21, 2015. Please include "CAL" in the subject of the email.

Agency Contact: Cari Corr, Virginia Department of Planning and Budget, CAL, 1111 East Broad Street, Richmond, VA 23219, telephone (804) 786-7455, or email [efis@dpb.virginia.gov](mailto:efis@dpb.virginia.gov).

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Professional and Occupational Regulation conducted a small business impact review of **18VAC120-11, Public Participation Guidelines** and determined that this regulation should be retained in its current form. The Department of Professional and Occupational Regulation is publishing its report of findings dated August 18, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the agency to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing public participation guidelines, which promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the agency is better equipped to effectively regulate the occupation or profession. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or contravene federal or state law or regulation. This is the first periodic review of the regulation since becoming effective in 2008. On August 18, 2015, the director reviewed the regulation and, for the reasons stated in this section, determined that the regulation should not be

amended or repealed, but should be retained in its current form.

**Agency Contact:** Mark N. Courtney, Senior Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8500, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

**STATE WATER CONTROL BOARD**

**Proposed Enforcement Action for Chesapeake Grain Company, Inc.**

An enforcement action has been proposed for Chesapeake Grain Company, Inc. for alleged violations of the State Water Control Law in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Mr. Robin Schuhmann will accept comments by email at [robin.schuhmann@deq.virginia.gov](mailto:robin.schuhmann@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from September 7, 2015, to October 7, 2015.

**Proposed Consent Order for Virginia-American Water Company**

An enforcement action has been proposed for Virginia-American Water Company for violations at the Hopewell Low Service Pump Station located at 915 Riverside Avenue in Hopewell, Virginia. The board proposes to issue a consent order to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Frank Lupini will accept comments by email at [frank.lupini@deq.virginia.gov](mailto:frank.lupini@deq.virginia.gov), FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from September 7, 2015, to October 8, 2015.

**Public Meeting and Public Comment for a Water Quality Study (TMDL) of Long Meadow Run and Turley Creek**

**Public Meeting:** A meeting will be held Monday, September 14, 2015, at 7 p.m. at J. Frank Hillyard Middle School at 226 Hawks Hill Drive, Broadway, VA 22815. This meeting will be open to the public and all are welcome. In the case of inclement weather, the meeting will take place on Thursday, September 17, 2015, at the same time and place. Please contact Tara Sieber at (540) 574-7870 with any questions.

**Purpose of notice:** The Department of Environmental Quality (DEQ), its contractors, Virginia Tech's Biological Systems Engineering Department, and the local steering committee, comprised of local landowners and interested parties, will

present the results of a water quality study known as a total maximum daily load (TMDL) and the recommendations in the implementation plan, or watershed clean-up plan, for Long Meadow Run and Turley Creek. This is an opportunity for local residents to learn more about the water quality study, the clean-up plan, and find out how they can make a difference to their local streams. A public comment period, beginning September 15, 2015, and ending October 16, 2015, will follow the meeting.

**Meeting description:** A public meeting will be held to reintroduce to the local community the water quality improvement process in Virginia, known as the TMDL process, review the work of the local steering committee, and solicit the input of the community on the TMDL document and the implementation plan, also known as a watershed clean-up plan. 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 North Fork Shenandoah River watershed do not meet Virginia's water quality standards. Long Meadow Run and Turley Creek were listed in 2002 as impaired due to violations of the state's general water quality standard (benthic) for aquatic life. The aquatic life impairment on Long Meadow Run extends from its headwaters to the confluence with the North Fork Shenandoah River, which is a total of 8.53 miles. The Turley Creek aquatic life impairment extends a total of 4.01 miles from its headwaters to the confluence with the North Fork Shenandoah River. These streams do not host a healthy and diverse population of aquatic life and subsequently were listed as impaired for the "general benthic (aquatic life)" water quality standard. This water quality study reviewed all data collected and determined the cause of the benthic impairment to be excess sediment in both streams; in addition, nitrogen was identified as an issue in Long Meadow Run. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, sediment levels need to be reduced to the TMDL amount in both streams, and nitrogen should be reduced in Long Meadow Run. Virginia agencies worked with local community partners to identify sources of excess sediment and recommend actions, practices, and strategies that could achieve the necessary reductions. The stream segments included in this TMDL study and IP are as follows:

Stream	County	Length	Impairment
Long Meadow Run	Rockingham County	8.53 miles	General Benthic (Aquatic Life)
Turley Creek	Rockingham County	4.01 miles	

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How to comment: The public comment period for this public meeting and the TMDL water quality study and watershed clean-up plan begins September 15, 2015, and will end on October 16, 2015. 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.

### **Public Meeting and Public Comment Period for Proposed Changes to Three River Basins' Water Quality Management Planning Regulations - Potomac-Shenandoah River Basin, Tennessee-Big Sandy River Basin, and Chesapeake Bay-Small Coastal-Eastern Shore River Basin**

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on eight proposed revisions to wasteload allocations (WLAs) in the regulation for eight EPA approved total maximum daily loads (TMDLs). DEQ will hold a public meeting to describe these proposed revisions on September 17, 2015, at 1 p.m. - 2 p.m. in DEQ's Central Office 2nd Floor Conference Room A, 629 East Main Street, Richmond, VA 23219. In case of inclement weather, the public meeting will be held at the same location on September 29, 2015, at 1 p.m. The eight proposed revisions to the WLAs in the Potomac-Shenandoah River Basin (9VAC25-720-50 A), Tennessee-Big Sandy River Basin (9VAC25-720-90 A), and Chesapeake Bay-Small Coastal Eastern Shore River Basin (9VAC25-720-110 A) include revisions to seven errors and the revision of one WLA to be in accordance with the EPA-approved TMDL modification. The public comment period for these proposed revisions will begin on September 17, 2015, and end on October 19, 2015. If requested during the public comment period, an advisory group of relevant and interested stakeholders will be convened. Please note that all written comments should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written or oral comments, please contact Will Isenberg, Department of Environmental Quality, Central Office, by postal mail at P.O. Box 1105, Richmond, VA 23218, by telephone at (804) 698-4228, or by email at william.isenberg@deq.virginia.gov.

The revisions to the Water Quality Management Planning Regulation are summarized below by river basin:

#### Potomac-Shenandoah River Basin (9VAC25-720-50 A):

The proposed revisions in the Potomac-Shenandoah River Basin Water Quality Management Planning Regulation (WQMPR) apply to TMDLs 1, 9, 58, and 59 in subsection A of 9VAC25-720-50. For TMDL #1, proposed changes include a revision of the stream name to read "Muddy Creek, Dry River and tributaries to North River," and a revision to the water body ID (WBID) to include B22R. For TMDL #9, the proposed change includes a revision of the current WLA to be the EPA approved

value from the TMDL report of 116 lbs/year. TMDL #58 and #59 are duplicates of TMDLs #29 and #30, respectively. Therefore, it is proposed that TMDL #58 and #59 be removed from the WQMPR.

The following EPA approved TMDL reports apply to revisions for TMDLs 1, 9, 58, and 59 described above:

- TMDL #1:

<http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/shenrvr/muddyni.pdf>

- TMDL #9:

<http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/shenrvr/plmillbc.pdf>

- TMDLs #29 and #30 & #58 and #59:

<http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/shenrvr/abropebc.pdf>

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

The proposed revisions in the Tennessee-Big Sandy River Basin WQMPR apply to TMDLs #6 and #9 in subsection A of 9VAC25-720-90. For TMDL #6, the proposed change includes a revision of the current WLA in regulation to be the EPA approved value from the TMDL report of 21,732 lbs/year. For TMDL #9, the proposed change includes a revision of the current WLA in regulation to be the EPA approved value from the TMDL modification of 322,234 kg/year.

The following EPA approved TMDL reports and modifications apply to revisions for TMDLs #6 and #9 described above:

- TMDL #6:

<http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/tenbigvr/lewisbc.pdf>

- TMDL #9 modification & report:

<http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/appmdls/mod/dumpsmod.pdf>

<http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/appmdls/tenbigvr/dumps.pdf>

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

The proposed revisions in the Chesapeake Bay-Small Coastal-Eastern Shore River Basin WQMPR apply to TMDLs #3 and #4 in subsection A of 9VAC25-720-110. For TMDL #3, the proposed change includes a revision to the current WLA in regulation to be the EPA approved value from the TMDL report of 0.31 lbs/day. For TMDL #4, the proposed change includes a revision to the current WLA to be the EPA approved value from the TMDL report of 0.10 lbs/day.

The following EPA approved TMDL report applies to revisions for TMDLs #3 and #4 described above:

- TMDL# 3-4:

<http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/baycoast/millcrdo.pdf>

Proposed revisions to the WQMPRs are summarized below:

WQMPR	TMDL#	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
9VAC26-720-50	1	Muddy Creek, Dry River, and tributaries to North River	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R, B22R	Nitrate	49,389	lbs/year
	9	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	116	lbs/year
	58	Abrams Creek	<del>Opequon Watershed TMDLs for Benthic Impairments</del>	<del>Frederick and Clark</del>	<del>B09R</del>	<del>Sediment</del>	<del>1039</del>	<del>T/YR</del>
	59	Lower Opequon	<del>Opequon Watershed TMDLs for Benthic Impairments</del>	<del>Frederick and Clark</del>	<del>B09R</del>	<del>Sediment</del>	<del>1039</del>	<del>T/YR</del>
9VAC26-720-90	6	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	21,732	lbs/year
	9	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Suspended Solids	322,234	kg/year
9VAC26-720-110	3	Mill Creek	Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, VA	Northampton	D06R	Organic Carbon as TC	0.31	lbs/day
	4	Mill Creek	Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, VA	Northampton	D06R	Nutrients as TN	0.10	lbs/day

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# General Notices/Errata

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## 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; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

**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/documents/cumultab.pdf>.

**Filing Material for Publication in the *Virginia Register of Regulations*:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

## ERRATA

### REAL ESTATE BOARD

**Title of Regulation:** 18VAC135-20. Virginia Real Estate Board Licensing Regulations.

**Publication:** 31:26 VA.R. 2604-2426 August 24, 2015.

**Correction to Final Regulation:**

Page 2611, 18VAC135-20-120 B, table, second row, column 1 should read as follows: "Salesperson's or ~~associate~~ broker's license as a business entity"

Page 2611, 18VAC135-20-120 B, table, second row, column 1 should read as follows: "Salesperson's or ~~associate~~ broker's license as a business entity"

VA.R. Doc. No. R12-3250; Filed August 28, 2015, 3:39 p.m.