



VIRGINIA

REGISTER OF REGULATIONS

VOL. 32 ISS. 9

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

DECEMBER 28, 2015

TABLE OF CONTENTS

Register Information Page	1517
Publication Schedule and Deadlines	1518
Petitions for Rulemaking	1519
Notices of Intended Regulatory Action	1521
Regulations	1522
1VAC7-10. Regulations for Filing and Publishing Agency Regulations (Final)	1522
4VAC5-36. Standard Fees for Use of Department of Conservation and Recreation Facilities, Programs, and Services (Final)	1526
4VAC20-140. Pertaining to Identification of Crab Pots, Peeler Pots and Fish Pots (Final)	1569
4VAC20-620. Pertaining to Summer Flounder (Emergency)	1569
4VAC20-720. Pertaining to Restrictions on Oyster Harvest (Final)	1571
4VAC20-950. Pertaining to Black Sea Bass (Final)	1578
6VAC35-170. Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice (Proposed)	1579
9VAC20-60. Virginia Hazardous Waste Management Regulations (Final)	1585
9VAC20-81. Solid Waste Management Regulations (Final)	1591
9VAC20-85. Coal Combustion Byproduct Regulations (Final)	1633
12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (Fast-Track)	1636
14VAC5-130. Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (Final)	1653
14VAC5-270. Rules Governing Annual Financial Reporting (Final)	1659
18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (Final)	1665
18VAC85-40. Regulations Governing the Practice of Respiratory Therapists (Final)	1665
18VAC85-50. Regulations Governing the Practice of Physician Assistants (Final)	1665
18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (Final)	1665
18VAC85-101. Regulations Governing the Practice of Radiologic Technology (Final)	1665
18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (Final)	1665
18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (Final)	1665
18VAC85-130. Regulations Governing the Practice of Licensed Midwives (Final)	1665
18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (Final)	1665
18VAC85-150. Regulations Governing the Practice of Behavior Analysis (Final)	1665
18VAC85-160. Regulations Governing the Registration of Surgical Assistants and Surgical Technologists (Final)	1665
18VAC110-20. Regulations Governing the Practice of Pharmacy (Emergency)	1669
18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (Emergency)	1673
18VAC125-20. Regulations Governing the Practice of Psychology (Final)	1676
18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (Final)	1676
20VAC5-315. Regulations Governing Net Energy Metering (Final)	1677
General Notices/Errata	1685

Virginia Code Commission

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

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$246.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

PUBLICATION SCHEDULE AND DEADLINES

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

December 2015 through December 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 (Monday)	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
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 (Tuesday)	December 12, 2016
33:9	December 7, 2016	December 26, 2016

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Agency Decision

Title of Regulation: 18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists.

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

Name of Petitioner: Dr. Arthur Yin Fan.

Nature of Petitioner's Request:

1. Add word "herbs" after "food supplements."
2. Add "basic examination prescription right" to acupuncture practice scope:

"Basic examination prescription right" includes: X-ray, ultrasound, MRI, etc. image tests; Blood routine test (CBC, complete blood count), Urine routine test (Urine analysis), Stool routine test (Stool analysis), Blood Liver panel, Blood Kidney panel, etc. bio-chem tests.

3. Require only a "recommendation" for diagnostic examination.

Prior to performing acupuncture, a licensed acupuncturist shall recommend patient to obtain written documentation that the patient has received a diagnostic examination within the past six months by a licensed doctor of medicine, osteopathy, chiropractic, or podiatry acting within the scope of his practice or shall provide to the patient a written recommendation for such a diagnostic examination on a form specified by the board and signed by the patient. The original of the signed form shall be maintained in the patient's chart and a copy provided to the patient. In case patient declines, the licensed acupuncturist shall let patient sign the consent form, check the reason of decline, and perform the basic examinations, includes in basic bio-chem lab tests and image test.

Agency Decision: Request denied.

Statement of Reason for Decision: The petition was considered on October 7, 2015, by the Advisory Board on Acupuncture, which recommended that the petition be denied and that no changes be made to the regulatory language. On October 22, 2015, the Board of Medicine concurred with the recommendation. The request to add "herbs" after "food supplements" was denied because herbs are considered food supplements by the U.S. Food and Drug Administration (FDA), and there was concern that any herbs that are not food supplements and outside the oversight of the FDA may present some risk to the public. The request to add "basic examination prescription right," was denied because it would expand the scope of practice for acupuncturists to include performance or ordering of tests, and such an expansion may

be inconsistent with the statutory definition of the practice of acupuncture in § 54.1-2900 of the Code of Virginia. Additionally, ordering and interpreting tests is beyond the training received in most acupuncture education programs in the United States. The request to change the requirement for documentation of referral or a recommendation for referral was not considered because the regulatory language in 18VAC85-110-100 is specifically found in § 54.1-2956.9 of the Code of Virginia.

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

VA.R. Doc. No. R15-38; Filed December 7, 2015, 10:25 a.m.

BOARD OF PHARMACY

Initial Agency Notice

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

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

Name of Petitioner: Bill Irvin.

Nature of Petitioner's Request: To allow a pharmacy providing services to a long-term care facility to provide prescription information of Schedule VI drugs to a "back-up" pharmacy located near the facility enabling the "back-up" pharmacy to provide the first dispensing of the prescription without the act constituting a transfer of the prescription.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Register of Regulations and will be published on December 28, 2015. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov; comment will be accepted until January 27, 2016. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in Regulations Governing the Practice of Pharmacy. This matter will be on the board's agenda for its meeting scheduled for March 29, 2016.

Public Comment Deadline: January 27, 2016.

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

VA.R. Doc. No. R16-10; Filed December 9, 2015, 10:05 a.m.

Petitions for Rulemaking

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

Name of Petitioner: Laura Court.

Nature of Petitioner's Request: Prohibition against euthanizing a pet against a veterinarian's recommendation if the pet owner is trying to schedule it and the veterinarian is not recommending it.

Agency Plan for Disposition of Request: The petition will be published on December 28, 2015, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov to receive public comment ending January 27, 2016. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its first meeting after the comment period, which is tentatively scheduled for February 10, 2016.

Public Comment Deadline: January 27, 2016.

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

VA.R. Doc. No. R16-09; Filed November 30, 2015, 12:10 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider amending **16VAC25-60, Administrative Regulation for the Virginia Occupational Safety and Health Program**, which contains rules and procedures under which the Commonwealth carries out its obligations, as prescribed by Title 40.1 of the Code of Virginia and the Virginia State Plan for Occupational Safety and Health, as approved by the U.S. Department of Labor. The proposed changes are intended to accommodate statutory changes to the Code of Virginia, strengthen anti-retaliation or "whistleblower" protections for both public and private sector employees, and specify the burden of proof threshold for Virginia Occupational Safety and Health (VOSH) Program cases that go to circuit court.

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

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Public Comment Deadline: January 27, 2016.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

VA.R. Doc. No. R16-4561; Filed December 7, 2015, 11:26 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

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 Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. In compliance with the second enactment clause of Chapter 300 of the 2015 Acts of the Assembly, the purpose of the proposed action is to adopt regulations to implement the requirement of law that facilities engaged in the compounding of sterile drugs and registered with the U.S. Secretary of Health and Human Services as outsourcing facilities must hold a permit to compound or ship compounded drugs into Virginia. The proposed amendments include (i) setting fees for approval of applications and renewal of permits and registration; (ii) specifying

requirements for pharmacies that are or are not applicable to outsourcing facilities; (iii) establishing requirements for pharmacist supervision, recordkeeping, and renewal; and (iv) specifying that if a compounding pharmacy shares physical space with an outsourcing facility, the more stringent standards of good manufacturing practices are applicable.

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

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

Public Comment Deadline: January 27, 2016.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R16-4528; Filed December 7, 2015, 11:23 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 Pharmacy intends to consider amending **18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances**. In compliance with the second enactment clause of Chapter 117 of the 2015 Acts of the Assembly, the purpose of the proposed action is to adopt regulations to implement the requirement of law that practitioners of the healing arts must dispense controlled substances in permitted facilities. The proposed amendments include (i) setting fees for approval of applications, renewal of permits, and reinstatement of lapsed permits and (ii) associating requirements for inspections, physical standards for the facility, and notification to the board with the facility permit rather than the individual licensee. The only proposed change in physical requirements is specificity about the availability of hot and cold water, which must be within 20 feet of the selling and storage area and not located within an examination room or restroom.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3304.1 of the Code of Virginia.

Public Comment Deadline: January 27, 2016.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 527-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R16-4532; Filed December 7, 2015, 11:22 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

VIRGINIA CODE COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Code Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4104 of the Code of Virginia, which exempts the actions of the commission relating to the adoption of regulations respecting the nature and content of the Virginia Administrative Code, making exceptions thereto, supplementing or limiting the duties of agencies thereunder, and otherwise carrying out the purposes of Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia.

Title of Regulation: **1VAC7-10. Regulations for Filing and Publishing Agency Regulations (adding 1VAC7-10-10 through 1VAC7-10-220).**

Statutory Authority: § 2.2-4104 of the Code of Virginia.

Effective Date: January 1, 2016.

Agency Contact: Karen W. Perrine, Assistant Registrar of Regulations, 201 North Ninth Street, Richmond, VA 23219, telephone (804) 786-3591 ext. 261, or email varegs@dls.virginia.gov.

Summary:

This regulatory action replaces existing regulations applicable to state agencies when filing and publishing state agency regulations and updates or establishes requirements to include (i) eliminating the filing of an entire regulation by description in lieu of filing any text; (ii) establishing a process when only a form associated with a regulation is being updated; (iii) addressing when an agency may incorporate one of its own documents by reference; (iv) adding several general rules of construction based on similar provisions for the Code of Virginia; (v) establishing a method for computation of time periods based on publication in the Virginia Register; (vi) clarifying that the PDF version of the Virginia Register is the official version; and (vii) making other updates to reflect statutory changes, current terminology, and current practices and technology.

CHAPTER 10 REGULATIONS FOR FILING AND PUBLISHING AGENCY REGULATIONS

Part I

General Provisions

1VAC7-10-10. Definitions.

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

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

"Adopt textual matter by reference" means to include text from a document or publication in the regulation as a requirement or provision of the regulation.

"Agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth empowered by the basic laws to adopt regulations or decide cases, except as exempted by the Virginia Register Act.

"Commission" means the Virginia Code Commission.

"File" means to submit to the registrar so that the registrar receives the regulation submission package, or required or requested information.

"Registrar" means the Registrar of Regulations, or his designee, as provided in § 2.2-4102 of the Code of Virginia.

"Regulation" means any statement of general application, having the force of law and affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

"Regulation submission package" means the regulation text and other information required to be submitted by the Administrative Process Act or the Virginia Register Act.

"Regulatory Information System" means the web-enabled application of the Office of the Registrar of Regulations that is used by an agency to file regulations, regulation submission packages, and related information and used by the Office of the Registrar to publish the Virginia Register of Regulations and update the Virginia Administrative Code.

"Virginia Administrative Code" or "VAC" means the codified publication of regulations under the provisions of Chapter 15 (§ 30-145 et seq.) of Title 30 of the Code of Virginia.

"Virginia Register Act" means Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia.

"Virginia Register of Regulations" or "Register" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

1VAC7-10-20. Computation of time.

When Article 2 (§ 2.2-4006 et seq.) or 6 (§ 2.2-4031 et seq.) of the Administrative Process Act or the Virginia Register Act prescribes a time period that is contingent upon publication in the Register, whether before, after, or upon publication, the day of publication shall not be counted as part of the required time period. This section shall not apply to the comment period designated in § 2.2-4007.06 of the Code of Virginia to begin on the date of publication of the notice in the Register.

1VAC7-10-30. General rules of construction.

This section shall be used in the construction of the Virginia Administrative Code.

1. Catchlines of sections. The catchline or title of a section following the section number is intended as a description to indicate the content of the section and does not constitute part of the regulation.
2. Gender. A word used in the masculine includes the feminine and neuter.
3. Number. A word used in the singular includes the plural, and a word used in the plural includes the singular unless the context clearly indicates otherwise.
4. The word "includes" means includes, but not limited to.
5. The word "or" means any one or all of the items listed or any combination thereof.

1VAC7-10-40. Form and style of regulations.

A. The registrar shall develop a manual to advise agencies regarding the form and style of regulations and the codification of regulations.

B. The registrar shall provide procedures stipulating how agencies shall prepare and file with the registrar's office (i) regulations, (ii) regulation submission packages and other information concerning regulatory actions, or (iii) other information requested by the registrar for publication in the Virginia Register of Regulations or the Virginia Administrative Code.

C. Pursuant to § 30-150 of the Code of Virginia, the registrar may omit from publication in the Virginia Register of Regulations or inclusion in the Virginia Administrative Code (i) effective date clauses, (ii) severability clauses, (iii) purpose statements, and (iv) provisions that are nonregulatory in nature, such as a defined word, term, or phrase that is not used in the regulatory text.

D. The registrar may accept any of the items or provisions listed in subsection C of this section if the agency establishes a need to the satisfaction of the registrar.

1VAC7-10-50. Method of filing.

An agency shall file regulations, regulation submissions packages, and requested information electronically through the Regulatory Information System, commonly known as "RIS," unless specifically approved by the registrar to file through other means.

1VAC7-10-60. Internet address; contact information; consequential changes.

A. If an agency includes an Internet address in the text of a regulation, the agency is responsible for maintaining the accuracy and currency of the Internet address.

B. If an agency includes contact information in the text of a regulation, the agency is responsible for maintaining the accuracy and currency of the contact information. Contact information includes a title, mailing address, telephone number, email address, or similar information.

C. The agency must (i) promptly notify the registrar's office when an Internet address or contact information changes and (ii) provide the correct Internet address or contact information. The agency shall file a request for amendment as directed by the registrar and provide the revised text of the regulation.

D. The registrar may correct an Internet address or contact information upon request by an agency. In addition, the registrar may, in his discretion, make other consequential corrections pursuant to §§ 2.2-4102 and 30-150 of the Code of Virginia.

E. The registrar will publish notice of the correction.

1VAC7-10-70. Waiver by registrar.

The registrar may waive a provision of this chapter, provided that the waiver is consistent with applicable state law.

1VAC7-10-80. Agency regulatory coordinator.

The head of each agency, or his designee, shall appoint or designate an individual as the agency regulatory coordinator who shall coordinate the regulatory activities of the agency with the Office of the Registrar of Regulations.

Part II

Filing Regulations and Regulation Submission Packages with the Registrar

1VAC7-10-90. Filing regulations.

A. An agency must file all regulations, including materials incorporated by reference and forms used in administering the regulation, with the registrar. The regulations shall be filed through the Regulatory Information System or as directed by the registrar.

B. The agency shall file the full text of a regulation with the registrar, except text that is incorporated by reference pursuant to § 2.2-4103 of the Code of Virginia shall be filed in accordance with Part III (1VAC7-10-140 et seq.) of this chapter.

Regulations

C. No regulation, or amendment or repeal thereof, is effective until filed with the registrar pursuant to § 2.2-4103 of the Code of Virginia. If the regulation, or amendment or repeal thereof, is incomplete, the registrar may decline to publish the regulation.

1VAC7-10-100. Final agency action date; effective date; statutory authority.

A. An agency shall provide the date of final agency action and the effective date of a regulation when filing a regulation submission package for a fast-track or final regulatory action, or other equivalent action.

B. When Virginia law allows a regulation to be effective upon the filing of the regulation with the registrar, the agency ordinarily should select an effective date at least three business days after filing. This subsection does not apply to emergency regulations adopted pursuant to § 2.2-4011 of the Code of Virginia.

C. An agency shall provide the effective date and expiration date of an emergency regulation when filing the emergency regulation and accompanying regulation submission package. If the expiration date of the emergency regulation is extended, the agency shall notify the registrar within three business days of the Governor's approval of the extension.

D. Pursuant to § 2.2-4012 D of the Code of Virginia, a regulation shall contain the statutory authority for the regulation. An agency shall include in the regulatory submission package the complete citation for each statute or regulation that serves as the statutory authority, as follows:

1. For a codified Virginia statute, the citation shall be to the applicable section of the Code of Virginia.
2. For an uncodified Virginia statute, the citation shall be to the applicable chapter of the designated Act of Assembly.
3. When a regulation is required to conform with federal law or regulation, the agency shall provide a citation to the specific federal law or regulation to which conformity is required.

1VAC7-10-110. Supplemental information; exemption from Administrative Process Act.

A. Pursuant to § 2.2-4103 of the Code of Virginia, the registrar may request information in addition to the full text of a regulation for the purpose of publishing the Register and VAC.

B. An agency shall respond to a request from the registrar within three business days of the request, unless a different response time is approved by the registrar.

C. When claiming an exemption from the Administrative Process Act, an agency shall provide the specific statutory citation for the claimed exemption. Upon request of the registrar, an agency should provide confirmation from the Office of the Attorney General of the specific statute upon which the exemption is based.

1VAC7-10-120. Withdrawal of a final regulation; publication.

A. When an agency withdraws a final regulation pursuant to § 2.2-4016 of the Code of Virginia, the agency shall file a written notice of withdrawal with the registrar prior to the effective date of the regulation being withdrawn. The notice shall include:

1. The reason for the withdrawal of the regulation;
2. Agency contact information;
3. The publication information; and
4. The date of agency action.

B. The notice of withdrawal will be published in the Register.

1VAC7-10-130. Omissions and errors.

A. An agency shall notify the registrar of all omissions or errors that the agency becomes aware of in any of the information (i) submitted for publication or (ii) published in the Register or the Virginia Administrative Code.

B. The notification shall be filed with the registrar within seven business days of the date that the agency becomes aware of the omission or error.

Part III

Adoption of Textual Matter by Incorporation by Reference

1VAC7-10-140. Incorporation by reference permitted.

A. A regulation may adopt textual matter by reference to all or any part of a publication or document. For the purposes of this part, a publication and a document are interchangeable. The material in the document becomes the text of the regulation and an enforceable part of the regulation.

B. The agency must comply with the provisions of 1VAC7-10-150 and 1VAC7-10-160 when incorporating a document by reference except as provided in 1VAC7-10-170.

C. Effective January 1, 2016, an agency may not adopt prospective changes to an incorporated document by referring to a future edition or revision of the document or by using "as updated," "as may be amended," "future editions," or similar language. When a document that an agency has incorporated by reference subsequently is modified by the publisher, the agency may adopt the modification but shall do so through a regulatory action. However, when an agency incorporates by reference provisions of the Code of Virginia, the Virginia Acts of Assembly, or the Virginia Administrative Code into a regulation, future amendments to the incorporated provisions are included unless other intent is specifically stated in the regulation.

D. Effective January 1, 2016, an agency may not incorporate one of its own documents by reference unless the agency establishes that the documents or circumstances are unique and highly unusual.

1VAC7-10-150. Filing requirements.

A. When an agency adopts textual matter in a regulation by reference to a document, the agency shall file a copy of the referenced document with the regulation submission package. The document shall be filed in its entirety, unless the registrar has approved a request for the document to be filed by descriptive statement as provided in 1VAC7-10-170. The agency shall also provide information as to where copies of the incorporated publications may be procured.

B. When an agency adopts textual matter by reference to Internet content, the agency shall file the Internet content with the registrar. The agency shall file a read-only electronic copy or a printed copy of the Internet content.

1VAC7-10-160. Regulation text.

When incorporating material by reference, an agency shall include in the regulatory text (i) a statement that the document is incorporated by reference; (ii) the complete name of the document; (iii) the effective, issue, revision, or publication date; (iv) the version or edition, if any; and (v) the publisher or entity that produced the document.

1VAC7-10-170. Exemptions from filing of documents adopted or incorporated by reference; requirements.

A. The requirements established in 1VAC7-10-150 and 1VAC7-10-160 do not apply to incorporation of textual matter by reference to material published in the Federal Register or the Code of Federal Regulations, or by reference to regulations of other Virginia agencies. Where such references are made, the regulatory text must contain a citation sufficient for accurate identification of the referenced material.

1. Where the material has been published in the Code of Federal Regulations, the agency must:

- a. Include in the regulatory text the title, part or section, and the date of publication. Example: 40 CFR Part 260 (July 1, 2014 update) or 40 CFR §§ 260.1 through 260.11 (July 1, 2014 update); or
- b. Include a section listing the applicability of the cited CFR text and stating that when a federal regulation is incorporated in the chapter, that regulation shall be as it exists and has been published on a certain date.

2. Where the referenced material has not been published in the Code of Federal Regulations but appears in the Federal Register, the agency must include in the regulatory text the volume, page, and date of the Federal Register. Example: 79 FR 264, January 2, 2014.

B. The registrar may exempt an agency from the requirement of filing the incorporated document in its entirety if such filing would be impractical or cause an undue hardship on the agency. The document shall be filed as directed by the registrar.

C. The agency shall request an exemption from this filing requirement by submitting a request to the registrar. The

registrar will notify the agency whether the exemption is approved.

D. Even if exempted under subsections A and B of this section, an agency must maintain on file and make available to the public the full text of all materials adopted by reference.

Part IV
Forms

1VAC7-10-180. Filing requirements.

A. An agency shall file any form that the agency intends to incorporate into or use in administering the regulation with the proposed or final, including fast-track, regulation submission package for publication in the Register pursuant to § 2.2-4031 A of the Code of Virginia. The agency shall include on the face of the form (i) the date of issuance or revision and (ii) a form number.

B. A form is not a substitute for regulation text and may not contain requirements that are not in the Code of Virginia or VAC.

1VAC7-10-190. Exemption from filing a form.

A. An agency may request an exemption from filing a form if the form (i) may be completed only online or electronically or (ii) is not in a printable format.

B. The agency shall make a request for an exemption from filing by submitting a request to the registrar. The registrar will notify the agency whether the exemption is approved.

C. If an exemption is approved, the Internet address for the form will be included in VAC.

D. The agency shall notify the registrar in writing if an Internet address for the form changes. Under the authority of § 30-150 of the Code of Virginia, the registrar may correct the Internet address in the Virginia Administrative Code.

E. The granting of an exemption under this section does not relieve an agency from maintaining the forms on file and making the forms available to the public.

1VAC7-10-200. Modification of forms in the Virginia Administrative Code.

A. The provisions of this section apply when a form for a regulation is added, amended, or removed, provided that (i) the regulatory text is not changing and (ii) the change to the form is not making a substantive change to the regulation.

B. An agency shall file form changes as directed by the registrar.

C. Notice of revised forms will be published in the Register, and forms will be updated in the Virginia Administrative Code online on the date of publication of the volume and issue of the Register in which it appears.

1VAC7-10-210. Publication.

A. For the purposes of § 2.2-4031 of the Code of Virginia, a form shall be considered to be published in the Virginia Register of Regulations if (i) the form is published in full, (ii)

Regulations

a hyperlink to the form is published, or (iii) a notice identifying where the form may be obtained is published.

B. The registrar shall determine how a form will be published.

Part V
Virginia Register of Regulations

1VAC7-10-220. Availability and official version.

As provided in § 2.2-4031 of the Code of Virginia, the Virginia Register of Regulations is published by posting the

Register on the Virginia Code Commission's website. The portable document format (PDF) file is the official version of the Register.

VA.R. Doc. No. R16-4592; Filed December 9, 2015, 10:34 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Final Regulation

REGISTRAR'S NOTICE: The Department of Conservation and Recreation is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Department of Conservation and Recreation will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 4VAC5-36. Standard Fees for Use of Department of Conservation and Recreation Facilities, Programs, and Services (amending 4VAC5-36-50, 4VAC5-36-60, 4VAC5-36-70, 4VAC5-36-90, 4VAC5-36-100, 4VAC5-36-110, 4VAC5-36-120, 4VAC5-36-140 through 4VAC5-36-170, 4VAC5-36-200, 4VAC5-36-210).

Statutory Authority: § 10.1-104 of the Code of Virginia.

Effective Date: January 28, 2016.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

Summary:

This regulatory action establishes, removes, or increases fees for use of the Department of Conservation and Recreation facilities, programs, and services as follows: parking and launch; admission; swimming; camping; cabin; picnic shelters and event tents; amphitheater and gazebo; interpretive canoe, boat, and paddleboat; interpretive and educational tour and program; outdoor skill program; hunting; miscellaneous rental; and conference center and meeting facility.

The amendments to the State Park System standard rates and prices represent (i) revisions to maintain fair market value and demand for services; (ii) the addition of new facilities and offerings; (iii) updates to ensure consistency with the private sector; (iv) the deletion of fees that have become obsolete as there is no longer demand for a service; (v) revisions to reflect private concessionaires' new seasonal prices; and (vi) updates to ensure formatting consistency.

4VAC5-36-50. Parking and launch fees.

PARKING FEES (NONTAXABLE)

	BASE RATE		VIRGINIA RESIDENTS	
	WEEKDAYS	WEEKENDS	WEEKDAYS	WEEKENDS
Daily Parking for Passenger Vehicles: Applies to cars, trucks, vans (up to 8 passengers), and motorcycles.				
All parks unless listed below.	\$5.00	\$6.00	\$3.00	\$4.00
Chippokes, Douthat, Fairy Stone, Grayson Highlands, Kiptopeke, Mason Neck, New River Trail, Sky Meadows, Smith Mountain Lake	\$6.00	\$7.00	\$4.00	\$5.00

Regulations

All days excluding holidays and prime-season weekends: Claytor Lake, First Landing, Lake Anna, Leesylvania, Pocahontas, Raymond R. "Andy" Guest Jr. Shenandoah River, Westmoreland, Staunton River	\$6.00	\$7.00	\$4.00	\$5.00
Holidays and prime-season weekends only: Claytor Lake, First Landing, Lake Anna, Leesylvania, Pocahontas, Raymond R. "Andy" Guest Jr. Shenandoah River, Westmoreland, Staunton River	\$9.00	\$9.00	\$7.00	\$7.00
York River Croaker Landing/Pier Area (also requires boat launch fee for all vehicles)	\$5.00	\$5.00	\$3.00	\$3.00
Daily Parking for High-Occupancy Vehicles: Applies to cars, trucks, SUVs, and vans (with 9 or more passengers).				
All parks unless listed below.	\$10.00	\$10.00	\$8.00	\$8.00
Chippokes, Claytor Lake, Douthat, Fairy Stone, First Landing, Grayson Highlands, Kiptopeke, Lake Anna, Leesylvania, Mason Neck, New River Trail, Pocahontas, Raymond R. "Andy" Guest Jr. Shenandoah River, Sky Meadows, Smith Mountain Lake, Westmoreland, Staunton River	\$12.00	\$12.00	\$10.00	\$10.00
Horse Trailer Parking Fee covers up to two horses in the same trailer (also requires vehicle parking fee). All parks unless listed below.	\$3.00 per trailer	\$3.00 per trailer	\$3.00 per trailer	\$3.00 per trailer
Lake Anna	\$4.00 per trailer	\$4.00 per trailer	\$4.00 per trailer	\$4.00 per trailer
Surcharge for additional horse in same trailer beyond the first two horses.	\$2.00 per horse	\$2.00 per horse	\$2.00 per horse	\$2.00 per horse
Other Trailer Parking Fee: Applies to other trailers not covered by camping, horse trailer, and boat launch fee. (Add to daily parking fee.)	\$2.00 per trailer	\$2.00 per trailer	\$2.00 per trailer	\$2.00 per trailer
Daily Bus Parking: All Seasons. Applies to vehicles with 16 or more passenger capacity.				
All parks unless listed below.	\$10	\$10	\$10	\$10
Claytor Lake, Hungry Mother, Leesylvania, Mason Neck, New River Trail	\$12	\$12	\$12	\$12
First Landing, Kiptopeke, Lake Anna, Pocahontas, Westmoreland	\$15	\$15	\$15	\$15
Natural Area Preserve Parking Fees for any Vehicle: The department may charge these fees at any Natural Area Preserve.	\$2.00	\$2.00	\$2.00	\$2.00

Regulations

	BASE RATE		VIRGINIA RESIDENTS	
Grayson Highlands Backpacker Parking.	\$12 up to 3 days		\$10 up to 3 days	
	WEEKDAYS	WEEKENDS	WEEKDAYS	WEEKENDS
Boat Launch Fees: Required to use park boat ramps on bodies of water where motorboats are permitted. Required for all vehicles using York River Croaker Landing/Pier Area. The fee is normally added to the parking fee to create a combined park/launch payment. When a vehicle is only dropping off or retrieving a nonmotorized boat or a boater and does not pay the parking fee, the \$3.00 launch fee is required.				
Daily Launch Fees: All Seasons				
All parks unless listed below.	\$3.00	\$3.00	\$3.00	\$3.00
Claytor Lake	\$2.00	\$2.00	\$2.00	\$2.00
First Landing, Kiptopeke (with Marine Fishing License), Lake Anna	\$4.00	\$4.00	\$4.00	\$4.00
Kiptopeke (without Marine Fishing License), Leesylvania	\$8.00	\$8.00	\$8.00	\$8.00
Surcharge for second boat on same trailer: jet ski	\$2.00	\$2.00	\$2.00	\$2.00
Overnight parking at boat launch: where available	\$10	\$10	\$10	\$10
Camper's Boat Launch Fee Kiptopeke: Does not apply if camper parks trailer at campsite.	\$3.00	\$3.00	\$3.00	\$3.00
Boat Tournament Fee for Fishing Tournaments: Registration fee is based on the number of boats registered and is nonrefundable regardless of number that actually participates. This fee is in addition to the applicable daily launch fee.	No charge	\$2.00 per boat	No charge	\$2.00 per boat
Annual and Lifetime Parking Fees:				
			FEE	
Lifetime Naturally Yours Passport Plus: Lifetime admission and parking pass to all state parks, plus 10% discount on individual campsites and horse stalls; all state park merchandise, except fuel sales; equipment rentals; and shelter rentals except where these services are provided by private concessionaires.				
Age up to 40			\$333	
Age 41-45			\$300	
Age 46-50			\$266	
Age 51-55			\$233	
Age 56-61			\$200	
Senior Lifetime Naturally Yours Passport Plus (Age 62 or older): See Lifetime Naturally Yours Passport Plus above.			\$121	

Regulations

Naturally Yours Passport Plus: 12-month from date of purchase admission and parking pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	\$66
Naturally Yours Parking Passport: 12-month from date of purchase admission and parking pass to park of purchase all state parks.	\$40 <u>\$66</u>
Senior Naturally Yours Passport Plus: See Naturally Yours Passport Plus above.	\$36
Senior Naturally Yours Parking Passport: See Naturally Yours Parking Passport above.	\$24 <u>\$36</u>
Golden Disability Pass: Available to persons with disabilities as verified by U.S. Social Security Administration's (SSA) "Benefit Verification Letter." Pass remains in effect unless SSA withdraws eligibility.	No Charge
Disabled Veterans Passport Admission, parking, and launch pass to all state parks, plus 50% discount on camping fees, swimming fees, shelter rentals, and department equipment rentals when provided by the department. Where equipment rentals are provided by private concessionaires, this passport does not apply. The passport shall be issued upon request to a veteran of the armed forces of the United States with a letter from the U.S. Department of Veterans Affairs, or from the military service that discharged the veteran, certifying that such veteran has a service-connected disability rating of 100%. This passport coverage shall be valid for as long as that determination by the U.S. Department of Veterans Affairs remains in effect.	No Charge
Annual and Lifetime Park/Launch/Equestrian Fees:	
Lifetime Naturally Yours Passport Plus for Boaters and Equestrians: Lifetime admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	
Age up to 40	\$667
Age 41-45	\$600
Age 46-50	\$534
Age 51-55	\$466
Age 56-61	\$400
Senior Lifetime Naturally Yours Passport Plus for Boaters and Equestrians (Age 62 or older): See Lifetime Naturally Yours Passport Plus for Boaters and Equestrians above.	\$345
Naturally Yours Passport Plus for Boaters and Equestrians: 12-month from date of purchase admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	\$167
Park/Launch/Equestrian Passport:	
12-month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania.	\$141
12-month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase.	\$107

Regulations

12 month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna.	\$87
Senior Naturally Yours Passport Plus for Boaters and Equestrians: Annual permit for all parks including Leesylvania.	\$133
Senior Park/Launch/Equestrian Passport:	
12 month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania.	\$120
12 month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase.	\$87
12 month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna.	\$73
Buggs Island Lake Special Annual Park/Launch/Equestrian Pass: Good only at Oeoneechee and Staunton River State Parks.	\$55
Leesylvania Annual Overnight Boating/Parking Pass.	\$74
Disabled Visitor Annual Boat Launch Pass (in addition to disabled tags).	\$48
Special Event Fees:	
	EVENT FEE
Standard Special Event Parking Fee: Applies to all parks and events that utilize parking fees unless noted below.	\$10 per vehicle
Community Event Fee: May be used by any park as a condition of a Special Use Permit for a community event provided by a nonprofit group or organization or government agency or entity.	\$1.00 per vehicle
Sky Meadows: Strawberry Festival	
Advance payment	\$20 per vehicle
Day of Event	\$25 per vehicle
Sky Meadows: Extended Hours Special Event: for events that take place after park hours such as Astronomy Night, Candlelight Tours, etc.	\$5.00 per vehicle
Grayson Highlands Fall Festival. Hungry Mother Arts and Crafts Festival	\$6.00 per vehicle
Claytor Lake Arts and Crafts Festival	\$5.00 per vehicle with canned food donation on designated day \$10 per vehicle
Fairy Stone: Super Country B-99 Fun Day Event	\$1.99 per vehicle
Kiptopeke: Eastern Shore Birding Festival	Parking Fee waived to registered festival guests; otherwise standard fees apply
Smith Mountain Lake: special park/launch rate for boaters participating in fishing tournaments if the tournament sponsor has also rented the Tournament Headquarters Building.	\$5.00 per vehicle/ boat combination
Raymond R. "Andy" Guest Jr. Shenandoah River: Riverfest Event	\$8.00 per vehicle

Regulations

Standard Special Event Per Person Entrance Fee: Applies to all parks and events that utilize per person admission fees unless noted below.	\$4.00 per adult \$3.00 per child, 6 through 12 years Children under 6 free
Sailor's Creek Battlefield: Battle of Sailor's Creek Reenactment	\$10 maximum per vehicle \$50 per bus (16 passenger +)
Chippokes Plantation Steam and Gas Engine Show	\$5.00 per person Children under 12 free
Chippokes Plantation Christmas	\$5.00 per person
Chippokes Pork, Peanut & Pine Festival	\$5.00 per person Children under 13 free
Grayson Highlands Wayne C. Henderson Music Festival	\$10 per person Children under 12 free
Natural Tunnel Special Event Parking Fee	\$2.00 per person \$6.00 per vehicle
Occoneechee Pow Wow	\$5.00 per person (13 years and older) \$3.00 per child, 3 through 12 years \$3.00 Seniors (62 and over) Children under 3 free
Occoneechee Pow Wow School Groups	\$4.00 per student Teachers and Chaperones free
<u>Pocahontas: 500 attendees in increments of 500 people</u>	<u>\$500</u>

Notes on parking fees:

1. Weekend rates apply on Memorial Day, Fourth of July, and Labor Day holidays.
2. Except as otherwise noted, boat launching shall be free for up to one boat per vehicle (maximum of two vehicles) per campsite, cabin, lodge, camping cabin, travel trailer, or camping lodge.
3. Parking fees are waived for any vehicle displaying disabled license plates or temporary disabled parking identification issued by any state or the federal government. However, the fee for any additional types of trailers, the boat launch fee or the portion of any combined parking-launching fee that applies to boat launching shall be collected from such vehicles. Additionally, the price for annual passes and lifetime passes that include boat launching for qualified disabled individuals shall be calculated by subtracting the applicable parking pass fee from the park/launch pass fee.
4. Parking fees are waived for any vehicle occupied solely by students and/or teachers and/or assisting personnel participating in an official activity of a bona fide school, home school, or institution of higher learning. Parks may require that individuals in vehicles other than those marked as a school bus verify their official activity by letter from the school or approved field trip form, or in the case of home school groups, proof of home school status such as current ID card from a state or national home school organization (HEAV, HSLDA, etc.) or a copy of the letter from the school district that acknowledges "Notice of Intent" to home school for that school year.
5. Parking fees are waived for official vehicles of federal, state, and local governments while on official business; vehicles making deliveries to the park; contractor and business vehicles performing work in the park; and emergency vehicles while conducting official business, including training.
6. Parking fees are waived for park employees during time of employment, including family and household members of staff occupying staff residences, visitors to staff residences, and park volunteers entering the park to perform volunteer duties.

Regulations

7. Parking fees may be waived for vehicles conducting research or collecting activities provided such waiver is included in the language of the Research and Collection Permit as required in 4VAC5-30-50.
8. The period covered by a daily parking fee shall be midnight to midnight. Park guests utilizing overnight parking when and where available (e.g., backpackers, overnight fishermen, etc.) will be required to pay the applicable daily parking fee for each calendar day that their vehicle is in the parking lot (partial days included).
9. Annual permits shall be valid for 12 months from the date of purchase, unless otherwise noted.
10. Parking fees are waived for visitors entering the park for the sole purpose of dining at the park restaurant at Douthat and Hungry Mother State Parks.
11. Parking fees are waived at state parks for participants in Walk for Parks, Fall River Renaissance, Envirothons, March for Parks, Operation Spruce-Up Day, Stewardship Virginia, National Trails Day, and other park-sanctioned public service events as approved by the director.
12. Daily parking fees are reduced to \$1.00 for vehicles occupied by participants in fund-raising events sponsored by nonprofit organizations (Walk-A-Thons, etc.) provided the sponsor has obtained a special use permit from the park that contains provisions for the identification of participants in the event.
13. Parking fees shall be waived for persons using park roads to gain legal access to their private residence and guests to such residences and for vehicles passing through, but not stopping in, a park on a public roadway.
14. Revenue collected from special event parking and/or admission fees may be divided between the park and the event sponsor if so designated and approved in the special event permit following a determination made by the director that the revenue split is in the benefit of the Commonwealth.
15. Annual Park/Launch/Equestrian passes cover the park entrance or parking fee for up to two horses in the same horse trailer or other allowable trailers. Annual and Lifetime parking-only passes do not include trailers.
16. Parking fees are waived for service vehicles such as tow trucks when entering the park to service a visitor vehicle.
17. Parking fees are waived for visitors entering the park to attend a performance by a U.S. military band if this is a required condition for the band's performance.
18. Parking fees are included in the rental fees for meeting facilities, up to the capacity of the facility and provided that this waiver of fee is included in the rental agreement for the facility.
19. Parking fees are waived for a period of up to 15 minutes for persons entering the park to deposit materials in community recycling collection containers.
20. Parking fees are waived for vehicles occupied entirely by persons attending fee interpretive programs.
21. Annual parking passes that do not include boat launch require payment of daily launch fee if launching a boat at any park or for all vehicles using Croaker Landing/Pier Area at York River State Park.
22. Annual parking pass holders are not guaranteed the parking privileges of the pass should parking places be unavailable.
23. Parking fees are waived at Mason Neck during the park's annual Elizabeth Hartwell Eagle Festival.
24. The payment of a parking fee at one park shall be applied to parking at any state park on the same day provided that the visitor supplies evidence of the paid parking fee.
25. Annual passes are issued to the purchaser and members of the same household and may not be transferred. Improper transfer or use may result in revocation of the pass without refund.
26. Parking fees are waived at all state parks for veterans on Veterans Day, November 11, of each year.
27. Parking fees are waived at all state parks on January 1 of each year.
28. Holidays are defined as Memorial Day, Fourth of July, and Labor Day, and prime season is the Saturday immediately prior to Memorial Day through the Sunday immediately prior to Labor Day.

4VAC5-36-60. Admission fees.

ADMISSION FEES (NONTAXABLE)

	DAILY ADMISSION PER PERSON (Weekdays and Weekends unless otherwise noted.)	ANNUAL PASS (Good for 12 months from date of purchase.)
Shot Tower	Free	NA

Regulations

Southwest VA Museum	\$2.00 (Groups of 10 or more: age 6 through 12) \$4.00 (Groups of 10 or more: age 13 and up)	NA
	\$3.00 (Ages 6 through 12)	\$6.00 (age 6 through 12) per year
	\$5.00 (Age 13 and up)	\$12 (age 13 and over) per year
	NA	\$20 (family: up to 2 adults and 2 children) per year
Kiptopeke Fishing Pier Fishing Fee	\$1.00 (Age 6 through 12) \$3.00 (Age 13 and over)	NA
Kiptopeke Fishing Pier Fishing Fee: Coupon book good for 10 visits	\$20 per 10 Passes	NA
Annual Night Fishing: All parks where available (also requires parking fee)	\$15 per person per year	
Late Night Fishing: All parks where available (also requires parking fee)	\$3.00 per person per night	
		ADMISSION
Natural Tunnel Chairlift:		
Children under age 6		Free
Round trip per person		\$3.00 <u>\$4.00</u>
One-way per person		\$2.00 <u>\$3.00</u>
Group Rate Round Trip per person (10 or more)		\$2.00 <u>\$3.00</u>
Season Pass		\$20
Daily Pass (Good for unlimited trips on date of issue, good for one person only)		\$6.00
Archery Range: All parks where available; per person user fee		\$2.00 per day (over 12) \$1.00 per day (age 3 through 12) \$15 per year (any age)
Bear Creek Lake		\$5.00 per day (over 12) \$3.00 per day (age 3 through 12) \$45 per year (any age) \$3.00 per person, per day group fee (minimum of 10 participants)
Pocahontas and New River Trail Horse Show Admission		\$5.00 per person Children 12 and under free
Park Sponsored Special Event Vendor Fees. All parks where available unless otherwise noted		\$125 per merchandise vendor \$150 per food vendor
Occoneechee Pow Wow		\$150 per merchandise vendor \$175 per food vendor
Mason Neck Fall Special Event		\$50 per vendor
Caledon Art and Wine Festival		\$50 per artist vendor \$100 per winery vendor

Regulations

New River Trail	\$25 per merchandise vendor \$25 per food vendor
-----------------	---

Notes on admission/entrance fees:

1. Fees are waived at Natural Tunnel for use of the chairlift on one designated "Customer Appreciation Day" per year.
2. Museum entrance fees are waived at the Southwest Virginia Museum during the "Festival of Trees" event for members of groups who submitted trees for the display.
3. For park museums and historic features that charge an entrance fee, visitors participating in the Time Travelers program of the Virginia Association of Museums shall be charged the existing per person group rate for that facility.
4. Entrance fees are waived at the Southwest Virginia Museum on Veteran's Day, November 11, of each year.

4VAC5-36-70. Swimming fees.

SWIMMING (NONTAXABLE)

Daily Swimming Fees	WEEKDAYS	WEEKENDS
All parks with fee swimming areas unless noted.	Under age 3 Free \$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)	Under age 3 Free \$3.00 (Age 3 through 12) \$4.00 (Age 13 and over)
Staunton River, Natural Tunnel, and Westmoreland	Under age 3 Free \$3.00 (Age 3 through 12) \$4.00 (Age 13 and over)	Under age 3 Free \$4.00 (Age 3 through 12) \$5.00 (Age 13 and over)
Pocahontas	Under age 3 Free \$5.00 (Age 3 through 12) \$6.00 (Age 13 and over)	Under age 3 Free \$7.00 (Age 3 through 12) \$8.00 (Age 13 and over)
Group campers utilizing primitive group camps. All parks where available unless otherwise noted.	\$1.00 (all ages)	\$1.00 (all ages)
Pocahontas (Group Cabin Guests)	\$3.00 (all ages)	\$3.00 (all ages)
Deposit on all locker keys: Refunded when key is returned.	\$2.00 each	
Swimming Coupon Book: (Age 3 and over). All parks where available unless otherwise noted.	\$23 per 10 coupons \$44 per 20 coupons	
Staunton River, Natural Tunnel, and Westmoreland	\$31 per 10 coupons \$58 per 20 coupons	
Pocahontas	\$50 per 10 coupons \$95 \$99 per 20 coupons	
	WEEKDAYS	WEEKENDS
Group Swimming: per person (10 persons or more). All parks where available unless otherwise noted.	\$1.50 (Age 3 through 12) \$2.50 (Age 13 and over)	\$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)
Staunton River, Natural Tunnel, and Westmoreland Group Swimming (20 persons or more). Five-day advanced registration required.	\$2.50 (all ages)	\$3.50 (all ages)
Pocahontas Group Swimming (20 persons or more). Five-day <u>Seven-day</u> advanced registration required (<u>Weekdays only</u>).	\$4.00 (all ages)	\$5.00 (all ages)
Season Swimming Permit: All parks where available unless otherwise noted.	\$44 (Age 3 through 12) \$55 (Age 13 and over)	

Regulations

Staunton River, Natural Tunnel, and Westmoreland	\$55 (Age 3 through 12) \$66 (Age 13 and over)
Pocahontas	\$66 (Age 3 through 12) \$77 (Age 13 and over)
After-Hours Exclusive Use of Pool or Swimming Area: All parks where available. Requires prior reservation. Rental period of approximately 1-2 hours, depending upon operating schedule and amount of available daylight. Cancellation fee charged if reservation is canceled less than 3 days before the date of event unless cancellation is for inclement weather or canceled by the park.	\$125 (up to 25 persons) \$150 (26 to 50 persons) \$200 (51 to 75 persons) \$225 (76 to 100 persons) \$35 to open food concessions with rental \$50 cancellation fee
Swimming lessons. All parks where available unless otherwise noted. Package of eight 45-minute lessons (includes parking)	\$30 per person \$25 per person if two or more from same family

Notes on swimming fees:

1. Nonswimming adults in street clothes admitted to swimming areas free when supervising children age 12 and under.
2. Rain check Policy for Swimming: All state parks will issue a rain check, good for a period of 12 months from the date of issue, to any paying customer (does not apply to free swimming vouchers) if the swimming area is forced to close for 40 minutes or more due to inclement weather. Rain checks may be issued only to patrons present at the swimming area at the time of closure.
3. A full refund is available for a group reservation only if the park or swimming area contractor is notified three days in advance of the time of the reservation. In the event that the group is unable to complete their reservation due to inclement weather, rain checks will be issued to the individual members of the group in the same manner as other park patrons.
4. All Season Swimming Permits include parking during the swimming season only.
5. Weekend rates apply on Memorial Day, Fourth of July, and Labor Day holidays.

4VAC5-36-90. Camping fees.

CAMPING FEES (TAXABLE, Price here does not include tax)

	BASE RATE	VIRGINIA RESIDENTS
Camping fees include free use of dump station and free swimming and boat launching for members of the camping party during their stay at the property, when and where available, except that at Kiptopeke State Park guest is subject to applicable launch fee unless the trailer is returned to the campsite immediately after launching. The number of campers per campsite is limited to six individuals except when all campers are members of the same household.	ALL SEASONS (Per site fees)	
Standard Sites: No hookup; access to bathhouse and restrooms.		
All parks with standard sites unless noted below.	\$24 per night	\$20 per night
Bear Creek and Occoneechee Waterfront Sites.	\$31 per night	\$26 per night
Kiptopeke, First Landing, Lake Anna.	\$28 per night	\$24 per night
Douthat.	\$31 per night	\$26 per night
Water and Electric Sites: Access to water and electric hookups; access to bathhouse and restrooms.		
All parks where available unless noted below, including Chippokes Campground A.	\$35 per night	\$30 per night

Regulations

Occoneechee Waterfront Sites and Chippokes Campground B.	\$39 per night	\$33 per night
Kiptopeke, First Landing, Lake Anna, Shenandoah River.	\$41 per night	\$35 per night
Water, Electric, and Sewage Sites: Access to water, electric, and sewage hookups; access to bathhouse and restrooms.		
Kiptopeke.	\$47 per night	\$40 per night
Hungry Mother.	\$39 per night	\$33 per night
Primitive Camping Sites: primitive restrooms; no showers.		
All parks where available unless noted below.	\$13 per night	\$11 per night
James River.	\$15 per night	\$13 per night
Grayson Highlands: Sites with electricity (November, March, and April when bathhouses are closed).	\$18 per night	\$15 per night
Occoneechee (persons renting the entire equestrian campground will receive a 10% discount on the combined price for sites and stalls, including transaction fees).	\$18 per night	\$15 per night
New River Trail primitive camping sites at Foster Falls and Cliffview, primitive sites at Sky Meadows.	\$18 per night	\$15 per night
New River Trail Water Trail Camping (no potable water).	\$14 per night	\$12 per night
Fairy Stone Equestrian Campsite.	\$24 per night	\$20 per night
Horse Camping		
Horse Stall Fee.	\$7.00 per night (outside stalls) \$9.00 per night (inside stall)	\$7.00 per night (outside stalls) \$9.00 per night (inside stall)
Standard Rates		
Primitive Group Camp Rental (camping in special primitive group areas). All parks where available.		
Up to 20 campers.	\$72 for entire area per night	\$61 for entire area per night
Up to 30 campers.	\$107 for entire area per night	\$91 for entire area per night
31 or more campers, up to maximum capacity of group camp area.	\$144 for entire area per night	\$122 for entire area per night
Grayson Highlands: Primitive camping is available in the stable area November, March, and April.	\$18 per site per night	\$15 per site per night
Special Group Camping Areas:		
Fairy Stone Group Campsites.	\$24 per night	\$20 per site per night
Chippokes Plantation: All 4 Sites; Group Rate; 24 persons maximum. Natural Tunnel Group Area. Grayson Highlands Group Area. Shenandoah River Group Area.	\$79 per night (only available as entire group area)	\$67 per night (only available as entire group area)

Regulations

Sky Meadows Group Area.		
Sky Meadows 6-Site Group Area.	\$118 per night	\$100 per night
Westmoreland Group Area.	\$144 per night	\$122 per night
Standard Buddy Sites: All parks where available unless noted below.	\$92 per night	\$78 per night
Pocahontas Group Sites. Holliday Lake Group Camp.	\$114 per night	\$97 per night
Sky Meadows Buddy Sites.	\$41 per night	\$35 per night
Pocahontas Group Camp.	\$95 per night	\$81 per night
James River Equestrian Group Area Campground (persons renting the entire equestrian campground will receive a 10% discount on the combined price for sites and stalls, including transaction fees).	\$254 per night	\$216 per night
Camping – Other Fees		
Camping Site Transaction Fee: Applies to each purchase transaction of a camping visit to a campsite (i.e., one transaction fee per camping visit per site no matter how many nights). Applies to Internet, reservation center, and walk up visits.	\$5.00	
<u>Site Specific Reservation Fee: Applies to a site designated as a "Reservable Site."</u>	<u>\$3.00 per night</u>	
Dump Station Fee: Free to state park campers during stay.	\$10 per use	
Camping Reservation Cancellation Fee Individual Site.	\$10 per reservation	
Camping Reservation Cancellation Fee Group Sites.	\$30 per reservation	
Camping Reservation Transfer Fee.	\$5.00 per reservation	
Douthat: Whispering Pines and Beaverdam Reservation.	\$33 per night	
Hiker or noncamper Shower Fee at Virginia State Parks.	\$5.00 per person	
Sky Meadows: Wheelbarrow Rental Fee for hike-in campers.	\$10 per wheelbarrow rented	

Notes on camping:

1. Check-out time is 3 p.m. and check-in time is 4 p.m.
2. Camping Transfer/Cancellation/Early Departure Policy.
 - a. Any fees to be refunded are calculated less the applicable cancellation ~~fee(s)~~ fee or fees.
 - b. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.
 - c. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.
 - d. A customer may move a camping reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to 4 p.m. on the scheduled date of arrival. If the reservation center will not be open again prior to the start date of the reservation, transferring is not an option. There is a fee to transfer.
 - e. A camping reservation may be canceled until 4 p.m. on the scheduled date of arrival but campers will be charged the cancellation fee. This cancellation fee applies to each separate reservation made.
 - f. Once the 4 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure.
 - g. After the check-in time is reached, the first night is considered used whether the site is occupied or not.
 - h. There is a one-night penalty, deducted from any amount available for refund, for early departure.

Regulations

3. Campers are allowed two vehicles per campsite per day without charge of a parking fee. Additional vehicles, beyond two, must pay the prevailing parking fee in effect at the park for each day that the ~~vehicle(s)~~ vehicle or vehicles are parked in the park. The number of vehicles allowed to park on the campsite varies according to site design and size of other camping equipment. No vehicles shall park on a campsite in other than the designated area for this purpose. Camper vehicles that do not fit on the site, whether or not they require the special camper vehicle fee, must park in the designated overflow parking area.

4. Each member of the camping party, except in primitive group areas, up to the maximum allowable per site, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of camping. Passes are only issued during days and seasons of operation of the swimming facility and are only good during the member's registered stay.

5. Damage to campsites, not considered normal wear and tear, will be billed to the person registered for the campsite on an itemized cost basis.

6. At honor collection sites, the stated camping fees on this list shall be considered as having tax included. Honor collection is defined as the payment of the camping fee on-site at the park at a nonelectronic collection point at which the payment is placed in a box or safe provided for that purpose.

7. Horse stalls may only be rented in conjunction with the rental of a campsite in the equestrian campground and a person must occupy the campsite. All horses brought to the park by overnight guests must be kept in rental stalls except in primitive equestrian areas at New River Trail and James River State Parks.

4VAC5-36-100. Cabin fees.

CABIN RENTALS (TAXABLE, Price here does not include tax)

	BASE RATE		VIRGINIA RESIDENTS	
PRIME SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	\$98	\$586	\$83	\$498
One Bedroom, Standard	\$115	\$688	\$98	\$585
One Bedroom, Waterfront or Water View	\$127	\$761	\$108	\$647
One Bedroom, Chippokes Plantation	\$134	\$800	\$113	\$680
Two Bedroom, Standard, all parks where available unless noted below	\$133	\$794	\$112	\$675
Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, Shenandoah River, Natural Tunnel	\$139	\$833	\$119	\$708
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	\$146	\$874	\$124	\$743
Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna	\$153	\$915	\$130	\$778
Two Bedroom, First Landing, Chippokes Plantation	\$154	\$922	\$131	\$784
Three Bedroom, Standard, all parks where available unless noted below	\$150	\$900	\$128	\$765
Three Bedroom, Chippokes Plantation, Bel Air Guest House	\$175	\$1,048	\$149	\$891

Regulations

Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, Shenandoah River, Natural Tunnel, Douthat	\$173	\$1,036	\$147	\$881
Hill Lodge (Twin Lakes)	\$195	\$1,169	\$166	\$994
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	\$351	\$2,104	\$298	\$1,788
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	\$414	\$2,479	\$352	\$2,107
Six-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, Shenandoah River, Natural Tunnel, Douthat	\$434	\$2,599	\$369	\$2,209
MID-SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	\$88	\$527	\$75	\$448
One Bedroom, Standard	\$103	\$619	\$88	\$526
One Bedroom, Waterfront or Water View	\$115	\$686	\$98	\$583
One Bedroom, Chippokes Plantation	\$120	\$720	\$102	\$612
Two Bedroom, Standard, all parks where available unless noted below	\$119	\$714	\$102	\$607
Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, Shenandoah River, Natural Tunnel	\$125	\$748	\$106	\$636
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	\$131	\$787	\$111	\$669
Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna	\$138	\$824	\$117	\$700
Two Bedroom, First Landing, Chippokes Plantation	\$139	\$832	\$118	\$707
Three Bedroom, Standard, all parks where available unless noted below	\$135	\$811	\$116	\$689
Three Bedroom, Chippokes Plantation, Bel Air Guest House	\$158	\$943	\$134	\$802
Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, Shenandoah River, Natural Tunnel, Douthat	\$156	\$933	\$132	\$793
Hill Lodge (Twin Lakes)	\$176	\$1,053	\$149	\$895
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	\$316	\$1,894	\$269	\$1,610
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	\$373	\$2,231	\$317	\$1,896

Regulations

Six-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, Shenandoah River, Natural Tunnel, Douthat	\$391	\$2,339	\$332	\$1,988
OFF-SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	\$73	\$440	\$62	\$374
One Bedroom, Standard	\$86	\$515	\$74	\$438
One Bedroom, Waterfront or Water View	\$95	\$571	\$81	\$485
One Bedroom, Chippokes Plantation	\$100	\$600	\$85	\$510
Two Bedroom, Standard, all parks where available unless noted below	\$99	\$595	\$84	\$506
Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, Shenandoah River, Natural Tunnel	\$104	\$624	\$88	\$530
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	\$110	\$656	\$93	\$558
Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna	\$115	\$687	\$98	\$584
Two Bedroom, First Landing, Chippokes Plantation	\$116	\$693	\$99	\$589
Three Bedroom, Standard, all parks where available unless noted below	\$113	\$674	\$96	\$573
Three Bedroom, Chippokes Plantation, Bel Air Guest House	\$131	\$786	\$111	\$668
Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, Shenandoah River, Natural Tunnel, Douthat	\$130	\$776	\$110	\$660
Hill Lodge (Twin Lakes)	\$147	\$878	\$125	\$746
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	\$263	\$1,578	\$224	\$1,341
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	\$310	\$1,859	\$264	\$1,580
Six-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, Shenandoah River, Natural Tunnel, Douthat	\$326	\$1,949	\$276	\$1,657
CAMPING CABINS, CAMPING LODGES, YURTS, AND TRAVEL TRAILERS				
Camping cabins, camping lodges, yurts, and travel trailers located in campgrounds and operated in conjunction with the campground.	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Camping Cabin rental rate: (2-night minimum rental required)	\$55	NA	\$47	NA

Regulations

Yurt rental: Standard fee	\$120	\$719	\$101	\$611
Travel Trailers: 25-30' Standard fee	\$120	\$719	\$101	\$611
Camping Lodges: Standard fee	\$109	\$653	\$92	\$555
OTHER CABIN FEES AND CHARGES				
Additional Cabin Fees:				
Cabin Transaction Fee: Applies to each purchase transaction of a visit to a cabin (i.e., one transaction fee per cabin visit per site no matter how many nights). Applies to Internet, reservation center, and walk up visits.	\$5.00			
Additional Bed Rentals	\$3.00 per rental night			
Additional linens at all parks unless otherwise noted. One set of linens is 1 sheet set (1 fitted sheet, 1 flat sheet, and 1 pillowcase) or 1 towel set (1 bath towel, 1 hand towel, and 1 washcloth or 2 bath towels and 1 washcloth)	\$2.00 per sheet set \$2.00 per towel set			
Cabin Cancellation Fee: Applies to all lodging in this section except as described below in "Lodge Cancellation Fee"	\$30 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy			
Cabin Transfer Fee: Applies to all lodging in this section except as described below in "Lodge Transfer Fee"	\$20 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy			
Lodge Cancellation Fee: Applies to Fairy Stone Lodge, Douthat Lodge, Hungry Mother Lodge, Potomac River Retreat, and all 6-bedroom park lodges	\$60 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy			
Lodge Transfer Fee: Applies to Fairy Stone Lodge, Douthat Lodge, Hungry Mother Lodge, Potomac River Retreat, and all 6-bedroom park lodges	\$50 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy			
<u>Camping Cabin Cancellation Fee</u>	<u>\$10 per cancellation period</u>			
<u>Camping Cabin Transfer Fee</u>	<u>\$5.00 per cancellation period</u>			
Pet Fee (this fee does not apply to service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia).	\$10 per pet per night			
Pocahontas Group Cabins	DAY		WEEK	
Algonquian Ecology Camp Dining Hall: 8 a.m. to 10 p.m. for day use, 24-hour use when rented with cabins	\$236		\$1,181	
Swift Creek Dining Hall: 8 a.m. to 10 p.m. for day use, 24-hour use when rented with cabins	\$275		\$1,375	
Dining Hall: fee for partial day rental when associated with full day rental as noted above	\$140		NA	
Cabin Units: per unit, per night	\$112		\$560	
Complete Algonquian Ecology Camp (4 units: 112 capacity) with Dining Hall	\$460		\$2,300	
Complete Swift Creek Camp (2 units: 56 capacity) with Dining Hall	\$375		\$1,875	
Refundable security deposit charged for all reservations	\$100 per reservation			

Regulations

Notes on Pocahontas Group Cabins:

Pocahontas Group Cabins: Reservations of \$200 or more require a 25% prepayment, due within 14 days of making the reservation. Balance of fees is due 60 days prior to the reservation start date. Reservations of less than \$200 require payment in full to confirm the reservation, due within 14 days of making the reservation. Cancellations made 30 days or more prior to the first day of the reservation shall receive a refund less a \$30 per unit cancellation fee. Cancellations made less than 30 days prior to the first date of the reservation receive no refund unless the units are subsequently rented, in which case the refund shall be full price minus \$30 per unit.

Notes on cabins and lodges:

1. Seasonal cabin and lodge rates shall be in effect according to the following schedule, except for camping cabins, camping lodges, yurts, and travel trailers, which operate on the same schedule and season as the campground at that particular park. In the event that a weekly rental period includes two seasonal rates, the higher rate will apply for the entire weekly rental period.

PARK	PRIME SEASON	MID-SEASON	OFF-SEASON
Bear Creek Lake Belle Isle Chippokes Plantation First Landing Kiptopeke Lake Anna Occoneechee Southwest Virginia Museum Staunton River Twin Lakes Westmoreland	Friday night prior to Memorial Day through the Sunday night prior to Labor Day	April 1 through the Thursday night prior to Memorial Day, and Labor Day through November 30	December 1 through March 31
Claytor Lake Douthat Fairy Stone Hungry Mother James River Smith Mountain Lake Shenandoah River Natural Tunnel	Friday night prior to Memorial Day through the Sunday night prior to Labor Day, and October 1 through October 31	April 1 through the Thursday night prior to Memorial Day, and Labor Day through September 30, and November 1 through November 30	December 1 through March 31

2. All dates refer to the night of the stay; checkout time is 10 a.m. and check-in time is 3 p.m.

3. The following holiday periods are charged prime season weekend rates: the Wednesday, Thursday, Friday, and Saturday period that includes Thanksgiving Day; Christmas Eve and Christmas Day; and New Year's Eve and New Year's Day.

4. Cabins and lodges require a two-night minimum stay.

5. Cabin guests are allowed two vehicles for a one or two bedroom cabin, and three vehicles for a three bedroom cabin per day without charge of parking fee. Additional vehicles must pay the prevailing parking fee for each day that the vehicle is parked in the park. The number of vehicles allowed to park at the cabin varies according to site design and other factors. All vehicles must park in designated parking areas, either at the cabin or in the designated overflow parking area.

6. Six-bedroom lodge guests are allowed six vehicles per lodge per day without charge of parking fee. Additional vehicles must pay the prevailing vehicle parking fee for each day the vehicle is parked in the park. The number of vehicles allowed to park at the lodge varies according to site design and other factors. All vehicles must park in designated parking areas, either at the lodge or in the designated overflow parking area.

7. Damage to cabins and other rental units under this section, not considered normal wear and tear, may be billed to the person registered for the cabin or rental unit on an itemized cost basis.

8. Each member of the rental party, up to the maximum allowable for the rented unit, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of rental. Passes are only issued during days and seasons of operation of the swimming facility and are only good during the member's registered stay.

9. Employees of DCR and the members of committees and boards of DCR shall receive a discount of 50% on applicable cabin or lodge rates for any season, when the rental of such cabins or lodge is in connection with the official business of DCR or its committees or boards.

Notes on cabin or lodge transfer/cancellation/early departure policy:

1. Any fees to be refunded are calculated less the applicable cancellation fees listed in this section.
2. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.
3. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.
4. A customer may move a cabin or lodge reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to 5 p.m. on the Monday before the scheduled date of arrival. There is an associated transfer fee. After 5 p.m. on the Monday before the scheduled date of arrival, cancellation is the only option (see note 5 below) except that transfers to a different cabin or lodge for the same rental nights shall be allowed, subject to availability, up to the check-in time for the original reservation.
5. Once the reservation is paid for, a customer may cancel in full with payment of the required cancellation fee if there are more than 30 days before the scheduled arrival date. As long as the reservation is not during the one-week minimum stay requirement period, the length of stay may be reduced without a fee as long as there are more than 30 days before the scheduled arrival. However, the length of stay cannot be less than two nights. During the 30 days prior to the scheduled arrival date, the cancellation fee is charged for each night canceled or reduced from the stay. Once the official check-in time on the scheduled arrival date is reached, the cancellation policy is no longer in effect and the early departure policy applies.
6. Once the 3 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure. There is a two-night minimum charge associated with all cabin, lodge, camping cabin, travel trailer, and camping lodge stays. Reducing the total nights stayed will incur a \$20 per night fee. If the original reservation was for a week, the weekly discount will no longer be valid and the fee will be adjusted to the nightly rate before any refunds are calculated.

4VAC5-36-110. Picnic shelters and event tents fees.

PICNIC SHELTERS AND EVENT TENTS (TAXABLE)	
The shelter rental periods shall be from park opening until park closing, unless otherwise specified.	DAY
Standard Small Picnic Shelter Rental Fee: Bear Creek Lake, Belle Isle, Caledon, Chippokes Plantation, Claytor Lake, Douthat, Holliday Lake, Hungry Mother (half shelter), Lake Anna, Natural Tunnel, New River Trail, Occoneechee, Pocahontas, Smith Mountain Lake, Twin Lakes, Westmoreland, York River, and all other small park picnic shelters.	\$60
Standard Large Picnic Shelter Rental Fee: Belle Isle, Chippokes Plantation, Claytor Lake, Douthat Fairy Stone, First Landing, Grayson Highlands, Hungry Mother (full shelter), James River, Kiptopeke, Lake Anna, Natural Tunnel, Occoneechee, Pocahontas, Powhatan, Shenandoah River, Smith Mountain Lake (Pavilion), Staunton River, Staunton River Battlefield, Twin Lakes, Westmoreland, York River, and all other large park picnic shelters.	\$90
Sky Meadows: Covered Group Picnic Area Shelter Rental (up to 60 people)	\$130
Sky Meadows: Group Picnic Pad (up to 60 people)	\$64
Leesylvania Shelter, Shenandoah River Large Group Shelter Rental	\$130
Leesylvania: Lee's Landing Picnic Area Rental	\$64
Leesylvania: Lee's Landing Picnic Shelter	\$400
With 15 tables and 100 chairs	\$820
Mason Neck Picnic Area Rental	
Area rental without tent shelter	\$64

Regulations

Area activity fee (for use of picnic area for "special use" without tent shelter that requires special set-up or clean-up)	\$35
Area rental with tent shelter (seasonably available)	\$130
Chippokes Plantation Conference Shelter (with kitchen)	\$315 per function
Chippokes Plantation Conference Shelter kitchen cleaning fee (only applicable is kitchen is used and not cleaned in accordance with rental agreement)	\$150 per function
Mini-Shelter: All parks where available unless otherwise noted.	\$21
Event Tent Rental: Full day in-park rental only. Price includes set up and take down.	
Standard fee: All parks where available unless otherwise noted.	\$0.45 \$0.55 per square foot
Chippokes Plantation, Douthat, Kiptopeke, Lake Anna, Pocahontas, Shenandoah River, Smith Mountain Lake, York River	\$0.55 per square foot
False Cape, First Landing, Leesylvania, Mason Neck	\$0.60 per square foot
Standard 10' x 10' event tent	\$25 per day
Westmoreland, Caledon Natural Area: 20' x 40' tent with tables and chairs	\$400 per day
Wilderness Road: 20' x 40'	\$350 per day
White String Lights for Tent	\$0.80 per foot
Side Panels for Tent	\$1.50 per foot
Standard Shelter Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within 14 days prior to date.	\$10
Standard Shelter Transfer Fee: Shelter reservation may be transferred if the change is made through the reservations center prior to scheduled use.	\$5.00

4VAC5-36-120. Amphitheater and gazebo fees.

AMPHITHEATERS AND GAZEBOS (TAXABLE, Price here does not include tax)

Amphitheater or Gazebo Rental Fee: The amphitheater or gazebo rental periods shall be from park opening until park closing unless otherwise specified.	DAY
Leesylvania, Fairy Stone, Staunton River, Kiptopeke, and all other amphitheaters and gazebos unless noted below.	\$32 <u>\$50</u>
Hungry Mother, Occoneechee, Westmoreland, New River Trail	\$53 <u>\$60</u>
Smith Mountain Lake, James River	\$74 <u>\$80</u>
<u>James River</u> , Natural Tunnel Gazebo at Cove Ridge.	\$100
Claytor Lake (gazebo)	\$96
First Landing (gazebo at Chesapeake Bay Center): rental period is 3 hours	\$84 per 3 hours
York River and Douthat Amphitheater.	\$105
Shenandoah River Overlook Rental	\$16 per half-day \$32 per full-day
Natural Tunnel and First Landing Amphitheaters: Private group or company rate	\$315

Regulations

Natural Tunnel and First Landing Amphitheaters: Educational group.	\$158
Natural Tunnel Amphitheater Wedding Package: Three consecutive half-day rental periods.	\$420 per package
First Landing: Courtyard at Chesapeake Bay Center; includes amphitheater and gazebo.	\$788
First Landing: Additional hourly charge for hours beyond 10 p.m. for gazebo.	\$11 per hour
First Landing: Additional hourly charge for hours beyond 10 p.m. for Courtyard.	\$53 per hour
Fishing Tournament Staging. All parks where available.	\$26
Pocahontas Amphitheater Area: Without Heritage Center. Includes Amphitheater, Exhibit Area, Restrooms and use of sound system. <u>Up to 1,000 attendees. See special event fees for additional attendees.</u>	\$630 <u>\$650</u>
Pocahontas Amphitheater Area Plus Heritage Center.	\$840 <u>\$850</u>
Parking Attendant (per attendant).	\$12 per hour
Law Enforcement Officer (per officer).	\$28 per hour
Natural Tunnel: Rental of Observation Deck at mouth of tunnel for dinner parties. Includes use of chairlift for transportation of guests and supplies and set-up/take-down of tables and chairs.	\$300 per 4 hours
Natural Tunnel Amphitheater Concession Building.	\$42
Natural Tunnel: Sound System Rental.	\$32
Natural Tunnel: Portable Dance Floor Rental.	\$100
Standard Amphitheater/Gazebo Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within 14 days prior to date.	\$11
All parks unless listed below.	\$11
Pocahontas Amphitheater or First Landing Courtyard.	\$105
Wilderness Road Amphitheater.	\$90

4VAC5-36-140. Interpretive canoe, boat, and paddleboat fees.

INTERPRETIVE CANOE, BOAT, AND PADDLEBOAT PROGRAMS (NONTAXABLE)

Interpretive Canoe, Boat, and Paddleboat Tours:	FEE
Environmental Education Group Canoe Tour: Available only to bona fide educational groups. Requires previous reservation and arrangements. Minimum 10 persons. Mason Neck and all other parks where available unless otherwise noted.	\$3.00 per person
Standard Canoe Interpretive Tour Fee for Individuals: Applies to canoe, rowboat, or paddleboat tours. Child riding as third passenger, where allowed, is free.	
Individuals at all parks unless noted below.	\$5.00 per person
Individuals at Leesylvania, York River, Pocahontas, Kiptopeke, Chippokes.	\$9.00 per person
<u>Individuals at James River.</u>	<u>\$10 per person</u>
Individuals at Mason Neck.	\$15 per person

Regulations

Individuals at Natural Tunnel.	\$15 per person
Individuals at False Cape: Back Bay Interpretive Tour.	\$16 per person
Family Groups at all parks unless noted below. Minimum 4 paying customers.	\$4.00 per person
Family Groups at Leesylvania, Pocahontas, York River, Kiptopeke. Minimum 4 paying customers.	\$6.00 per person
Family Groups at Mason Neck.	\$9.00 per person
Group rate at Natural Tunnel (minimum 10 paying customers).	\$12 per person
Sunset, Moonlight, Dawn, or Extended Canoe Interpretive Tour Fee for Individuals: Applies to canoe, rowboat, or paddleboat tours.	
All parks where offered unless noted below.	\$6.00 per person
Sunset, Dawn, Extended Canoe Interpretive Tour Fee for Individuals: Leesylvania, York River, Chippokes, Kiptopeke.	\$11 per person
Sunset, Dawn, Extended Canoe Interpretive Tour Fee for Individuals: New River Trail, Mason Neck.	\$15 per person
Extended Canoe Interpretive Tour Fee for Individuals: Grayson Highlands, Hungry Mother, New River Trail, Natural Tunnel.	\$25 per person
Moonlight/Night Canoe Interpretive Tour Fee for Individuals: Leesylvania, York River, Chippokes.	\$13 per person
Moonlight/Night Canoe Interpretive Tour Fee for Individuals: Mason Neck.	\$20 per person
Sunset, Moonlight, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: Applies to canoe, rowboat, or paddleboat tours. Minimum 4 paying customers.	
All parks where offered unless otherwise noted.	\$5.00 per person
Sunset, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: Leesylvania, York River, Chippokes. Requires 4 or more paying customers.	\$7.00 per person
Sunset, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: New River Trail, Mason Neck.	\$11 per person
Moonlight/Night Canoe Interpretive Tour Fee for Family Groups: Leesylvania, York River. Requires 4 or more paying customers.	\$8.00 per person
Extended Canoe Interpretive Tour Fee for Family Groups: Grayson Highlands.	\$25 per person
Bear Creek Lake: Willis River Interpretive Canoe Tour	
Short Trip.	\$8.00 per person
Long Trip.	\$10 per person
Natural Tunnel Clinch River:	
Half-Day Trip Group Rate. Requires 10 or more paying customers.	\$12 per person
Full-Day Trip. Group Rate. Requires 10 or more paying customers.	\$20 per person
Half-Day Trip. Individuals.	\$15 per person
Full-Day Trip. Individuals.	\$25 per person

Regulations

Overnight Trip. Individuals.	\$45 per person
Short Trip. Clinchport to Copper Creek	\$7.00 per person
False Cape: Day Kayak Paddle/Catered Lunch	\$60 per person
False Cape: Back Bay by Water	\$45 per person
Interpretive Kayak Tour, Solo Kayak: All parks where available unless otherwise noted.	\$16 per person
Interpretive Kayak Tour, Solo Kayak: Natural Tunnel	
Settlers Run	\$7.00 per person
Boones Run	\$15 per person
Long Hunters Run	\$25 per person
Interpretive Kayak Tour, Solo Kayak: Westmoreland, Caledon	\$19 per person
Interpretive Kayak Tour, Solo Kayak: False Cape	\$20 per person
Interpretive Kayak Tour, Tandem Kayak: All parks where available unless otherwise noted.	\$22 per kayak
Interpretive Kayak Tour, Tandem Kayak: Westmoreland, Caledon	\$25 per kayak
Tag-along Fee: Participant provides his own canoe or kayak. Not available at all sites.	\$10 per person
Interpretive Stand-Up Paddle Board Tour: Westmoreland	\$25 per person
Interpretive Pontoon Boat Tour: All parks where available.	\$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)
Interpretive Tube Tour: all parks where available unless otherwise noted.	\$6.00 per person
Lake Excursion and Ecology Tour	
Claytor Lake: 2-hour tour includes grilled dinner and swimming. (Friday and Saturday only)	\$20 (Age 13 and over) \$12 (Age 3 through 12)
Rental of Entire Boat (Exclusive Use): All parks where available	\$60 per tour

Notes on interpretive canoe, boat, and paddleboat programs:

1. Cancellation Policy for group reservations: Guest must cancel four days prior to the tour date in order to receive a refund. Any guest canceling less than four days before the start of the reservation will not be eligible for a refund. A one-time \$10 cancellation fee will apply per reservation regardless of number of boats reserved. In the event of inclement weather where the park must cancel, the guest will be offered either a complete refund or reservation transfer to another date.

2. Additional costs for supplies and materials may apply.

4VAC5-36-150. Interpretive and educational tours and program fees.

INTERPRETIVE AND EDUCATIONAL TOURS AND PROGRAMS (NONTAXABLE)

Interpretive and Educational Tours and Programs		
PARK	PROGRAM	FEE
All parks unless otherwise noted:	Standard Interpretive Program or Tour: such as typical staff led nature hikes or campfire programs.	Free

Regulations

	Fee-based Interpretive Program or Tour: (Fee only applies to programs or tours that have unusual costs or require special equipment, personnel, marketing, or other special arrangements).	\$2.00 per person \$6.00 per family
	Fee-based Night Hike or Evening Program or Evening Tour: (Fee only applies to programs or tours that have unusual costs or require special equipment, personnel, marketing, or other special arrangements).	\$3.00 per person \$8.00 per family
	Standard Workshop Fee	\$5.00 per child (Age 12 and under) \$15 per adult (Age 13 and over)
	Standard Wagon Ride Program	\$3.00 per person \$8.00 per family \$25 exclusive group
	Extended or Special Event Wagon Ride Program	\$4.00 per person \$10 per family \$75 exclusive group booking
	Park Outreach Program: Price per park staff member conducting program	\$10 for under 2 hours \$25 for 2 to 3 hours \$50 for 4 hours plus
	Standard Junior Ranger Program: 4-day program. All parks unless noted below.	\$10 full program \$3.00 per day
	Haunted Hike	\$1.00 (Age 3 through 12) \$3.00 (Age 13 and over)
	Geo Caching or Orienteering Interpretive Program	\$3.00 per person \$8.00 per family \$25 per group
	Nature-Themed Birthday Party: Includes a nature talk, hike, games, songs, and time in the Nature Center for gifts and cakes. At least one staff member is present to conduct activities.	\$96 per hour plus materials cost for 12 children \$8.00 per additional child
	Standard Women's Wellness Weekend Program	\$149 per person
Grayson Highlands	Junior Ranger Program	\$5.00 per person per day
	Hayrides	\$2.00 per child \$3.00 per adult
	Adventure Rangers Interpretive Program	\$10 per person per day
	Make a Birdhouse Program	\$5.00 per person
	Make Your Own Hiking Stick Program	\$3.00 per person
	2-Day Photography Class	\$35 per person
Twin Lakes	Haunted Hike	\$3.00 (Age 3 through 12) \$5.00 (Age 13 and over)

Regulations

Occoneechee, Caledon	Individual interpretive program pass: (Allows admission for 1 person to 4 interpretive programs valued at \$3.00 or less)	\$6.00 per pass
	Family interpretive program pass: (Allows admission for members of the same family to 4 interpretive programs valued at \$8.00 or less)	\$18 per pass
Pocahontas	Nature Camps	\$100 per child per program plus materials cost \$30 per child plus materials cost for Jr. Assistant. The Jr. Assistant helps the park staff in conducting camp programs.
	Curious Kids	\$3.00 per program
	Nature and Discovery Programs (School/Groups Outreach)	\$4.00 per child \$80 minimum \$15 additional if program is outside of Chesterfield County
Sky Meadows	Nature and Discovery Programs (School/Groups Outreach)	\$2.00 per child \$50 minimum \$15 additional if program is outside of the following counties: Fauquier, Frederick, Clark, and Loudoun
Smith Mountain Lake	Nature and Discovery Programs (School/Groups Outreach)	\$10 per school visit
	What Bird Am I?	\$3.00 per person
	Who Is Coming to Dinner? (Owl Program)	\$3.00 per person
Southwest Virginia Museum	How Our Ancestors Lived	\$5.00 per person
	Special Themed Interpretive Program	\$10 per person
	Music or Literary Event	\$5.00 per person
	Workshop (Adult)	\$10 per person
	Workshop (Children)	\$5.00 per person
	Nature and Discovery Programs (School/Groups Outreach)	\$25 for under 2 hours \$50 from 2 hours to under 4 hours \$75 for 4 or more hours
	Guided Tour or Activity	School Groups: \$1.50 per person Public Groups: \$2.50 per person
	Step-On Tour Guide Service	\$7.00 per person
Caledon	Caledon Eagle Tours	\$6.00 per person \$50 Flat Rate (minimum: 10; maximum: 20)
	All Group Programs up to 2 hours long	\$5.00 per person
	Haunted Hay Ride	\$5.00 per person (age 7 and over) Children under 7 free

Regulations

	Special Program Bus Fee: Programs involving transportation within the natural area.	\$3.00 per person
	Workshop (Adult)	\$15 per person
	Workshop (Children)	\$5.00 per person
Natural Tunnel: Cove Ridge	Guided Programs	\$25 per program (Maximum 30 participants) \$25 facility fee (If applicable)
	Environmental Education (Children's Activities)	\$25 per program (Maximum 30 participants) \$25 facility fee (If applicable)
	Environmental Education (Adult Facilitation)	\$15 per person
Hungry Mother/ Hemlock Haven	Junior Naturalist Program	\$4.00 per person per week \$12 unlimited participation in interpretive season
Kiptopeke	Birding Program (Group Rates)	\$35 (Corporate) \$25 (Nonprofit)
York River	Guided Adventure Programs	\$4.00 per person \$40 per group (Minimum 12 persons)
	<u>Junior Ranger Program</u>	<u>\$35 per person</u>
Westmoreland	Guided Program Fee	\$25 per person
Natural Tunnel	Junior Ranger Program (Includes T-Shirt)	\$35 per person
	Wagon Ride Program	\$50 Exclusive Education Group Booking
	Hay Wagon and Hot Dog Roast	\$10 per person
	Bike Tours - 2 hours	\$10 per person
	Extended Bike Tours - 4 hours	\$15 per person
	Canoe and Bike Tour - 4 hours	\$20 per person
	Halloween Haunted House/Hay Wagon Ride	\$3.00 (Age 3 through 12) \$5.00 (Age 13 and over)
Mason Neck	Junior Ranger Program	\$50 per person
Holliday Lake	Field Archaeology Workshop	\$25 per person
	Junior Ranger Program (3 half-day workshops) (Ages 6 to 13)	\$25 per child
False Cape	Wildlife Watch Tour – Per Person	\$8.00 per person
	Wilderness Survival Weekend (2-night stay)	\$200 per person
	Wilderness Survival Weekend (1-night stay)	\$100 per person
	Wilderness Survival Program	\$16
	Astronomy Program	\$16 per person

Regulations

	Wild Women Weekend	\$200 per person
	Summer Survival	\$120 per person
	Blue Berry Blues	\$20 per person
Staunton River	Interpretive Craft	\$2.00 per person
First Landing	Junior Ranger Program 3 Hour Program 6 Hour Program	\$25 per person \$50 per person
Bear Creek Lake	Junior Ranger Program	\$20 per person
Leesylvania	Junior Ranger Program	\$50 per person
	Halloween Haunted Hike	\$2.00 per person \$6.00 per group (4 person maximum)
	Interpretive Programs	\$2.00 per person
	Kids Fishing Tournament	\$2.00 per child
Natural Tunnel	Pannel Cave Tour	\$10 per person \$7.00 per person (Family-Group; 8-person minimum)
	Bolling Cave Tours	\$15 per person \$12 per person (Family-Group; 10-person minimum)
	Stock Creek Tunnel Tour/Snorkeling on the Clinch	\$5.00 per person
	Canorkle (Canoeing and Snorkeling guided tour)	\$15 per person
	Hike to the Tub	\$10 per person
New River Trail	New River Trail Seniors Van Tour Full Day	\$25 per person
	New River Trail Seniors Van Tour Half Day	\$15 per person
	Bertha Cave Tour	\$10 per person
James River	Haunted Wagon Ride	\$5.00 per person (Age 7 and over) Children 6 and under free
	Interpretive Archery Program	\$5.00 \$8.00 per person
Belle Isle	Triple Treat Program: Hayride/Canoe/Campfire	\$10 per person
	Junior Ranger 3-day program	\$5.00 per class
	Bike Tour: visitors can supply their own bike or rent separately	\$2.00 per person \$6.00 per family

Notes on interpretive and educational tours and programs:

Additional costs for supplies and materials may apply.

Regulations

4VAC5-36-160. Outdoor skill program fees.

OUTDOOR SKILL PROGRAMS (NONTAXABLE)

Outdoor Skill Programs		FEE
Grayson Highlands	Outdoor Survival Skills and Backpacking	\$95 per person
	Basic Map and Compass	\$25 per person
	Beginning Rock Climbing and Backpacking	\$95 per person
	Advanced Map and Compass Skills	\$25 per person
Westmoreland, Douthat, Hungry Mother, False Cape	Photography Workshop, with meals and lodging	\$325 per person
	Photography Workshop, with meals, no lodging	\$295 per person
	Photography Workshop, no meals, no lodging	\$225 per person
	Nonparticipant Lodging and Food	\$235 per person
	Nonparticipant Meals only	\$125 per person
Lake Anna	Prospecting for Gold Workshop	\$50 per person
Kiptopeke	Kayak Fishing Program	\$35 per person
Hungry Mother	Mountain Empire Fly Fishing School	\$225 per person
Grayson Highlands	Guided Fly Fishing Trip: Half-day	\$50 per person
	Guided Fly Fishing Trip: Full-day	\$75 per person
<u>James River</u>	<u>Canoe Skills Course</u>	<u>\$70 per person</u>
Shenandoah River	Zipline Canopy Tour	\$89 per person
Sky Meadows	Venture Realm Hiking Retreat	\$53 per person

4VAC5-36-170. Hunting fees.

HUNTING (NONTAXABLE)

Hunting: All parks where available unless otherwise noted. (Does not apply to open hunting areas at Fairy Stone, Hungry Mother, Grayson Highlands, Occoneechee, and Pocahontas)	FEE
Standard Daily Hunting Fee for reservation-type managed hunts (No separate application fee required).	\$15 per hunter per day
Standard Daily Hunting Fee for lottery-type managed hunts (Paid in addition to any applicable application fee).	\$10 per hunter per day
<u>Standard Daily Hunting Fee: James River</u>	<u>\$25 per hunter per day</u>
Lottery Hunt Application Fee	\$5.00 per application
Chippokes Plantation: Southern Heritage Deer Hunt	\$325 per adult, or youth 16 through 17 with a separate stand \$200 per youth ages 12 through 17, requires shared stand with a paying adult \$50 per nonhunting companion
Waterfowl Hunt at Crow's Nest Natural Area Preserve Permit (maximum of 3 per person per season)	\$100 each

Notes on hunting fees:

At parks where there is a "standby" process, no additional daily fee for that hunting season shall be charged if the hunter has already paid at least one previous daily hunting fee for that park's hunting season.

4VAC5-36-200. Miscellaneous rental fees.

RENTALS (TAXABLE; Price here does not include tax)

Bike Rentals (includes helmet)	FEE
All parks where available unless otherwise noted	\$3.00 per hour \$8.00 per half-day \$15 per full-day
New River Trail, James River , Mason Neck	\$5.00 per hour \$12 per half-day \$18 per day
First Landing	\$5.00 per hour \$16 per day
Claytor Lake	
Adult Bicycles	\$10 per hour \$15 per half-day \$25 per day
Children Bicycles	\$8.00 per hour \$12 per half-day \$20 per day
Children Bicycle Trailer	\$8.00 per hour \$12 per half-day \$20 per day
Bike Helmet without bike rental	\$1.00
Child Cart for bike (unless otherwise noted)	\$5.00
Personal Bike Repair Services	\$25 basic tune-up \$60 standard tune-up \$13.50 flat repairs \$10 minor adjustments
Boat Rentals	
Standard Paddleboat Rental:	
All parks where available unless otherwise noted	\$4.00 per half-hour \$6.00 per hour
Fairy Stone, Hungry Mother	\$5.00 per half-hour \$8.00 per hour
Smith Mountain Lake	\$25 per half-hour \$35 per one hour
Westmoreland	\$7.00 per half-hour \$12 per hour

Regulations

Standard Canoe Rental:	
All parks where available unless otherwise noted.	\$8.00 per hour \$15 per half-day \$25 per full-day \$40 for 24 hours \$100 per week
Smith Mountain Lake	\$8.00 per half-hour \$12 per one hour \$60 for 24 hours \$30 additional for each day after first day
Claytor Lake	\$12 <u>\$12.50</u> per hour \$35 per half-day \$50 per day
Leesylvania, Mason Neck	\$7.00 per half-hour \$12 per hour \$35 per half-day \$50 per day
James River	\$10 per hour (does not include shuttle) \$40 per day (does not include shuttle) \$120 per week (does not include shuttle)
Standard Float Trips:	
James River	
Bent Creek to Canoe Landing:	
Canoe	\$45 <u>\$50</u> Max 3 people
Single Kayak	\$35 <u>\$40</u> per kayak
Canoe Landing to Dixon Landing:	
Tubes	\$12 per tube
Group of four <u>eight</u> or more	\$10 per tube
Canoe	\$15 <u>\$20</u> per canoe
Single Kayak	\$15 <u>\$20</u> per kayak
Bent Creek to Dixon Landing:	
Canoe	\$50 <u>\$60</u> per canoe
Single Kayak	\$40 <u>\$45</u> per kayak
Shuttle Service Only:	
Canoe Landing to Dixon Landing, canoe or single kayak, scheduled or unscheduled	\$2.00 <u>\$3.00</u> per person \$5.00 per canoe/kayak

Regulations

Bent Creek Shuttle (Scheduled)	\$5.00 \$10 per boat (canoe/kayak) \$5.00 per person
Bent Creek Shuttle (Unscheduled)	\$15 per boat (canoe/kayak) \$15 per person
Tubes	\$5.00 per person/Bent Creek Shuttle \$2.00 \$5.00 between landings in park
Late Rental Fee	\$15 per half hour past return time
New River Trail	\$7.00 per hour \$20 per half-day \$30 per day \$35 per half-day, includes canoe rental and shuttle \$50 per full day, includes canoe rental and shuttle
Canoe Rental (includes shuttle)	
Trip A: Austinville to Foster Falls	\$35 per canoe
Trip B: Ivanhoe to Austinville	\$50 per canoe
Trip C: Ivanhoe to Foster Falls	\$55 per canoe
Trip D: Foster Falls to Allisonia	\$55 per canoe
Kayak Rental (includes shuttle)	
Trip A: Austinville to Foster Falls	\$25 per kayak
Trip B: Ivanhoe to Foster Falls	\$40 per kayak
Trip C: Foster Falls to Allisonia	\$45 per kayak
Standard Rowboat Rental, without motor:	
All parks where available unless otherwise noted	\$6.00 per hour \$12 per half-day \$22 per full-day \$36 per 24 hours \$80 per week
Hungry Mother: Rowboats	\$4.00 per hour \$15 per day \$40 per week
New River Trail: Rafts and flat-bottom boats	\$7.00 per hour \$20 per half-day \$30 per day
Standard Rowboat Rental with electric motor and battery: All parks where available unless otherwise noted	\$10 per hour \$20 per 4 hours \$36 per day \$100 per 4 days \$150 per week

Regulations

Hungry Mother: Standard Rowboat Rental with electric motor and battery	\$12 per hour \$24 per 4 hours \$45 per day \$75 per 24 hours (limited to overnight guests)
Standard Motorboat Rental, 16-foot console steering, 25-45 horsepower outboard. All parks where available.	\$18 per hour \$90 per day
Standard Fishing Boat Rental with gasoline motor and one tank of fuel: All parks where available.	\$10 per hour (2-hour minimum) \$50 per day
Pedal Craft Rental: (Hydro-Bike, Surf-Bike, etc.) All parks where available unless otherwise noted.	
One person.	\$8.00 per hour
Two person.	\$10 per hour
Hungry Mother: Hydro Bike	\$5.25 per half hour \$8.00 per hour
Smith Mountain Lake: Hydro Bike	\$8.00 per half hour \$12 per hour \$4.00 additional per hour after first hour \$60 per 24 hours \$30 additional per day after first day
Barracuda Boat. All parks where available	\$10 per hour
Solo Kayak Rental:	
All parks where available unless otherwise noted	\$8.00 per hour \$20 per half-day \$30 per day \$40 for 24 hours \$100 per week
Westmoreland	\$12 per hour \$17 per half-day
Smith Mountain Lake	\$8.00 per half hour \$12 per hour \$60 per 24 hours \$30 additional per day after first day
Mason Neck	\$6.00 per half-hour \$10 per hour \$35 per half-day \$50 per day

Regulations

James River	\$7.00 per hour (does not include shuttle) \$20 \$40 per day (does not include shuttle) \$80 \$100 per week (does not include shuttle) \$12 \$15 per half hour past return time
Claytor Lake	\$10 per hour \$25 per half-day \$40 per day
Tandem Kayak Rental:	
All parks where available unless otherwise noted.	\$10 per hour \$20 per half-day \$30 per full-day \$45 for 24 hours \$120 per week
Westmoreland	\$15 per hour \$22 per half-day
Smith Mountain Lake	\$10 per half-hour \$15 per hour \$80 for 24 hours \$30 additional for each day after first day
Mason Neck	\$8.00 per half-hour \$15 per hour \$45 per 4 hours \$60 per day
Smith Mountain Lake: 14-foot fishing boat with 5 hp (3 person capacity). Rental does not include fuel and oil. Damage deposit of \$200 required.	\$50 for 3 hours \$10 additional per hour after first 3 hours \$150 for 24 hours \$30 additional per day after first day
Claytor Lake: 16-foot Bass Tracker with 60 hp motor. Damage deposit of 50% required.	\$30 per hour \$75 \$80 per half-day \$115 \$125 per day
Claytor Lake: 21-foot pontoon boat (10 person capacity) with 75 hp motor and tow hook. Damage deposit of 50% required.	\$45 \$55 per hour \$125 \$140 per half-day \$195 \$210 per day
Claytor Lake: 24-foot pontoon boat with 75 hp motor. Damage deposit of 50% required.	\$50 \$55 per hour \$140 \$150 per half-day \$210 \$225 per day
Claytor Lake: 24-foot pontoon boat with 115 hp motor. Damage deposit of 50% required.	\$55 \$60 per hour \$150 \$160 per half-day \$225 \$240 per day

Regulations

Claytor Lake: 30-foot pontoon boat with 115 hp motor. Damage deposit of 50% required.	\$60 per hour \$165 per half-day \$250 per day
Claytor Lake: 18-foot bowrider with 190 hp motor. Damage deposit of 50% required.	\$50 \$55 per hour \$130 \$140 per half-day \$200 \$215 per day
Claytor Lake: 30-foot pontoon boat with 60 hp motor. Damage deposit of 50% required.	\$350 \$375 per day \$175 \$185 9 a.m. - noon \$225 \$250 1 p.m. - 5 p.m.
Claytor Lake: 19-foot bowrider with 220 hp motor, Damage deposit of 50% required.	\$55 \$60 per hour \$150 \$160 per half-day \$225 \$240 per day
Occoneechee: 17-1/2-foot fishing boat. Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$85 \$95 per hour \$20 \$25 additional per hour after first hour \$175 \$195 per 8 hours \$875 \$935 per 7 day week
Occoneechee: 20-foot pontoon boat with motor (8 person capacity). Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$85 \$95 per hour \$20 \$25 additional per hour after first hour \$175 \$205 per 8 hours \$875 \$945 per 7 day week
Occoneechee: 22-foot pontoon boat with motor (10 person capacity). Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$95 \$105 per hour \$20 \$25 additional per hour after first hour \$185 \$225 per 8 hours \$925 \$1,125 per 7 day week
<u>Occoneechee: 24-foot pontoon boat with motor (12 person capacity). Rental includes 30 gallons of fuel. Damage deposit of \$200 required.</u>	<u>\$120 per hour</u> <u>\$25 additional per hour after first hour</u> <u>\$250 per 8 hours</u> <u>\$1,210 per 7 day week</u>
Occoneechee: 25-foot pontoon boat with motor (14 person capacity). Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$110 \$120 per hour \$25 additional per hour after first hour \$230 \$270 per 8 hours \$1,150 \$1,300 per 7 day week
Smith Mountain Lake: 18-20-foot Runabout with 190 hp (8 person capacity). Rental does not include fuel and oil. Damage deposit of \$200 required.	\$165 for 3 hours \$20 additional per hour after first 3 hours \$255 per 8 hours \$320 for 24 hours \$100 additional per day after first day
Claytor Lake: Jet ski/personal watercraft	\$50 \$55 per hour \$140 per 4 hours \$210 \$215 per 8 hours

Regulations

Smith Mountain Lake: 24-foot pontoon boat with 40 hp (10-12 person capacity). Damage deposit of \$200 required.	\$90 for 3 hours \$20 additional per hour after first 3 hours \$165 per 8 hours \$215 for 24 hours \$80 additional each day after first day
Smith Mountain Lake: Personal watercraft (Waverunner 700). Rental does not include fuel and oil. Damage deposit of \$500 required.	\$180 for 3 hours \$20 additional per hour after first 3 hours \$270 per 8 hours \$335 for 24 hours \$130 additional per day after first day
Belle Isle: Motorboat less than 25 horsepower (3 gallons of fuel included, 2 hour minimum)	\$15 per hour \$60 per half-day \$100 per day
Belle Isle: Motorboat 25-49 horsepower (11 gallons of fuel included, 2 hour minimum)	\$22 per hour \$70 per half-day \$110 per day
Standard Damage/Replacement Fees: All parks where available unless otherwise noted. Not required for damage due to normal wear and tear.	
Paddle	\$20
Anchor/Rope	\$40
Fuel Tank/Hose	\$60
Fire Extinguisher	\$25
Throw Cushion	\$10
Propeller (small)	\$100
Propeller (large)	\$135
Personal Flotation Device (PFD): replacement fee for lost/damaged PFD	\$25 each
Other Rentals:	
Personal Flotation Device (PFD): When separate from boat rental.	\$1.00 per day
Smith Mountain Lake, James River: Personal Flotation Device, type II.	\$5.00 for first day \$1.00 additional days
Smith Mountain Lake: Personal Flotation Device, type III	\$7.00 for first day \$2.00 additional days
Canoe/Kayak Paddles: All parks where available unless otherwise noted.	\$5.00 per day
New River Trail: Float Tubes	\$5.00 per hour \$12 per half-day \$18 per day
James River:	
Cooler Tubes	\$3.00 \$5.00 per day

Regulations

Tubes	\$8.00 per hour (does not include shuttle) \$20 per day (does not include shuttle) \$12 per half hour past return time
Claytor Lake: 2-person tow tube and towrope (with rental of boat only)	\$20 per 2 hours \$25 per half-day \$30 per day
Claytor Lake: Water skis and towrope (with rental of boat only)	\$20 per 2 hours \$25 per half-day \$30 per day
Claytor Lake: Kneeboard and towrope (with rental of boat only)	\$15 per 2 hours \$20 per half-day \$25 per day
Claytor Lake: Tubes/Skis (without boat rental)	\$25 per half-day \$35 per day
<u>Occoneechee: Tubes and towrope</u>	<u>\$30 per day</u>
Smith Mountain Lake: Tow tube; Water Skis; Knee Board <u>Kneeboard</u>	\$15 per day with boat rental \$5.00 per additional day \$25 per day without boat rental
Smith Mountain Lake: Wake Board	\$25 per day with boat rental \$10 per additional day \$30 per day without boat rental
Mobile Pig Cooker: All parks where available unless otherwise noted.	\$40 per day
GPS Units	\$6.00 per unit per half-day \$10 per unit per day
Volleyball Net and Ball Rental: All parks where available.	\$10
Binocular Rentals (2 hours): All parks where available.	\$2.00
Beach Floats: All parks where available.	\$1.00 per hour \$3.00 for 4-hours \$5.00 for full-day
Surf Lounge Floating Chair Rental. All parks where available.	\$2.00 per hour, single chair \$5.00 per half-day, single chair \$7.00 per full day, single chair \$3.00 per hour, double chair \$7.00 per half-day, double chair \$10 per full day, double chair
Body Board: First Landing	\$6.00 per day
Standard Stand-Up Paddle Board: Westmoreland	\$15 per hour
Beach Umbrella: All parks where available unless otherwise noted.	\$3.00 per hour \$8.00 for 4 hours \$15 for full-day
First Landing	\$6.00 per day

Regulations

Beach Chair: All parks where available	\$5.00 per day
First Landing	\$6.00 per day
Fishing Rods: All parks where available unless otherwise noted.	\$5.00 per half-day
First Landing	\$6.00 per day \$3.00 per rod per fishing program
Tents with a group camp reservation. All parks where available.	
2-person tent	\$12 per day
3-person tent	\$20 per day
4-person tent	\$25 per day
5-person tent	\$30 per day
Coleman Camp Stove Rental, includes fuel	\$10 per day
Tabletop Propane Grill, includes fuel	\$15 per day
Coin-Operated Washing Machine: All parks where available unless otherwise noted.	\$1.25 per load, tax included
First Landing	\$1.50 per load, tax included
Coin Operated Dryer: All parks where available unless otherwise noted.	\$1.25 per load, tax included
First Landing	\$1.50 per load, tax included
Pump Out: All parks where available unless otherwise noted.	\$5.00
Horse Rentals:	
All parks where available unless otherwise noted.	\$20 per one-hour ride \$35 per two-hour ride \$100 per full day ride
Pony Rides: All parks where available unless otherwise noted.	\$5.00 per 15 minutes
Horseback Riding Lessons: All parks where available unless otherwise noted.	\$25 per lesson on group basis \$30 per lesson for individual
Horseback Summer Day Camp: All parks where available unless otherwise noted.	\$180 per person per week
Horseshoe or Croquet Rental for Campers. All parks where available.	\$1.00 per hour \$5.00 per day \$20 deposit
Grayson Highlands:	
Bouldering pad	\$5.00 per day
Bouldering pad with chalk bag	\$8.00 per day

Regulations

4VAC5-36-210. Conference center and meeting facility fees.

CONFERENCE CENTERS (TAXABLE)

Prices may be discounted and/or waived by the director when necessary to create competitive bids for group sales.	FEE
Hemlock Haven Conference Center at Hungry Mother	
Main Hall (Capacity: 240)	\$350 per day
Upper Level Dogwood Room (Capacity: 50)	\$200 per day
Lower Level Board Room: (Capacity: 16)	\$100 per day
Ferrell Hall (Entire complex from 8 a.m. through 10 p.m.)	\$575 per day
Day Use Recreational Package (Includes all outside recreational facilities)	
0 – 250 persons	\$300 per half-day \$600 per full-day
251 – 500 persons	\$425 per half-day \$850 per full-day
501 + persons	\$575 per half-day \$1,200 per full-day
Cedar Crest Conference Center at Twin Lakes	
Complex: Doswell Hall with deck, grounds, volleyball, horseshoes; Kitchen, Latham and Hurt Rooms NOT included.	\$229 per 4 hours \$459 per day \$53 each extra hour
Doswell Meeting Room: Meeting Room only; no kitchen or dining room.	\$164 per room per 4 hours \$328 per room per day \$37 each extra hour
Small breakout rooms with main room: Latham and Hurt.	\$65 per room per 4 hours \$131 per room per day \$21 each extra hour
Small breakout rooms without main room.	\$98 per room per 4 hours \$196 per room per day \$37 each extra hour
Picnic Shelter or Gazebo at Cedar Crest.	\$68 per 4 hours \$131 per day \$11 each extra hour
Kitchen rental only available with complex rental.	\$105 per event
Kitchen Cleaning Fee: Deposit.	\$150 per event
Chippokes Plantation Meeting, Conference, and Special Use Facilities	
Mansion Conference Room.	\$26 per hour
Mansion or Historic Area Grounds (Includes parking for party rental).	\$525 per 4 hours
Mansion Board Room	\$105 per 4 hours

Regulations

Chippokes Plantation Conference Shelter (Available on reservation basis only).	\$105 per 4 hours	
Wedding Package (includes historic area grounds, gardens, tent set up and take down, 10 60-inch round tables, 10 standard size rectangle tables, 100 folding chairs, Wedding Coordinator, changing room for bride and groom, Mansion kitchen area, boardroom, no fee for wedding rehearsal).	\$1,412 per 4 hours \$2,073 per 8 hours \$50 nonrefundable reservation fee	
Southwest Virginia Museum	DAY	EVENING
Victorian Parlor		
Up to 30 People (8 tables – 30 chairs) OR Up to 50 people (50 chairs and head table)	\$42	\$68
Additional meeting rooms: Victorian Parlor must be rented in order to rent additional rooms.		
Hallway (downstairs) (Includes three existing tables with linens)	\$11	\$11
Additional Hours	\$10 per hour	\$10 per hour
Exceeding approved hours	\$20 per hour	\$20 per hour
Wedding Portraits	\$52 per 2 hours	\$78 per 2 hours
Wedding Packages	EVENT	
Wedding Package A: Accommodates 100 people. Use of arbor in Victorian Garden. Setup of 100 chairs. One parking attendant. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled).	\$500	
Wedding Package B: Accommodates 100 people. Use of a 40x40 Tent. Small platform stage (4"H x 8'W x 8'L). Accent rope lighting. Setup of 100 chairs. One parking attendant. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled).	\$1,500	
Wedding Package C: Accommodates 200 people (this requires an off-site reception area). Use of a 40x60 tent. Small platform stage (4"H x 8'W x 8'L). Accent rope lighting. Setup of 200 chairs. Two parking attendants. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled).	\$2,500	
Reception Packages		
Casual Reception Package A: May be reserved with Wedding Package A or B. Use of Victorian Parlor or foyer; parlor set with serving tables and linens. Use of serving kitchen.	\$200	
Casual Reception Package B: May be reserved with Wedding Package A or B. Use of 20x30 tent; set with tables and linens. Use of serving kitchen.	\$300	

Regulations

Formal Reception Package C: May be reserved with Wedding Package A or B. Use of 40x60 tent; sit-down reception for 100 to include tables, linens and chairs. Use of serving kitchen.	\$2,250	
Wedding and Reception Combination Package		
Wedding and Reception Combination Package: Accommodates 100 people. Both wedding and reception are held under the same tent. Use of a 40x60 tent. Small platform stage (4"H x 8'W x 8'L). Accent rope lighting. Setup of 100 chairs. One parking attendant. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled). Back of tent set with serving tables and linens. Use of serving kitchen.	\$2,500	
Damage Fee: a minimal damage fee will be assessed to the person(s) renting the property for damage to the site.	\$200	
Wilderness Road (Mansion and Ground Rental)		
Karlan Mansion and Grounds Rental	\$350 for first day \$150 for each additional day	
Wilderness Road Visitor Center Theater	\$50 per 4 hours	
Cove Ridge Center at Natural Tunnel:	PRIVATE FEE	EDUCATIONAL FEE
Cove Ridge Center Annual Membership: Membership entitles organization to a 25% discount on facility rental fees and group rates on all programming offered through the center.	\$1,050 per year	\$525 per year
Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for two consecutive half-day rental periods, and parking passes.	\$415	\$210
Overnight Use of one dorm: Includes Day Use Package plus one dorm rooms for one night and swimming (in season).	\$683	\$498
Overnight Use of both dorms: Includes Day Use Package plus two dorm rooms for one night and swimming (in season).	\$892	\$656
Wedding Package Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for three consecutive half-day rental periods, and parking passes.	\$525	NA
Wedding Package Overnight: Includes Day Use Package plus one dorm for one night and swimming (in season).	\$919	NA
Wedding Package Overnight: Includes Day Use Package plus both dorms for one night and swimming (in season).	\$1,102	NA
Wedding Package with Amphitheater: Rental of the park amphitheater in conjunction with any of the above wedding packages.	\$236 for the rental period	NA
Additional seating on deck (only available with exclusive use of the center).	\$42	\$0

Regulations

Auditorium	\$150 per half day \$250 per full day	\$99 per half day \$183 per full day
Classroom – Library (half-day)	\$63	\$47
One dorm: Overnight lodging for up to 30, includes swimming (in season) and parking passes.	\$420 per night April 1-October 31 \$378 per night November 1-March 31	\$315 per night April 1-October 31 \$283 per night November 1-March 31
Both Dorms: Overnight lodging for up to 60, includes swimming (in season) and parking passes.	\$630 per night April 1-October 31 \$567 per night November 1-March 31	\$472 per night April 1-October 31 \$425 per night November 1-March 31
Per Person Student Rate for Overnight Dorm Use	\$13 per person	\$13 per person
Kitchen Use (when not included in package)	\$50 per event	\$50 per event
<u>Pocahontas Heritage Center at Pocahontas</u> : All reservations require 50% down at time of reservation (Nonrefundable within 14 days of event)	PRIVATE FEE	EDUCATIONAL FEE
Large Room (Capacity: seated at tables 50; reception style 125, auditorium 80: includes tables, chairs, and warming kitchen)	\$131 per 4 hours \$236 per full-day \$26 each extra hour	\$78 per 4 hours \$141 per full-day \$15 each extra hour
<u>Powhatan Dining Hall (when renting two-day and three-day packages, first day begins at 10:00 a.m. and each subsequent day starts at 8:00 a.m.)</u>	<u>\$325 per full day (10 a.m.-10 p.m.)</u> <u>\$590 two-day package</u> <u>\$900 three-day package</u>	
<u>Swift Creek Dining Hall</u>	<u>\$500 per full day (10 a.m.-10 p.m.)</u> <u>\$800 two-day package</u> <u>\$1,400 three-day package</u>	
Grayson Highlands	FEE	
Wedding Packages: 0 – 100 persons 101 – 150 persons 151 – 200 persons	\$100 \$150 \$200	
Westmoreland	FEE	
Tayloe and Helen Murphy Hall Meeting Facility: Includes Main Meeting Room, Kitchen, and Grounds	\$500 (8 a.m. to 10 p.m.) \$350 additional rental days after first day	

Regulations

Wedding and Reception Package for Tayloe and Helen Murphy Hall: The hours accompanying this package are 10:00 a.m. to 10:00 p.m. on Friday, 8:00 a.m. to 10:00 p.m. on Saturday, and 9:00 a.m. to 2:00 p.m. on Sunday.	\$1,000
Potomac Overlook Rental	\$55 per day
Kitchen Clean Up Fee: (Waived if renter cleans facility)	\$250 per event
Potomac River Retreat: Table and Chair Set-up	\$40
Fairy Stone	
Fayerdale Hall Meeting Facility Weekend Rental. Includes Friday, Saturday, and Sunday	
One Day Rental	\$236 (8 a.m. to 10 p.m.)
Two Consecutive Days Rental	\$315
Three Consecutive Days Rental	\$366
Fayerdale Hall Meeting Facility Weekday Rental. Includes Monday through Thursday only.	
One Day Rental	\$75 (8 a.m. to 10 p.m.)
Two Consecutive Days Rental	\$125
Three Consecutive Days Rental	\$174
Four Consecutive Days Rental	\$225
Douthat	
Restaurant (includes table set-up)	\$236
Allegheny Room: Up to 30 persons.	\$158 per day
Wedding Package: Conference room and amphitheater (see "amphitheater section") on day of wedding, plus an extra half-day amphitheater for rehearsal.	\$289
First Landing	
Trail Center Conference Room and Meeting Facility	\$280 per day
Lake Anna	
Visitor Center	\$32 per half-day \$53 per full day
Concessions Building Rental	\$100 per day
Bear Creek Lake	
Meeting facility	\$350 per day (Memorial Day weekend through October 31) \$236 per day (November 1 up to Memorial Day weekend) \$25 each extra hour

Regulations

Wedding Package	\$400 per day (Memorial Day weekend through October 31) \$315 per day (November 1 up to Memorial Day weekend)
Claytor Lake	
Marina Meeting Facility: Includes facility, chairs, and tables.	\$633 per day, Friday – Sunday \$275 per day, Monday – Thursday \$1,203 per two days
Wedding Package: Includes rental of facility, chairs, tables, gazebo, and special use permit (\$10 permit fee is waived with package).	\$702 per day package \$1,395 per two-day package
Leesylvania Wedding/Function Package: Includes Rental of: Lee's Landing Picnic Shelter, 100 Chairs, 15 Tables, and Parking for up to 50 vehicles.	\$840 per half-day \$945 per full-day
Mason Neck	
Small Wedding Package: Includes two 10 foot by 10 foot canopies, up to 50 chairs, and parking for up to 25 cars.	\$250 per event
Wedding Package: Includes a 20 foot by 40 foot tent, up to 100 chairs, and parking for up to 50 cars.	\$788 per event
Parking Attendant	\$53 per 4 hours
Smith Mountain Lake	
Meeting room at Visitor Center	\$158 per day
Exceeding approved hours. All parks unless otherwise noted below.	\$25 per hour
Sky Meadows	
Timberlake House Meeting Room Capacity 15 people	\$150 per day 8 a.m. to 5 p.m. \$50 additional per day to extend rental to 8 p.m.
Timberlake House Kitchen (in conjunction with rental of meeting room)	\$25 per day or part of day
Equipment and Services Associated with Meetings and Rentals:	
Microphone/Podium Rental	\$15 per day
Stage Section Rental: 4' x 4'	\$24 per event
First Landing	
Trail Center Pergola	\$95 per 3 hours
Chair Rentals	
White, padded	\$3.00
White, plastic event chair	\$1.50
Standard folding chair	\$1.00

Regulations

Table Rentals	
Rectangular, 6'	\$7.50
Rectangular, 8'	\$8.00
Round, 4'	\$7.50
Round, 5'	\$8.75
Round, 6'	\$15
Linen Rentals: All parks unless otherwise noted	
Table cloth only	\$3.00 per table
Place settings	\$2.00 each
Wilderness Road	
Table cloth	\$7.00
Twin Lakes	
Overlay	\$1.25 per table
Napkins	\$0.40 per napkin
Fax	First 2 pages free \$2.00 each extra page
Copies	Single copy free \$0.15 each extra copy
Lost Key Fee	\$10
Easels	\$5.00 per day
Overhead Projector	\$10 per day
TV with VCR	\$10
Second TV	\$10
Overhead Projector with Screen	\$10
Slide Projector with Screen	\$10
Flip Chart	\$10
Event Set-up and Clean Up Fees	
First Landing	
Table and Chair Set-up Fee	\$40 per event
Park labor to clean up after special events and facility rentals if not done in accordance with rental agreement or use permit	\$50 per hour

Notes on conference and meeting facilities fees:

1. Conference and meeting facilities require a 30% prepayment due 10 days after making reservation, and payment of the full balance prior to or on the first day of the reservation. Cancellations made 14 or more days prior to the first day of the reservation shall be charged the lesser of 10% of the total fee or \$100. Cancellations made less than 14 days prior to the first date of the reservation shall be charged 30% of the total fee.

2. Alcohol use during weddings at the Southwest Virginia Museum: Weddings held during public operating hours of the museum will not be allowed to serve alcohol. Weddings held after regular operating hours of the museum must comply with ABC permit laws and have alcohol in the designated reception areas.

VA.R. Doc. No. R16-4517; Filed December 7, 2015, 5:18 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-140. Pertaining to Identification of Crab Pots, Peeler Pots and Fish Pots (amending 4VAC20-140-10, 4VAC20-140-20; adding 4VAC20-140-15).**

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

Effective Date: January 1, 2016.

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.

Summary:

The amendments (i) require an eel pot fisherman to use his Marine Resources Commission identification number preceded by the letter "E" on each buoy or stake attached to each eel pot and (ii) require a fish pot fisherman to use his Marine Resources Commission identification number preceded by the letter "F" on each buoy or stake attached to each fish pot.

CHAPTER 140

PERTAINING TO IDENTIFICATION OF CRAB POTS, PEELER POTS AND EEL POTS, AND FISH POTS

4VAC20-140-10. Purpose.

The purpose of this chapter is to describe the lawful methods an individual shall use to identify his licensed crab pots, peeler pots ~~or~~, fish pots, or eel pots.

4VAC20-140-15. Identification of eel pots.

Any person owning or using an eel pot, for which a commercial license is prescribed by law, shall display his Marine Resources Commission identification number preceded by the letter "E" on each floating buoy or stake attached to each such eel pot, in a legible and visible manner.

4VAC20-140-20. Identification of fish pots.

Any person owning or using a fish pot, for which a license is prescribed by law, shall display and maintain his current identification number, assigned by the Marine Resources Commission, preceded by the letter "F" on each floating buoy or stake attached to each such fish pot, in a legible and visible manner.

VA.R. Doc. No. R16-4591; Filed December 9, 2015, 1:42 p.m.

Emergency Regulation

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

Statutory Authority: §§ 28.201 and 28.210 of the Code of Virginia.

Effective Dates: December 8, 2015, through January 7, 2016.

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.

Preamble:

This emergency regulation increases to 7,500 pounds the landing limit in Virginia during the second 30-day period beginning December 1.

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

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

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

B. From the second Wednesday in March through April 19, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.
3. Land in Virginia more than 7,500 pounds of Summer Flounder during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.

Regulations

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

C. From November 1 through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivisions 3 and 4 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 30-day period, with the first 30-day period beginning on November 1.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during the first 30-day period, with the first 30-day period beginning on November 1.

4. Land in Virginia more than a total of ~~5,000~~ 7,500 pounds of Summer Flounder during the second 30-day period with the second 30-day period beginning on December 1.

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

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

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

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

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

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

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

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

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

VA.R. Doc. No. R16-4589; Filed December 8, 2015, 3:54 p.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 4VAC20-720-20, 4VAC20-720-70, 4VAC20-720-75, 4VAC20-720-80).**

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

Effective Date: January 1, 2016.

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.

Summary:

The amendments (i) remove Public Ground 2 of Mathews County, known as Pultz Bar, from the definition of the Mobjack Bay Area, (ii) permit the use of hand tongs to harvest oysters from the seaside of the Eastern Shore with a valid oyster hand tong license, and (iii) establish a vessel limit for hand tonging on the seaside of the Eastern Shore.

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 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.,

Regulations

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 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~~ that area 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° 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

Regulations

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 "PTSMA" 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 PTSMA, 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° 34.5310000' N., Longitude 76° 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 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.

Regulations

"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.

4VAC20-720-70. 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, the Rappahannock River Area 9, 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 or hand tong.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation Areas 3 and 5, James River Area, Thomas Rock Area, Upper Chesapeake Bay Blackberry Hangs Area, Mobjack Bay Area, Great Wicomico River Area, and Pocomoke Sound Area - Public Ground 9 and 10, by any gear 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.

Regulations

E. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation 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, Mobjack Bay Area, Great Wicomico River, and Pocomoke Sound Area - Public Ground 9 and 10, 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 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~~ seaside of the Eastern Shore, as described in ~~4VAC20-720-40~~ 4VAC20-720-70 B ~~48~~, unless that person has first obtained a valid oyster by hand license. It shall be unlawful for any person to harvest shellfish from the public oyster grounds on the seaside of the Eastern Shore by hand tong, as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster hand tong license.

4VAC20-720-80. Quotas and harvest limits.

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 any oysters for commercial purposes. Any individual who possesses the valid licenses and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 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 16.

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 any oysters for commercial purposes. Any individual who possesses the valid licenses and has paid the oyster resource user fee as described

in this subsection shall be limited to a maximum harvest of 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 17, 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 any oysters for commercial purposes. Any individual who possesses the valid licenses and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 12 bushels per day.

D. 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 18, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who are licensed by a valid gear license and have paid the oyster resource user fee, multiplied by eight. 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 any oysters for commercial purposes. Any individual who possesses the valid licenses and has paid the oyster resource user fee, as described in this subsection, shall be limited to a maximum harvest of eight bushels per day.

~~D. E.~~ E. In the Pocomoke and Tangier Sounds Rotation Area 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. R16-4593; Filed December 9, 2015, 1:38 p.m.

Final Regulation

<p>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.</p>

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

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

Effective Date: January 1, 2016.

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.

Summary:

The amendment increases the commercial black sea bass directed fishery quota to 502,000 pounds beginning January 1, 2016.

4VAC20-950-47. Commercial harvest quotas.

A. The annual commercial black sea bass directed fishery quota is ~~402,584~~ 502,000 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

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

VA.R. Doc. No. R16-4590; Filed December 9, 2015, 1:44 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Proposed Regulation

Title of Regulation: **6VAC35-170. Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice (amending 6VAC35-170-10, 6VAC35-170-30, 6VAC35-170-40, 6VAC35-170-50, 6VAC35-170-80, 6VAC35-170-100, 6VAC35-170-140, 6VAC35-170-170, 6VAC35-170-190, 6VAC35-170-200, 6VAC35-170-220; adding 6VAC35-170-62, 6VAC35-170-65, 6VAC35-170-185; repealing 6VAC35-170-120).**

Statutory Authority: §§ 66-10 and 66-10.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 28, 2016.

Agency Contact: Janet P. Van Cuyk, Legislative and Research Manager, Department of Juvenile Justice, 600 East Main Street, 20th Floor, P.O. Box 1110, Richmond, VA 23218, telephone (804) 588-3879, FAX (804) 371-6490, or email janet.vancuyk@djj.virginia.gov.

Basis: Section 66-10.1 of the Code of Virginia directs the Department of Juvenile Justice's State Board of Juvenile Justice to promulgate regulations pursuant to the Administrative Process Act to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia for human research to be conducted or authorized by the department. Thus, the regulation is mandatory.

The board is empowered with general authority to promulgate regulations by § 66-10 of the Code of Virginia that states the board may "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

Purpose: The Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice (6VAC35-170) establishes the regulatory requirements and minimum standards for research on human subjects who are under the care or supervision of department or other board regulated programs or facilities. The regulation became effective February 1, 2005, and is intended to protect the safety, rights, and confidentiality of human research subjects.

The board approved the submission of a Notice of Intended Regulatory Action (NOIRA) for 6VAC35-170, Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice, on September 13, 2013, and it was submitted on February 18, 2014. The Executive Branch review for this stage was completed on March 13, 2014. The NOIRA was published in the Virginia Register of Regulations on April 21, 2014. The public comment period ended on May 21, 2014. The board approved the proposed amendments to the regulatory language on November 12, 2014.

The proposed amendments to the regulation provide the public information on the requirements and the decision process for research proposals involving only data requests. Additionally, the proposed amendments require researchers to report noncompliance with the conditions of the signed research agreements and authorize the department and Human Research Review Committee to prohibit further research or restrict the publication and use of the data research results.

Substance: The proposed language describes how all external data requests and research proposals within the Commonwealth's juvenile justice system will be coordinated, reviewed, and approved or denied. The proposed language provides the process for the review and approval of two new types of external data requests. These are (1) external aggregate data requests (new section: 6VAC35-170-62) and (2) external case-specific data requests (new section: 6VAC35-170-65). Proposed language also addresses researcher noncompliance (new section: 6VAC35-170-185). Additional revisions have been proposed to bring the current language in the regulation related to human research in line with the requirements of Title 32.1 of the Code of Virginia.

Regulations

Issues: The primary advantage of the proposed amendment to the public is providing the public with the requirements and decision process for research proposals involving only data requests. Additionally, language has been proposed requiring an additional layer of review to ensure juvenile information is adequately protected when providing de-identified data. The current timeline for the decision process for research proposals not involving human research is 40 days. The proposed timeline for the decision process for aggregate data requests has been shortened to 20 days. The primary advantage to the department and the Commonwealth is the proposed language allowing the department the discretion to approve or deny research projects to ensure selected projects align with the current department needs and priorities. Finally, proposed language allows the department or the Human Research Review Committee to restrict or terminate the work of researchers who fail to comply with the approved conditions of a research proposal. There are no disadvantages to the public, the department, or the Commonwealth in adopting the proposed changes to the regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Juvenile Justice proposes 1) to reduce the time allotted for decisions for aggregate data requests and 2) to require researchers to submit an annual progress report.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. These regulations establish procedures for coordination, review, approval, and denial of data requests and research proposals involving juveniles within the Commonwealth's juvenile justice system.

One of the proposed changes will reduce the time to make decisions for aggregate data requests from 30 days to 20 days. With this change, researchers will be informed of a decision regarding their request sooner than it is currently.

Another proposed change will require researchers to submit an annual progress report to the Department of Juvenile Justice (DJJ). DJJ reports that the majority of projects are completed within one year and expects to receive only 3-4 annual reports from researchers. Furthermore, DJJ states that the type of information that will be included in the annual report is already required by the Institutional Review Boards and should require minimal to no extra work on the researchers part to comply.

The remaining proposed changes are formatting and clarifying changes reflecting the practices currently followed and are not expected to create any significant economic impact other than improving the clarity of the regulations.

Businesses and Entities Affected. These regulations primarily apply to researchers wishing to analyze data involving juveniles within the Commonwealth's juvenile justice system. In fiscal year 2014, DJJ received six research proposals and

approved five of those proposals. In the same timeframe, the average daily population in three juvenile correctional centers was 599 and the average daily population in 25 juvenile detention centers was 735. There were also 1,366 placements in 19 juvenile group homes/shelter care facilities.

Localities Particularly Affected. The regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed amendments are not expected to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are not expected to affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are not expected to affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are not expected to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are not expected to affect real estate development costs.

Agency's Response to Economic Impact Analysis: The responsible Virginia Board of Juvenile Justice agency representatives have reviewed the Department of Planning and Budget's (DPB) economic impact analysis of 6VAC35-170, Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice. The agency is in agreement with DPB's analysis.

Summary:

The proposed action addresses how all external data requests and research proposals within the Commonwealth's juvenile justice system will be coordinated, reviewed, and approved or denied. The proposed amendments provide the process for the review and approval of (i) external aggregate data requests, (ii) external case specific data requests, and (iii) human research proposals. The proposed amendments also require researchers to report noncompliance with the conditions of the signed research agreements and authorize the Department of Juvenile Justice and the Human Research Review Committee to prohibit further research or restrict the publication and use of the data research results.

CHAPTER 170

REGULATION GOVERNING MINIMUM STANDARDS FOR JUVENILE INFORMATION REQUESTS FROM AND RESEARCH INVOLVING HUMAN SUBJECTS OR RECORDS OF WITHIN THE DEPARTMENT OF JUVENILE JUSTICE

6VAC35-170-10. Definitions.

Unless the context clearly indicates otherwise, the following words and terms when used in this ~~regulation~~ chapter shall have the following meanings, consistent with the definitions offered in § 32.1-162.16 of the Code of Virginia:

"Aggregate data" means statistics that relate to broad classes, groups, or categories so that it is not possible to distinguish the properties of individuals within those classes, groups, or categories.

"Case-specific data" means nonaggregated data that provides information about individuals within a group.

"Coordinator of external research" is the department employee designated by the director to receive research proposals from external entities and ensure that the proposals are reviewed in accordance with this ~~regulation~~ chapter and related department procedures.

"De-identified data" means data with common identifiers, such as names, phone numbers, social security numbers, addresses, etc., removed in order to eliminate the ability of an individual viewing the data to determine the identity of an individual.

"Department" means the Department of Juvenile Justice.

"Director" means the Director of the Department of Juvenile Justice, ~~or his designee.~~

"Encrypted" means the transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process or key or the securing of the information by another method that renders the data elements unreadable or unusable.

"External research" means research conducted at or using the resources of a facility, program, or organization that is owned, operated, or regulated by the department or the Board of Juvenile Justice by researchers who are not part of the department or under contract to the department, or who are not employees of another state agency conducting a study at the direction of the General Assembly.

~~"Human subject" means any individual who is under the department's care, custody or supervision, or a member of the family of such an individual, who is or who is proposed to be a subject of human research.~~

~~"Human research" means any systematic investigation using human subjects, that may expose those subjects to physical or psychological injury, and that departs from the application of established and accepted therapeutic methods appropriate to meet the subject's needs including research development, testing and evaluation, utilizing human subjects that is designed to develop or contribute to generalized knowledge. Human research shall not be deemed to include research exempt from federal research regulation pursuant to 45 CFR 46.101(b).~~

"Human Research Review Committee" means the committee established by the department to oversee human research proposals and activities in accordance with 6VAC35-170-130 and § 32.1-162.19 of the Code of Virginia.

"Human subject" means any individual who is under the department's care, custody, or supervision, or a member of the

family of such an individual, who is, or who is proposed to be, a subject of human research.

"Informed consent" means the knowing and voluntary agreement without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion of a person who is capable of exercising free choice. The basic elements necessary for informed consent regarding human research include:

1. A reasonable and comprehensible explanation to the person of the proposed procedures and protocols to be followed, their purposes, including descriptions of ~~any~~ attendant discomforts, and risks and benefits reasonably to be expected;
2. A disclosure of ~~any~~ alternative procedures or therapies that might be helpful to the person;
3. An instruction that the person may withdraw his consent and stop participating in the human research at any time without prejudice to him;
4. An explanation of ~~any~~ costs or compensation that may accrue to the person and whether third party reimbursement is available for the proposed procedures or protocols; and
5. An offer to answer, and answers to, ~~any~~ questions by the person about the procedures and protocols.

"Legally authorized representative" means the parent or parents having custody of a prospective subject; the legal guardian of a prospective subject; or any person or judicial or other body authorized by law to consent on behalf of a prospective subject to such subject's participation in the particular human research, including an attorney in fact appointed under a durable power of attorney, provided the power grants the authority to make such a decision and the attorney in fact is not employed by the person, institution, or agency conducting the human research. No official or employee of the institution or agency conducting or authorizing the research shall act as a legally authorized representative.

"Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the human subject.

"Organizational unit head" means the person in charge of a juvenile correctional center, ~~halfway house~~, court service unit, ~~regional office~~ or other organizational unit of the department.

"Principal researcher" means the individual who is responsible for the research design, the conduct of research, supervision of ~~any~~ research staff, and the research findings.

Regulations

"Research" means the systematic development of knowledge essential to effective planning and rational decision-making. It involves the assessment of current knowledge on conceptual problems selected, statement of those problems in researchable format, design of methodologies appropriate to the problems, and the application of statistical techniques to organize and analyze data. Research findings should provide valuable information to management for policy options.

"Researcher" means an individual conducting research.

"Research project" means the systematic collection of information, analysis of the data, and the preparation of a report of findings.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or electronic form.

6VAC35-170-30. Professional ethics.

The All research shall conform to the standards of ethics of professional societies such as the American Correctional Association, the American Psychological Association, the American Sociological Association, the National Association of Social Workers, the American Evaluation Association, or their equivalent.

6VAC35-170-40. Confidentiality requirements of all research.

A. Research findings shall not identify individual subjects.

B. All records and all information given by research subjects or employees of the department shall be kept confidential in accordance with § 16.1-300 of the Code of Virginia, and applicable rules and regulations regarding confidentiality of juvenile records.

C. Persons who breach confidentiality shall be subject to sanctions in accordance with applicable laws, regulations, policies, and procedures.

D. Confidentiality does not preclude reporting results ~~in a consolidated form that protects the identity of individuals,~~ utilizing de-identified data or giving raw data to the department for possible further analysis.

6VAC35-170-50. Conditions for department approval of external research.

The department ~~will~~ may approve research projects only when it determines, in its sole discretion, that the following conditions have been met:

1. The department has sufficient financial resources and staff to support the research project, and that on balance the benefits of the research justify the department's involvement;
2. The proposed research will not interfere significantly with department programs or operations, particularly those of the operating units that would participate in the proposed research; ~~and~~

3. The proposed research is compatible with the purposes and goals of the juvenile justice system and with the department's organization, operations, and resources; and

4. The proposed research requests for aggregate data or de-identified data, and the human research proposals, comply with all department procedures, which shall be posted on the department's website.

6VAC35-170-62. Review and approval of aggregate data requests.

A. Aggregate data requests shall be submitted to the department in accordance with procedures posted on the department's website.

B. The coordinator of external research shall determine the following prior to approving the request:

1. The request meets the conditions for department approval of research identified in 6VAC35-170-30 and 6VAC35-170-50;

2. The data requested is accessible;

3. An estimate of the time required to process the data request; and

4. Based on staff workload, if staff resources are available to process the data request.

C. The coordinator of external research may approve and coordinate the provision of data.

D. The principal researcher shall be notified in writing of the approval or denial of the data request within 20 business days of the department receiving the proposal.

1. The department shall provide the principal researcher with documentation of the rationale for the denial of the request when applicable.

2. The department shall provide the principal researcher with a written estimated timeline for receipt of the data when applicable.

6VAC35-170-65. External case-specific data requests.

A. External case-specific data requests shall be submitted to the department via the Research Proposal Form, the Research Agreement Form, and any attachment required by department procedures.

B. The Research Agreement Form shall be signed by the principal researcher and the student researcher, if applicable, at the time of submission.

C. The coordinator of external research shall determine the following within 10 business days of receiving the research proposal:

1. The request meets the conditions for department approval of research identified in 6VAC35-170-30 and 6VAC35-170-50;

2. The proposal is not a human research proposal and is not required to be reviewed by the Human Research Review Committee;

3. The principal researcher has appropriate academic or professional standing or job-related experience in the area to be studied;

4. The proposal is in the required format and includes all required information;

5. The proposal complies with basic research standards and applicable laws;

6. The data requested is accessible;

7. Department staff and resources are available to process the data request; and

8. An estimate of the time required to compile the data request.

D. The following identifiers shall be removed from the data provided to researchers:

1. Names;

2. Dates (date of birth, date of admission, date of release, etc.);

3. Postal address information, other than town or city, state, and zip code;

4. Telephone numbers;

5. Social security numbers;

6. Medical record numbers;

7. Account numbers (Juvenile Tracking System, Direct Care, etc.);

8. Biometric identifiers, including finger and voice prints; and

9. Full face photographic images and any comparable image.

E. The director or his designee may on a case-by-case basis approve the dissemination of data containing a limited number of the identifiers listed in subsection D of this section for research benefiting the department.

F. The human research review process shall be followed when the data requested by a researcher are such that a reasonable person could identify the research participants.

G. Industry standard levels of encryption shall be required to protect all juvenile record information provided to researchers.

H. Upon determining the requirements in subsection C of this section are met, the director or his designee shall designate a committee to meet within 20 business days of receiving the proposal. The committee shall:

1. Review the data requested and determine if it is necessary to restrict the scope of the information provided. The scope of information may be restricted for any reason.

2. Determine the research is beneficial to the department.

3. Ensure juvenile confidential information will be adequately protected.

4. Make a recommendation to the director or his designee to approve or disapprove the request.

I. The director shall approve or deny the proposal within 10 business days of receiving the recommendation.

J. The department shall notify the researcher of the director's decision within five business days of the director making the decision.

K. Notification of the denial of a proposal shall include a written rationale.

L. Notification of the approval of a proposal shall include the research agreement. The research agreement shall outline the respective responsibilities of the parties and will specify:

1. When progress reports shall be required. If the external research also involves human research, this schedule of progress reports shall be developed in consultation with the Human Research Review Committee;

2. The department shall have unrestricted permission to use the research findings in accordance with professional standards of research;

3. A final report shall be submitted electronically to the department;

4. Unless waived by the director or designee, all external articles, reports, and presentations made from the data collected shall be submitted electronically to the department and shall include the statement, "The findings of this study are the responsibility of the researchers, and cooperation by the Virginia Department of Juvenile Justice in facilitating this research should not be construed as an endorsement of the conclusions drawn by the researchers."; and

5. The research agreement is not effective until signed by both the principal researcher and the director or his designee.

M. The department shall provide a final signed copy of the research agreement to the principal researcher by first class mail, electronic mail, or facsimile.

6VAC35-170-80. Informed consent required for human research (see (§ 32.1-162.18 of the Code of Virginia).

A. If a human subject is competent, informed consent shall be given in writing by the subject and witnessed.

B. If a human subject is not competent, informed consent shall be given in writing by the subject's legally authorized representative and witnessed.

C. If a human subject is a minor who is otherwise capable of giving informed consent, informed consent shall be given in writing by both the minor and his legally authorized representative.

D. If two or more persons who qualify as legally authorized representatives with decision-making authority inform the researcher that they disagree as to participation of the prospective subject in human research, the subject shall not be enrolled in the human research that is the subject of the consent.

Regulations

~~D.~~ E. Notwithstanding consent by a legally authorized representative, no person who is otherwise capable of giving informed consent shall be forced to participate in any human research.

~~E.~~ F. A legally authorized representative may not consent to nontherapeutic research unless the Human Research Review Committee determines that such nontherapeutic research will present no more than a minimal risk to the human subject.

~~F.~~ G. No informed consent form shall include any language through which the human subject waives or appears to waive any legal ~~rights~~ right, including any release of any individual, institution, or agency or any ~~agents~~ agent thereof from liability for negligence (see § 32.1-162.18 of the Code of Virginia).

6VAC35-170-100. Proposal for external research.

A. If the research is proposed to take place in a particular organizational unit, the principal researcher shall present a preliminary research proposal to the head of that organizational unit and get the organizational unit head's endorsement of the proposal, in accordance with procedures established by the department.

B. The principal researcher shall submit to the coordinator of external research a complete research proposal describing the research project, and containing:

1. Name, address, telephone numbers, title and affiliation of the principal researcher;
2. Name of the person who will immediately supervise the project, if different from the principal researcher;
3. Funding source, if any;
4. Date of the proposal's submission to the department;
5. Title or descriptive name of the proposed research project;
6. Statement of the specific purpose or purposes of the proposed research project with anticipated results, including benefit to the department;
7. A concise description of the research design and techniques for data collection and analysis, and of the likely effects of the research methodology on existing programs and institutional operations;
8. ~~Time frames~~ Timeframes indicating proposed beginning and ending dates for (i) data collection, (ii) analysis, (iii) preliminary report, and (iv) final report;
9. A listing of ~~any~~ resources the researcher will require from the department or its units, such as staff, supplies, materials, equipment, work spaces, or access to clients and files;
10. ~~Endorsement~~ A written endorsement from the head of the organizational unit where the research will be conducted, if applicable;
11. For student research, endorsement from the researcher's academic advisor or other appropriate persons;

12. For research involving records of juveniles at state and local court service units, a written endorsement from the appropriate juvenile and domestic relations judge or judges;

13. For human research, a written endorsement from the institutional review board of the institution or organization with which the researcher is affiliated; and

14. For all research projects, a signed and dated statement that the principal researcher and research staff have read, understand, and agree to abide by these regulations.

~~6VAC35-170-120. Research proposals not involving human research. (Repealed.)~~

~~Designated department staff shall review research proposals that do not involve human research and make a recommendation to the director within 20 days of receiving the proposal. The director shall approve or deny proposals within 10 days of receiving the staff recommendation.~~

6VAC35-170-140. Timeline for review of human research proposals.

A. The ~~human research review committee~~ Human Research Review Committee will review proposals involving human research within 30 business days of receiving a complete research proposal.

B. At the request of the researcher, the ~~committee~~ Human Research Review Committee may conduct an expedited review when the proposed research involves no more than minimal risk to the human subjects and:

1. The proposal has been reviewed and approved by another agency's human research review committee; or
2. The review involves only minor changes to a research project that was previously approved.

6VAC35-170-170. Recommendation to director and final action.

A. The ~~committee~~ Human Research Review Committee shall make a recommendation to the director to deny, approve, or conditionally approve the proposed human research.

B. The director shall approve or deny the proposal within 10 business days of receiving the committee's recommendation.

C. The research agreement shall become effective only after all reviews required by this regulation and department procedures are completed and the director signs the agreement on behalf of the department. The coordinator of external research must send a copy of the signed ~~Research Agreement~~ research agreement to the researcher before the project may begin.

6VAC35-170-185. Researcher noncompliance.

A. The researcher shall report noncompliance with the approved research proposal to the Human Research Review Committee and the institutional review board.

B. Research activities identified by the department or the Human Research Review Committee as failing to comply with the approved proposal or in violation of the Code of Virginia or the Virginia Administrative Code may result in

the department restricting or terminating further research and the department may prohibit the researcher from presenting or publishing the research results.

6VAC35-170-190. Committee reports required.

A. In accordance with § 66-10.1 of the Code of Virginia, the ~~committee~~ Human Research Review Committee shall submit to the Governor, the General Assembly, and the director at least annually a report on human research projects approved by the committee, and the status of such research, including any significant ~~deviations~~ deviation from the proposals as approved.

B. The ~~committee~~ Human Research Review Committee shall also annually submit to the Board of Juvenile Justice the same report as required by subsection A of this section. ~~The report to the board shall also include a summary of human research proposals that were not approved.~~

6VAC35-170-200. Progress reports.

A. The department may require periodic reports on the progress of any research project. The principal researcher shall be responsible for providing such reports, and any supplementary information requested by the department, in a timely manner.

B. The researcher shall submit an annual progress report to coordinator of external research when the research is not completed within one year of approval.

6VAC35-170-220. Final report.

A. The department shall require that a formal final report be submitted to the coordinator of external research, and may require up to 10 copies of the report.

B. The report shall, unless waived by the director or designee, contain the following statement:

"The findings of this study are the responsibility of the researchers, and cooperation by the Virginia Department of Juvenile Justice in facilitating this research should not be construed as an endorsement of the conclusions drawn by the researchers."

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 (6VAC35-170)

[Research Proposal Summary \(undated; filed 12/2015\)](#)

[Research Agreement \(undated; filed 12/2015\)](#)

VA.R. Doc. No. R14-3973; Filed December 7, 2015, 11:31 a.m.



TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18, 9VAC20-60-260, 9VAC20-60-261, 9VAC20-60-1390, 9VAC20-60-1420).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921; 40 CFR Parts 260 through 272.

Effective Date: January 27, 2016.

Agency Contact: Leslie A. Romanchik, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4129, FAX (804) 698-4234, TTY (804) 698-4021, or email leslie.romanchik@deq.virginia.gov.

Summary:

The Virginia Hazardous Waste Management Regulations, 9VAC20-60, include citations and requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations (CFR). This regulatory amendment will bring these citations up to date and incorporate the latest Title 40 of the CFR to the one as published in the July 1, 2015, update.

As part of this regulatory action, the Virginia Waste Management Board is adopting the U.S. Environmental Protection Agency's Definition of Solid Waste (DSW) as promulgated on October 30, 2008, and subsequently updated by the Revisions to the Definition of Solid Waste Rule promulgated on January 13, 2015 (80 FR 1694). The purpose of the DSW rule is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material. However, this regulatory action does not incorporate the conditional exclusion for hazardous secondary materials that are managed in land-based units. This regulatory action amends the definition of "contained" to add condition (5), which clarifies that land-based units managing hazardous secondary materials will continue to be required to comply with the applicable

Regulations

provisions of the Virginia Hazardous Waste Management Regulations for hazardous waste land-based units.

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated herein, that regulation shall be as it exists and has been published in the July 1, ~~2014~~, 2015 update.

9VAC20-60-260. Adoption of 40 CFR Part 260 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 260 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 260 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 260.10, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

2. In 40 CFR 260.10, the term "contained" shall be appended by adding the following: (5) Hazardous secondary materials managed under the exclusion provided in 40 CFR 261.4(a)(23) or (a)(24) shall not be managed in a land-based unit unless the land-based unit meets the applicable standards of 40 CFR Parts 260 through 270, as incorporated by reference, for management of hazardous waste.

3. In 40 CFR 260.10, the term "EPA" shall mean the United States Environmental Protection Agency.

~~3.~~ 4. In 40 CFR 260.10 the term "new tank system" and "existing tank system," the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:

- a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;
- b. Leak detection requirements for all underground tank systems for which construction commenced after July 14, 1986; and
- c. Permitting standards for underground tanks that cannot be entered for inspection.

For non-HSWA regulations, the reference date shall be January 1, 1998.

~~4.~~ 5. In 40 CFR 260.10, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

~~5.~~ 6. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."

~~6.~~ 7. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

~~7.~~ 8. Throughout 40 CFR 260.11(a), the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."

~~8.~~ 9. In Part XIV (9VAC20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain provisions analogous to 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.34, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

~~9.~~ 10. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21, 40 CFR 260.22, and 40 CFR 260.23 are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

~~10.~~ 11. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

~~11. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 260 as promulgated by U.S. EPA on October 30, 2008, (73 FR 64757-64788) (definition of solid waste rule) are not adopted herein.~~

9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions,

modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218.
2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.
3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.
5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9VAC20-81).
6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."
7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.
8. ~~Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on October 30, 2008, (73 FR 64757-64788) (definition of solid waste rule) are not adopted herein.~~

9VAC20-60-1390. Changes in classifications as a solid waste.

A. Variances.

1. Applicability.

- a. A person who recycles waste that is managed entirely within the Commonwealth may petition the director to exclude the waste at a particular site from the classification as the solid waste (Parts I (9VAC20-60-12 et seq.) and III (9VAC20-60-124 et seq.) of this chapter).

The conditions under which a petition for a variance will be accepted are shown in subdivision 2 of this subsection. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.

b. A person who ~~generated~~ generates wastes at a generating site in Virginia and whose waste is subject to federal jurisdiction (e.g., the waste is transported across state boundaries) shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before his waste may be considered for a variance by the director.

c. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before the waste may be considered for a variance by the director.

d. A person who received a favorable decision from the administrator in the response to a petition for variance or nonwaste determination or a person whose wastes were delisted as a result of a successful petition to the administrator shall provide a notification to the department containing the following information: (i) the petitioner's name and address and (ii) a copy of the administrator's decision.

2. Conditions for a variance. In accordance with the standards and criteria in subsection B of this section and the procedures in 9VAC20-60-1420 ~~A B~~, the director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

a. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I).

b. Materials that are reclaimed and then reused within the original primary production process in which they were generated; and

c. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

d. Hazardous secondary materials that are reclaimed in a continuous industrial process.

e. Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

f. Hazardous secondary materials that are transferred for reclamation under 40 CFR 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under an RCRA Part B permit or interim status standards.

Regulations

B. Standards and criteria for variances.

1. The director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed on an annual basis by filing a new application. The director's decision will be based on the following criteria:

- a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);
- b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;
- c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
- d. The extent to which the material is handled to minimize loss; and
- e. Other relevant factors.

2. The director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

- a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
- b. The prevalence of the practice on an industry-wide basis;
- c. The extent to which the material is handled before reclamation to minimize loss;
- d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
- e. The location of the reclamation operation in relation to the production process;
- f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
- g. Whether the person who generates the material also reclaims it; and
- h. Other relevant factors.

3. The director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is the partial reclamation has produced a commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors: material. A determination that a partially reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in 40 CFR 260.43 and on whether all of the following decision criteria are satisfied:

- ~~a. The degree of processing the material has undergone and the degree of further processing that is required;~~
- ~~b. The value of the material after it has been reclaimed;~~
- ~~c. The degree to which the reclaimed material is like an analogous raw material;~~
- ~~d. The extent to which an end market for the reclaimed material is guaranteed;~~
- ~~e. The extent to which the reclaimed material is handled to minimize loss; and~~
- ~~f. Other relevant factors.~~

a. Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

b. Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

c. Whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials that is used in subsequent production steps;

d. Whether there is a market for the partially reclaimed material as demonstrated by known customer or customers who are further reclaiming the material (e.g., records of sales or contracts and evidence of subsequent use, such as bills of lading); and

e. Whether the partially reclaimed material is handled to minimize loss.

4. The director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under 40 CFR 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards. The director's decision will be based on the following criteria:

- a. The reclamation facility or intermediate facility must demonstrate that the reclamation process for the

hazardous secondary materials is legitimate pursuant to 40 CFR 260.43;

b. The reclamation facility or intermediate facility must satisfy the financial assurance condition in 40 CFR 261.4(a)(24)(vi)(F);

c. The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant noncomplier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

d. The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 40 CFR Part 261 Subpart M;

e. If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals, or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and

f. The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and must include consideration of potential cumulative risks from other nearby potential stressors.

5. An applicant may apply to the administrator for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste (i.e., nonwaste determination). The determinations will be based on the criteria contained in subdivision B 6 or B 7 of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (e.g., one of the solid waste variances under this section). Determinations may also be granted by the director if the state is either authorized for this provision or if the following conditions are met:

a. The director determines the hazardous secondary material meets the criteria in subdivision B 6 or B 7 of this section, as applicable;

b. The state requests that EPA review its determination; and

c. EPA approves the state determination.

6. The director may grant a nonwaste determination for hazardous secondary material that is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in 40 CFR 260.43 and on the following criteria:

a. The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

b. Whether the capacity of the production process would use the hazardous secondary material in a reasonable timeframe and ensure that the hazardous secondary material will not be abandoned (e.g., based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

c. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

d. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under 40 CFR 261.2 or 40 CFR 261.4.

7. The director may grant a nonwaste determination for hazardous secondary material that is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in 40 CFR 260.43 and on the following criteria:

a. Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (e.g., based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

b. Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

c. Whether the capacity of the market would use the hazardous secondary material in a reasonable timeframe and ensure that the hazardous secondary material will not be abandoned (e.g., based on past practices, market

Regulations

factors, the nature of the hazardous secondary material, or any contractual arrangements);

d. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

e. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under 40 CFR 261.2 or 40 CFR 261.4.

9VAC20-60-1420. Administrative procedures.

A. Procedures for variances to be classified as a boiler. The director will use the following procedures in evaluating applications for variances to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the department for the variance. The application must address the relevant criteria contained in 9VAC20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any).

B. Variances. The director will use the following procedures in evaluating applications for variances submitted under 9VAC20-60-1380 B, 9VAC20-60-1390, and 9VAC20-60-1400.

1. The applicant shall apply to the department. The application shall address the relevant criteria contained in 9VAC20-60-1380 B, 9VAC20-60-1390, and 9VAC20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any), and will publish it in the newspaper in the locality where the applicant is located.

3. In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in 9VAC20-60-1390 upon which a variance or nonwaste determination has been based, the applicant must

send a description of the change in circumstances to the director. The director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or nonwaste determination or may require the facility to reapply for the variance or nonwaste determination.

4. Variances and nonwaste determinations shall be effective for a fixed term not to exceed 10 years. No later than six months prior to the end of this term, facilities must reapply for a variance or nonwaste determination. If a facility reapplies for a variance or nonwaste determination within six months, the facility may continue to operate under an expired variance or nonwaste determination until receiving a decision on their reapplication from the director.

5. Facilities receiving a variance or nonwaste determination must provide notification as required by 40 CFR 260.42 as incorporated by reference.

C. Changes in management procedures.

1. Recycling activities. In determining whether to regulate recycling activities in a manner differing from procedures described in 40 CFR 261.6(a)(2)(iii), the director will fulfill all the requirements of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. In addition to the process required by the APA, the director will:

a. If a generator is accumulating the waste, issue a notice setting forth the factual basis for the decision and stating that the person shall comply with applicable requirements of 9VAC20-60-262. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with 9VAC20-60-262 is required. The order becomes effective in 30 days, unless the director specifies a later date or unless review under Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act is requested.

b. If the person is accumulating the recyclable material at a storage facility, issue a notice stating that the person shall obtain a permit in accordance with all applicable provisions of Part III (9VAC20-60-124 et seq.), 9VAC20-60-270, and Part XII (9VAC20-60-1260 et seq.) of this chapter. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the

director's determination. The questions of whether the director's decision was proper will remain open for consideration during the public comment period discussed under ~~9VAC20-60-1210~~ 40 CFR 124.11 and in any subsequent hearing.

2. Variance from secondary containment. The following procedures shall be followed in order to request a variance from secondary containment:

a. The department shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in 40 CFR 265.193(g), (or 40 CFR 264.195(g)), and 9VAC20-60-1410 B according to the following schedule:

(1) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with 40 CFR 265.193(a) or 40 CFR 264.193(a); and

(2) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

b. As part of the notification, the owner or operator shall also submit to the department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in 9VAC20-60-1410 B 4 or 9VAC20-60-1410 B 5.

c. The demonstration for a variance shall be completed and submitted to the department within 180 days after notifying the department of intent to conduct the demonstration.

d. In case of facilities regulated under 9VAC20-60-265:

(1) The director will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(2) The director will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is

incomplete or does not include sufficient information, the 90-day time period will begin when the department receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in subdivision 2 d (1) of this subsection is extended, the 90-day time period will be similarly extended.

e. In case of facilities regulated under 9VAC20-60-264, if a variance is granted to the permittee, the director will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

VA.R. Doc. No. R16-4568; Filed December 7, 2015, 4:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-10, 9VAC20-81-35, 9VAC20-81-45, 9VAC20-81-90, 9VAC20-81-95, 9VAC20-81-97, 9VAC20-81-110, 9VAC20-81-300, 9VAC20-81-310, 9VAC20-81-370, 9VAC20-81-450, 9VAC20-81-460, 9VAC20-81-470, 9VAC20-81-485, 9VAC20-81-550, 9VAC20-81-600, 9VAC20-81-610, 9VAC20-81-700; adding 9VAC20-81-475, 9VAC20-81-800, 9VAC20-81-810, 9VAC20-81-820).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Parts 257 and 258.

Effective Date: January 27, 2016.

Agency Contact: Justin L. Williams, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4185, FAX (804) 698-4234, TTY (804) 698-4021, or email justin.williams@deq.virginia.gov.

Summary:

On April 17, 2015, the U.S. Environmental Protection Agency published a final rule in the Federal Register titled "Disposal of Coal Combustion Residuals from Electric Utilities." The federal rule became effective October 19, 2015. This regulatory action amends Virginia's Solid Waste Management Regulations to incorporate the recently adopted federal standards concerning coal combustion residuals. The federal rule establishes standards for the disposal of coal combustion residuals from electric utilities in landfills and surface impoundments. The rule contains

Regulations

locational restrictions, design criteria, operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and recordkeeping requirements. These requirements are being incorporated by reference into Virginia's Solid Waste Management Regulations. Solid waste permits will be issued for coal combustion residual landfills and surface impoundments operating in Virginia.

The federal rule also modified 40 CFR 261.4(b), which identifies materials excluded from being hazardous waste. The Virginia Hazardous Waste Management Regulations incorporate 40 CFR 261.4 by reference. The Virginia Hazardous Waste Management Regulations will be updated as part of a separate rulemaking process to include the revisions made to 40 CFR 261.4(b)(4) (Bevill exclusion).

Part I Definitions

9VAC20-81-10. Definitions.

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

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the frostline with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Beneficial use of CCR" means the CCR meet all of the following conditions:

1. The CCR must provide a functional benefit;

2. The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

3. The use of the CCR must meet relevant product specifications, regulatory standards, or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

4. When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in nonroadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil, and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"Capacity" means the maximum permitted volume of solid waste, inclusive of daily and intermediate cover, that can be disposed in a landfill. This volume is measured in cubic yards.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"CCR landfill" means an area of land or an excavation that receives CCR and that is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this chapter, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

"Clean wood" means solid waste consisting of untreated wood pieces and particles that do not contain paint, laminate,

bonding agents, or chemical preservatives or are otherwise unadulterated.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the requirements of this chapter.

"Closure" means that point in time when a permitted landfill has been capped, certified as properly closed by a professional engineer, inspected by the department, and closure notification is performed by the department in accordance with 9VAC20-81-160 D.

"Coal combustion byproducts" or "CCB" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by burning coal. CCB includes both CCR and other non-CCR wastes identified in this definition.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. CCR is a specific type of CCB.

"Combustion unit" means an incinerator, waste heat recovery unit, or boiler.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility that will ultimately upgrade it to conform to this chapter.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, ~~and/or~~ or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Conditionally exempt small quantity generator" means a generator of hazardous waste who has been so defined in 40 CFR 261.5, as amended. That section applies to the persons who generate in that calendar month no more than 100 kilograms of hazardous waste or one kilogram of acutely hazardous waste.

"Construction" means the initiation of permanent physical change at a property with the intent of establishing a solid waste management unit. This does not include land-clearing activities, excavation for borrow purposes, activities intended for infrastructure purposes, or activities necessary to obtain Part A siting approval (i.e., advancing of exploratory borings, digging of test pits, groundwater monitoring well installation, etc.).

"Construction/demolition/debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, split tires, and white goods or combinations of the above solid wastes.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material that is used to blanket solid waste in a landfill.

"Daily disposal limit" means the amount of solid waste that is permitted to be disposed at the facility and shall be computed on the amount of waste disposed during any operating day.

"Debris waste" means wastes resulting from land-clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

Regulations

"Demolition waste" means that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store, or treat before or instead of being abandoned, disposed of, burned, or incinerated.

"Discarded material" means a material that is:

1. Abandoned by being:
 - a. Disposed of;
 - b. Burned or incinerated; or
 - c. Accumulated, stored, or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or
2. Recycled used, reused, or reclaimed material as defined in this part.

"Disclosure statement" means a sworn statement or affirmation as required by § 10.1-1400 of the Code of Virginia. (see DEQ Form DISC-01 and 02 (Disclosure Statement)).

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Disposal unit boundary" or "DUB" means the vertical plane located at the edge of the waste disposal unit. This vertical plane extends down into the uppermost aquifer. The DUB must be positioned within or coincident to the waste management boundary.

"EPA" means the ~~United States~~ U.S. Environmental Protection Agency.

"Exempt management facility" means a site used for activities that are conditionally exempt from management as a solid waste under this chapter. The facility remains exempt from solid waste management requirements provided it complies with the applicable conditions set forth in Parts II (9VAC20-81-20 et seq.) and IV (9VAC20-81-300 et seq.) of this chapter.

"Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has

obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Expansion" means a horizontal expansion of the waste management boundary as identified in the Part A application. If a facility's permit was issued prior to the establishment of the Part A process, an expansion is a horizontal expansion of the disposal unit boundary.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Facility boundary" means the boundary of the solid waste management facility. For landfills, this boundary encompasses the waste management boundary and all ancillary activities including, but not limited to scales, groundwater monitoring wells, gas monitoring probes, and maintenance facilities as identified in the facility's permit application. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs. For unpermitted solid waste management facilities, the facility boundary is the boundary of the property line where the solid waste is located.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including low-lying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food-chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where

coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management facility.

"Governmental unit" means any department, institution, or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"Ground rubber" means material processed from waste tires that is no larger than 1/4 inch in any dimension. This includes crumb rubber that is measured in mesh sizes.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste found listed in Appendix VIII of 9VAC20-60-261.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Home use" means the use of compost for growing plants that is produced and used on a privately owned residential site.

"Host agreement" means any lease, contract, agreement, or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas) which, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9VAC20-60.

"Household waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste that is a byproduct of a production process.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Interim cover systems" means temporary cover systems applied to a landfill area when landfilling operations will be temporarily suspended for an extended period (typically, longer than one year). At the conclusion of the interim period, the interim cover system may be removed and landfilling operations resume or final cover is installed.

"Karst topography" means areas where karst terrane, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant

Regulations

in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

"Land-clearing activities" means the removal of flora from a parcel of land.

"Land-clearing debris" means vegetative waste resulting from land-clearing activities.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Landfill mining" means the process of excavating solid waste from an existing landfill.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an ~~off-site~~ offsite facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated groundwater is regulated as contaminated groundwater.

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or

masses of minerals or small particles of older rock, that formed by crystallization of magma or by induration of loose sediments. This term does not include ~~manmade~~ man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Materials recovery facility" means a solid waste management facility for the collection, processing, and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures, and techniques used to systematically analyze, inspect, and collect data on operational parameters of the facility or on the quality of air, groundwater, surface water, and soils.

"Monitoring well" means a well point below the ground surface for the purpose of obtaining periodic water samples from groundwater for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter.

"Municipal solid waste" means that waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New CCR landfill" means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

"New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or

operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nuisance" means an activity that unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Offsite" means any site that does not meet the definition of onsite as defined in this part.

"Onsite" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way that he controls and to which the public does not have access, are also considered onsite property.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9VAC20-81-45.

"Operating record" means records required to be maintained in accordance with the facility permit or this part (see 9VAC20-81-530).

"Operation" means all waste management activities at a solid waste management facility beginning with the initial receipt of solid waste for treatment, storage, disposal, or transfer and ceasing with the initiation of final closure activities at the solid waste management facility subsequent to the final receipt of waste.

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying

degrees or any combination of substances that contain such substance (see 40 CFR 761.3, as amended).

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permit" means the written permission of the director to own, operate, or construct a solid waste management facility.

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

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance that causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist that indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

"Postclosure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Process rate" means the maximum rate of waste acceptance that a solid waste management facility can process for treatment ~~and/or~~ and storage. This rate is limited by the capabilities of equipment, personnel, and infrastructure.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board ~~of~~ for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (18VAC10-20).

"Professional geologist" means a geologist licensed to practice geology in the Commonwealth as defined by the rules and regulations set forth by the Board for Geology (18VAC70-20) Professional Soil Scientists, Wetland Professionals, and Geologists (18VAC145-40).

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over

Regulations

the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Putrescible waste" means solid waste that contains organic material capable of being decomposed by micro-organisms and cause odors.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Refuse" means all solid waste products having the character of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Refuse-derived fuel (RDF)" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste Management Regulations (9VAC20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include any release that results in exposure to persons solely within a workplace; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal

application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (groundwater, surface water, soils, and sediments) and debris, that are managed for the purpose of remediating a site in accordance with 9VAC20-81-45 or Part III (9VAC20-81-100 et seq.) of this chapter or under the Voluntary Remediation Regulations (9VAC20-160) or other regulated remediation program under DEQ oversight. For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9VAC20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under this chapter or otherwise approved by the director. An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association, limited liability company, or cooperative: a duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the business entity;
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: a duly authorized representative of the locality if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the locality.

"Rubbish" means combustible or slowly putrescible discarded materials that include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Run-on" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means metal parts such as bars, rods, wire, empty containers, or metal pieces that are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Semiannual" means an interval corresponding to approximately 180 days. For the purposes of scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered semiannual.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as "solid waste" in 9VAC20-81-95.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility" or "SWMF" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Special wastes" means solid wastes that are difficult to handle, require special precautions because of hazardous properties, or the nature of the waste creates waste management problems in normal operations. (See Part VI (9VAC20-81-610 et seq.) of this chapter.)

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

"State waters" means all water, on the surface and under the ground, wholly or partially within, or bordering the Commonwealth, or within its jurisdiction.

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or fossil fuel combustion products, when done in accordance with this chapter, spread and compacted with proper equipment, and covered with a vegetated soil cap.

"Sudden event" means a one-time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, ~~manmade~~ man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with ~~manmade~~ man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

"Surface waters" means all state waters that are not groundwater as defined in § 62.1-255 of the Code of Virginia.

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of nonearthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans

Regulations

and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device that uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4 inch to four inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from four inches to 10 inches in any dimension.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery.

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique, or process, including but not limited to incineration, designed to change the physical, chemical, or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation, recovery, or disposal.

"Underground source of drinking water" means an aquifer or its portion:

1. Which contains water suitable for human consumption; or
2. In which the groundwater contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the disposal of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material that is either:

1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or

2. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect, or other arthropod that transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into fertile excrement.

"Vertical design capacity" means the maximum design elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste disposal unit boundary.

"VPDES" (Virginia Pollutant Discharge Elimination System) means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

"Washout" means carrying away of solid waste by waters of the base flood.

"Waste-derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste-derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "refuse derived fuel (RDF)" as defined in 9VAC5-40-890.

"Waste management boundary" means the vertical plane located at the boundary line of the area approved in the Part A application for the disposal of solid waste and storage of leachate. This vertical plane extends down into the uppermost aquifer and is within the facility boundary.

"Waste pile" means any noncontainerized accumulation of nonflowing, solid waste that is used for treatment or storage.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9VAC20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" means, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

1. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;
2. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or
3. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:
 - a. An alteration of the physical, chemical, or biological properties of state waters or a discharge or deposit of sewage, industrial wastes, or other wastes to state waters by any owner that by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;
 - b. The discharge of untreated sewage by any person into state waters; and
 - c. The contribution to the degradation of water quality standards duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States" or "waters of the U.S." means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including:
 - a. Any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;
 - c. Any such waters that are used or could be used for industrial purposes by industries in interstate commerce;
 - d. All impoundments of waters otherwise defined as waters of the United States under this definition;

e. Tributaries of waters identified in subdivisions 3 a through d of this definition;

f. The territorial sea; and

g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 3 a through f of this definition.

"Wetlands" means those areas that are defined by the federal regulations under 33 CFR Part 328, as amended.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill that is actively receiving solid waste for compaction and cover.

"Yard waste" means a subset of vegetative waste and means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed 12 inches in diameter.

9VAC20-81-35. Applicability of chapter.

A. This chapter applies to all persons who treat, store, dispose, or otherwise manage solid wastes as defined in 9VAC20-81-95.

B. All facilities that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity or until the closure date established pursuant to § 10.1-1413.2 of the Code of Virginia, in Table 2.1 provided:

1. The facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance.
2. On or before October 9, 1993, the owner or operator of the solid waste management facility submitted to the director:
 - a. An acknowledgment that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action, and financial responsibility requirements;
 - b. A statement signed by a professional engineer that he has reviewed the regulations established by the department for solid waste management facilities, including the open dump criteria contained therein, that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations and that, on the basis of his inspection and review, he has concluded:
 - (1) That the facility is not an open dump;
 - (2) That the facility does not pose a substantial present or potential hazard to human health and the environment; and

Regulations

(3) That the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water, or groundwater in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

c. A statement signed by the owner or operator:

(1) That the facility complies with applicable financial assurance regulations; and

(2) Estimating when the facility will reach its vertical design capacity.

3. Enlargement or closure of these facilities shall conform with the following subconditions:

a. The facility may not be enlarged prematurely to avoid compliance with this chapter when such enlargement is not consistent with past operating practices, the permit, or modified operating practices to ensure good management.

b. The facility shall not dispose of solid waste in any portion of a landfill disposal area that has received final cover or has not received waste for a period of one year, in accordance with 9VAC20-81-160 C. The facility shall notify the department, in writing, within 30 days, when an area has received final cover or has not received waste for a one-year period, in accordance with 9VAC20-81-160 C. However, a facility may apply for a permit, and if

approved, can construct and operate a new cell that overlays ("piggybacks") over a closed area in accordance with the permit requirements of this chapter.

c. The facilities subject to the restrictions in this subsection are listed in Table 2.1. The closure dates were established in Final Prioritization and Closure Schedule for HB 1205 Disposal Areas (DEQ, September 2001). The publication of these tables is for the convenience of the regulated community and does not change established dates. Any facility, including, but not limited to those listed in Table 2.1, must cease operation if that facility meets any of the open dump criteria listed in 9VAC20-81-45 A 1.

d. Those facilities assigned a closure date in accordance with § 10.1-1413.2 of the Code of Virginia shall designate on a map, plat, diagram, or other engineered drawing, areas in which waste will be disposed of in accordance with Table 2.1 until the latest cessation of waste acceptance date as listed in Table 2.1 is achieved. This map or plat shall be placed in the operating record and a copy shall be submitted upon request to the department in order to track the progress of closure of these facilities. If the facility already has provided this information under 9VAC20-81-160, then the facility may refer to that information.

TABLE 2.1
Final Prioritization and Closure Schedule For House Bill (HB) 1205 Disposal Areas

Solid Waste Permit Number and Site Name	Location	Department Regional Office ¹	Latest Cessation of Waste Acceptance Date ²
429 - Fluvanna County Sanitary Landfill	Fluvanna County	VRO	12/31/2007
92 - Halifax County Sanitary Landfill ³	Halifax County	BRRO	12/31/2007
49 - Martinsville Landfill	City of Martinsville	BRRO	12/31/2007
14 - Mecklenburg County Landfill	Mecklenburg County	BRRO	12/31/2007
228 - Petersburg City Landfill ³	City of Petersburg	PRO	12/31/2007
31 - South Boston Sanitary Landfill	Town of South Boston	BRRO	12/31/2007
204 - Waynesboro City Landfill	City of Waynesboro	VRO	12/31/2007
91 - Accomack County Landfill – Bobtown South	Accomack County	TRO	12/31/2012
580 – Bethel Landfill ³	City of Hampton	TRO	12/31/2012
182 - Caroline County Landfill	Caroline County	NVRO	12/31/2012
149 - Fauquier County Landfill	Fauquier County	NVRO	12/31/2012

405 - Greenville County Landfill	Greenville County	PRO	12/31/2012
29 - Independent Hill Landfill ³	Prince William County	NVRO	12/31/2012
1 - Loudoun County Sanitary Landfill	Loudoun County	NVRO	12/31/2012
194 - Louisa County Sanitary Landfill	Louisa County	NVRO	12/31/2012
227 - Lunenburg County Sanitary Landfill	Lunenburg County	BRRO	12/31/2012
507 - Northampton County Landfill	Northampton County	TRO	12/31/2012
90 - Orange County Landfill	Orange County	NVRO	12/31/2012
75 - Rockbridge County Sanitary Landfill	Rockbridge County	VRO	12/31/2012
23 - Scott County Landfill	Scott County	SWRO	12/31/2012
587 - Shoosmith Sanitary Landfill ³	Chesterfield County	PRO	12/31/2012
417 - Southeastern Public Service Authority Landfill ³	City of Suffolk	TRO	12/31/2012
461 - Accomack County Landfill #2	Accomack County	TRO	12/31/2020
86 - Appomattox County Sanitary Landfill	Appomattox County	BRRO	12/31/2020
582 - Botetourt County Landfill ³	Botetourt County	BRRO	12/31/2020
498 - Bristol City Landfill	City of Bristol	SWRO	12/31/2020
72 - Franklin County Landfill	Franklin County	BRRO	12/31/2020
398 - Virginia Beach Landfill #2 – Mount Trashmore II ³	City of Virginia Beach	TRO	12/31/2020

Notes:

¹Department of Environmental Quality Regional Offices:

- BRRO - Blue Ridge Regional Office
- NVRO - Northern Virginia Regional Office
- PRO - Piedmont Regional Office
- SWRO - Southwest Regional Office
- TRO - Tidewater Regional Office
- VRO - Valley Regional Office

²This date means the latest date that the disposal area must cease accepting waste.

³A portion of these facilities operated under HB 1205 and another portion currently is compliant with Subtitle D requirements.

C. Facilities are authorized to expand beyond the waste boundaries existing on October 9, 1993, as follows:

1. Existing captive industrial landfills.
 - a. Existing nonhazardous industrial waste facilities that are located on property owned or controlled by the

generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 1 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a captive industrial landfill beyond the waste boundaries existing

Regulations

on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements in effect at the time of permit issuance.

c. Owners or operators of facilities that are authorized under subdivision 1 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120.

d. Facilities authorized for expansion in accordance with subdivision 1 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

2. Other existing industrial waste landfills.

a. Existing nonhazardous industrial waste facilities that are not located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 2 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand an industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 2 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities authorized for expansion in accordance with subdivision 2 of this subsection are limited to expansion

to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

3. Existing construction/demolition/debris landfills.

a. Existing facilities that accept only construction/demolition/debris waste shall comply with all the provisions of this chapter except as shown in subdivision 3 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a construction/demolition/debris landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 3 of this subsection to accept waste for disposal beyond the active portion of the landfill existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with 9VAC20-81-160.

f. Facilities authorized for expansion in accordance with subdivision 3 of this subsection are limited to expansion to the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

4. Facilities or units undergoing expansion in accordance with the partial exemptions created by subdivision 1 b, 2 b, or 3 b of this subsection may not receive hazardous wastes generated by the exempt small quantity generators, as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60), for disposal on the expanded

portions of the facility. Other wastes that require special handling in accordance with the requirements of Part VI (9VAC20-81-610 et seq.) of this chapter or that contain hazardous constituents that would pose a risk to health or environment, may only be accepted with specific approval by the director.

5. Nothing in subdivisions 1 b, 2 b, and 3 b of this subsection shall alter any requirement for ~~ground water~~ groundwater monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance, or corrective action imposed under this chapter, or impair the powers of the director to revoke or modify a permit pursuant to § 10.1-1409 of the Virginia Waste Management Act or Part V (9VAC20-81-400 et seq.) of this chapter.

D. An owner or operator of a previously unpermitted facility or unpermitted activity that managed materials previously exempt or excluded from this chapter shall submit a complete application for a solid waste management facility permit, permit by rule or a permit modification, as applicable, in accordance with Part V (~~9VAC20-81-430~~ (9VAC20-81-400 et seq.) of this chapter within six months after these materials have been defined or identified as solid wastes. If the director finds that the application is complete, the owner or operator may continue to manage the newly defined or identified waste until a permit or permit modification decision has been rendered or until a date two years after the change in definition whichever occurs sooner, provided however, that in so doing he shall not operate or maintain an open dump, a hazard, or a nuisance.

Owners or operators of solid waste management facilities in existence prior to September 24, 2003, shall now be in compliance with this chapter. Where conflicts exist between the existing facility permit and the new requirements of the regulations, the regulations shall supersede the permit except where the standards in the permit are more stringent than the regulation. Language in an existing permit shall not act as a shield to compliance with the regulation, unless a variance to the regulations has been approved by the director in accordance with the provisions of Part VII (9VAC20-81-700 et seq.) of this chapter. Existing facility permits will not be required to be updated to eliminate requirements conflicting with the regulation, except at the request of the director or if a permit is modified for another reason. However, all sanitary landfills and incinerators that accept waste from jurisdictions outside of Virginia must have submitted the materials required under 9VAC20-81-100 E 4 by March 22, 2004.

E. This chapter is not applicable to landfill units closed in accordance with regulations or permits in effect prior to December 21, 1988, unless releases from these closed landfills meet the open dump criteria found in 9VAC20-81-45, or the closed landfills are found to be a hazard or a nuisance under subdivision 21 of § 10.1-1402 of the Code of Virginia, or a site where improper waste management has

occurred under subdivision 19 of § 10.1-1402 of the Code of Virginia.

F. Part VIII (9VAC20-81-800 et seq.) of this chapter applies to the following:

1. Owners and operators of new and existing CCR landfills and CCR surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers;

2. Disposal units located offsite of the electric utility or independent power producer. Part VIII of this chapter also applies to any practice that does not meet the definition of a beneficial use of CCR; and

3. Inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.

G. Part VIII of this chapter is not applicable to the following:

1. CCR landfills that have ceased receiving CCR prior to October 19, 2015;

2. Electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015;

3. Wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals;

4. Fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

5. Practices that meet the definition of a beneficial use of CCR;

6. CCR placement at active or abandoned underground or surface coal mines; or

7. Municipal solid waste landfills that receive CCR.

9VAC20-81-45. Open dumps.

A. Prohibition.

1. No person shall dispose of solid waste in open dumps, nor own, operate or allow to be operated on his property an open dump as defined in subsection B of this section or § 10.1-1400 of the Code of Virginia. Both permitted and unpermitted sites or facilities may be classified as open dumps.

2. Any person found to be in violation of this section shall be ordered to immediately cease treatment, storage, and

Regulations

disposal of any additional solid waste and shall take measures to abate improper management of the solid waste and come into compliance with the requirements of this chapter.

B. Criteria – Incorporation of 40 CFR 257.1 through 257.3-8 by reference.

1. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR 257.1 through 257.3-8 are adopted herein and incorporated by reference as part of the Virginia Solid Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are part of 40 CFR 257.1 through 257.3-8 are also hereby incorporated as part of the Virginia Solid Waste Management Regulations.

2. In all locations in these regulations where 40 CFR 257.1 through 257.3-8 are incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

a. 40 CFR 257.1(b) and 40 CFR 257.3-5 are not included in the incorporation of 40 CFR 257.1 through 257.3-8 by reference and are not part of the Virginia Solid Waste Management Regulations.

b. The following text shall be substituted for 40 CFR 257.1(a): "Unless otherwise provided, the criteria in §§ 257.1 through 257.3-8 are adopted for determining which solid waste disposal facilities and practices are a nuisance and pose a reasonable probability of adverse effects on health or the environment under §§ 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act, 42 USC § 6901 et seq. (1976) (RCRA) and the Virginia Waste Management Act, § 10.1-1400 of the Code of Virginia (Act). Unless otherwise provided, the criteria in §§ 257.50 through 257.107 are adopted for determining which CCR landfills and CCR surface impoundments pose a reasonable probability of adverse effects on human health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act."

c. The following text shall be substituted for 40 CFR 257.1(a)(1): "Facilities failing to satisfy the criteria in §§ 257.1 through 257.3-8 or §§ 257.5 through 257.30 or §§ 257.50 through 257.107 are considered open dumps, which are prohibited under section 4005 of RCRA and § 10.1-1408.1 of the Act."

d. The following text shall be substituted for 40 CFR 257.1(a)(2): "Practices failing to satisfy the criteria in §§ 257.1 through 257.3-8 or §§ 257.5 through 257.30 or §§ 257.50 through 257.107 constitute open dumping, which is prohibited under section 4005 of RCRA and § 10.1-1408.1 of the Act."

e. In addition to those exceptions found in 40 CFR 257.1(c), the open dump criteria does not apply to sites actively enrolled in the Voluntary Remediation Program (9VAC20-160) or sites that have successfully completed the Voluntary Remediation Program in accordance with all conditions and requirements of their Certificates of Satisfactory Completion.

f. In addition to those exceptions found in 40 CFR 257.1(c), the open dump criteria shall not apply to sites that are undergoing remediation per the requirements of CERCLA or the RCRA Corrective Action Program and are doing so with the department's ~~and/or~~ or the U.S. Environmental Protection Agency's oversight.

C. Site evaluation and remedial action.

1. If a site is a potential or probable open dump, a site evaluation may be conducted. This site evaluation will be conducted by the department in order to determine if further action is required under this section. The site evaluation will include but is not limited to any records that can be obtained from the owner, operator, or other responsible party as well as all documented observations by department personnel regarding the following:

- a. The location of the site;
- b. The amount, type, and source of the waste at the site;
- c. The permit status for the activities taking place at the site; and
- d. A preliminary evaluation of the site with respect to the criteria outlined in subsection B of this section.

2. Based on the criteria of subsection B of this section and the information gathered under the provisions of subdivision 1 of this subsection, the department will make a determination that the site is or is not an open dump.

3. If the department determines that the site is an open dump then the department will make a recommendation for remedial action as follows:

- a. Remedial action is required; or
- b. Removal of the wastes from the site and disposal at a facility permitted to accept the wastes is required. The department may require submission of evidence of proper management of the removed waste and may require evidence, including confirmatory sampling, of the removal of solid waste and any hazardous constituents. A site inspection will be ~~performed~~ performed by the department to confirm the removal of the waste materials.

4. The site evaluation conducted under this subsection may be performed pursuant to an administrative or judicial order or other appropriate mechanism as chosen by the department.

5. Pursuant to the recommendations made under subdivision 3 of this subsection, any required remedial action as deemed necessary by the department shall be

performed by the responsible party pursuant to an administrative or judicial order or other appropriate mechanism as chosen by the department.

D. Process and appeal.

1. Any case decision by the department based on the requirements of this section shall be subject to the process and appeal provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).
2. A final determination and an administrative order requiring remedial action may be obtained in the same hearing or proceeding subject to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC20-81-90. Relationship with other regulations promulgated by the Virginia Waste Management Board.

A. Virginia Hazardous Waste Management Regulations (9VAC20-60).

1. Solid wastes that have been declared hazardous or a universal waste by the generator in accordance with 40 CFR 262.11, as amended, or that are regulated as hazardous wastes by the Commonwealth or another state, and will be treated, stored, or disposed of in Virginia shall be managed in accordance with the requirements of 9VAC20-60 and not 9VAC20-81.
2. Any material from a state other than Virginia that is classified as a hazardous waste in that state shall be managed in accordance with 9VAC20-60.
3. Wastes generated by generators who are conditionally exempt pursuant to 40 CFR 261.5 may be managed in solid waste management facilities provided that:
 - a. (i) A specific approval is obtained from the director for acceptance of the material at a facility with an approved liner and leachate collection system; or (ii) it is included in the facility permit; and
 - b. Records are kept of the actual amount, type, and source of these wastes.

B. Regulated Medical Waste Management Regulations (9VAC20-120). Solid wastes that are defined as regulated medical wastes by the Regulated Medical Waste Management Regulations shall be managed in accordance with those regulations. Regulated medical wastes that are excluded or exempt by 9VAC20-120 shall be regulated by this chapter.

C. Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70). 9VAC20-70 specifies the requirements for financial assurance and allowable financial assurance mechanisms. Solid waste management facilities shall provide financial assurance in accordance with 9VAC20-70.

D. Solid Waste Management Facility Permit Action Fees and Annual Fees (9VAC20-90). All applicants for solid waste management facility permits are required to pay a fee in accordance with the schedule shown in 9VAC20-90. All solid

waste management facilities shall pay annual fees in accordance with 9VAC20-90, as applicable.

E. Solid Waste Planning and Recycling Regulations (9VAC20-130). 9VAC20-130 establishes a framework for local governments to plan for solid waste management needs and a mechanism for tracking recycling rates and solid waste management plan contents.

F. Transportation of Solid and Medical Wastes on State Waters (9VAC20-170). 9VAC20-170 establishes the standards and procedures pertaining to the commercial transport, loading and offloading of solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth.

G. Voluntary Remediation Regulations (9VAC20-160). 9VAC20-160 establishes standards and procedures for the Virginia Voluntary Remediation Program.

H. Coal Combustion Byproduct Regulations (9VAC20-85). 9VAC20-85 establishes standards for the use of fossil fuel combustion products, which are not subject to requirements of this chapter, and ~~to establish~~ establishes standards for siting, design, construction, operation, and administrative procedures pertaining to their use, reuse, or reclamation other than in a manner addressed by this chapter.

9VAC20-81-95. Identification of solid waste.

A. Wastes identified in this section are solid wastes that are subject to this chapter unless regulated pursuant to other applicable regulations issued by the department.

B. Except as otherwise provided, the definition of solid waste per 40 CFR 261.2 as incorporated by 9VAC20-60-261, as amended, is also hereby incorporated as part of this chapter. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 9VAC20-60-261, as amended, are also hereby incorporated as part of this chapter as well.

C. Except as otherwise modified or excepted by 9VAC20-60, the materials listed in the regulations of the United States Environmental Protection Agency set forth in 40 CFR 261.4(a) are considered a solid waste for the purposes of this chapter. However, these materials are not regulated under the provisions of this chapter if all conditions specified therein are met. This list and all material definitions, reference materials and other ancillaries that are part of 40 CFR Part 261.4(a), as incorporated, modified ~~and/or~~ or accepted by 9VAC20-60 are incorporated as part of this chapter. In addition, the following materials are not solid wastes for the purpose of this chapter:

1. Materials generated by any of the following, which are returned to the soil as fertilizers:
 - a. The growing and harvesting of agricultural crops.
 - b. The raising and husbanding of animals, including animal manures and used animal bedding.
2. Mining overburden returned to the mine site.

Regulations

3. Recyclable materials used in manner constituting disposal per 9VAC20-60-266.
4. Wood wastes burned for energy recovery.
5. Materials that are:
 - a. Used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as effective substitutes for commercial products or natural resources provided the materials are not being reclaimed or accumulated speculatively; or
 - b. Returned to the original process from which they are generated.
6. Materials that are beneficially used as determined by the department under this subsection. The department may consider other waste materials and uses to be beneficial in accordance with the provisions of 9VAC20-81-97.
7. The following materials and uses listed in this part are exempt from this chapter as long as they are managed so that they do not create an open dump, hazard, or public nuisance. These materials and the designated use are considered a beneficial use of waste materials:
 - a. Clean wood, wood chips, or bark from land clearing, logging operations, utility line clearing and maintenance operations, pulp and paper production, and wood products manufacturing, when these materials are placed in commerce for service as mulch, landscaping, animal bedding, erosion control, habitat mitigation, wetlands restoration, or bulking agent at a compost facility operated in compliance with Part IV (9VAC20-81-300 et seq.) of this chapter;
 - b. Clean wood combustion residues when used for pH adjustment in compost, liquid absorbent in compost, or as a soil amendment or fertilizer, provided the application rate of the wood ash is limited to the nutrient need of the crop grown on the land on which the wood combustion residues will be applied and provided that such application meets the requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);
 - c. Compost that satisfies the applicable requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);
 - d. Nonhazardous, contaminated soil that has been excavated as part of a construction project and that is used as backfill for the same excavation or excavations containing similar contaminants at the same site, at concentrations at the same level or higher. Excess contaminated soil from these projects is subject to the requirements of this chapter;
 - e. Nonhazardous petroleum contaminated soil that has been treated to the satisfaction of the department in accordance with 9VAC20-81-660;
 - f. Nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products;
 - g. Solid wastes that are approved in advance of the placement, in writing, by the department or that are specifically mentioned in the facility permit for use as alternate daily cover material or other protective materials for landfill liner or final cover system components;
 - h. Fossil fuel combustion products that are not CCR when used as a material in the manufacturing of another product (e.g., concrete, concrete products, lightweight aggregate, roofing materials, plastics, paint, flowable fill) or as a substitute for a product or material resource (e.g., blasting grit, roofing granules, filter cloth pre-coat for sludge dewatering, pipe bedding);
 - i. Tire chips and tire shred when used as a ~~sub-base~~ sub-base fill for road base materials or asphalt pavements when approved by the Virginia Department of Transportation or by a local governing body;
 - j. Tire chips, tire shred, and ground rubber used in the production of commercial products such as mats, pavement sealers, playground surfaces, brake pads, blasting mats, and other rubberized commercial products;
 - k. Tire chips and tire shred when used as backfill in landfill gas or leachate collection pipes, recirculation lines, and drainage material in landfill liner and cover systems, and gas interception or remediation applications;
 - l. Waste tires, tire chips or tire shred when burned for energy recovery or when used in pyrolysis, gasification, or similar treatment process to produce fuel;
 - m. Waste-derived fuel product, as defined in 9VAC20-81-10, derived from nonhazardous solid waste;
 - n. Uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock placed in commerce for service as a substitute for conventional aggregate; and
 - o. Clean, ground gypsum wallboard when used as a soil amendment or fertilizer, provided the following conditions are met:
 - (1) No components of the gypsum wallboard have been glued, painted, or otherwise contaminated from manufacture or use (e.g., waterproof or fireproof drywall) unless otherwise processed to remove contaminants.
 - (2) The gypsum wallboard shall be processed so that 95% of the gypsum wallboard is less than 1/4 inch by 1/4 inch in size, unless an alternate size is approved by the department.
 - (3) The gypsum wallboard shall be applied only to agricultural, silvicultural, landscaped, or mined lands or roadway construction sites that need fertilization.

(4) The application rate for the ground gypsum wallboard shall not exceed the following rates.

Region	Rate
Piedmont, Mountains, and Ridge and Valley	250 lbs/1,000 ft ²
Coastal Plain	50 lbs/1,000 ft ²

Note: These weights are for dry ground gypsum wallboard.

D. The following activities are conditionally exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.
2. Composting of household waste generated at a residence and composted at the site of generation.
3. Composting activities performed for educational purposes as long as no more than 100 cubic yards of materials are ~~on-site~~ onsite at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.
4. Composting of animal carcasses onsite at the farm of generation.
5. Composting of vegetative waste ~~and/or~~ or yard waste generated onsite by owners or operators of agricultural operations or owners of the real property or those authorized by the owners of the real property provided:
 - a. All decomposed vegetative waste and compost produced is utilized on said property;
 - b. No vegetative waste or other waste material generated from other sources other than said property is received;
 - c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and
 - d. They pose no nuisance or present no potential threat to human health or the environment.
6. Composting of yard waste by owners or operators who accept yard waste generated offsite shall be exempt from all other provisions of this chapter as applied to the composting activities provided the requirements of 9VAC20-81-397 B are met.
7. Composting of preconsumer food waste and kitchen culls generated onsite and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation.
8. Vermicomposting, when used to process Category I, Category II, or Category III feedstocks in containers

designed to prohibit vector attraction and prevent nuisance odor generation. If offsite feedstocks are received no more than 100 cubic yards of materials may be onsite at any one time. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

9. Composting of sewage sludge or combinations of sewage sludge with nonhazardous solid waste provided the composting facility is permitted under the requirements of a Virginia Pollution Abatement (VPA) or VPDES permit.
10. Management of solid waste in appropriate containers at the site of its generation, provided that:
 - a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal;
 - b. Nonputrescible wastes are not stored more than 90 days between time of collection and time of removal for proper management; and
 - c. Treatment of waste is conducted in accordance with the following:
 - (1) In accordance with a waste analysis plan that:
 - (a) Contains a detailed chemical and physical analysis of a representative sample of the waste being treated; and contains all records necessary to treat the waste in accordance with the requirements of this part, including the selected testing frequency; and
 - (b) Is kept in the facility's onsite file and made available to the department upon request.
 - (2) Notification is made to the receiving waste management facility that the waste has been treated.

11. Using rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement as clean fill.
12. Storage of less than 100 waste tires at the site of generation provided that no waste tires are accepted from offsite and that the storage will not present a hazard or a nuisance.
13. Storage in piles of land-clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum:
 - a. The wastes are managed in the following manner:
 - (1) They do not cause discharges of leachate, or attract vectors.
 - (2) They cannot be dispersed by wind and rain.
 - (3) Fire is prevented.
 - (4) They do not become putrescent.
 - b. Any facility storing waste materials under the provisions of this subsection shall obtain a ~~storm water~~ stormwater discharge permit if they are considered a

Regulations

significant source under the provisions of 9VAC25-31-120 A 1 c.

c. No more than a total of 1/3 acre of waste material is stored onsite and the waste pile does not exceed 15 feet in height above base grade.

d. Siting provisions.

(1) All log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose are stored at the site of the industrial activity that produces them;

(2) A 50-foot fire break is maintained between the waste pile and any structure or tree line;

(3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed 4:1;

(4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and

(5) No stored waste materials shall extend closer than 50 feet to any property line.

e. If activities at the site cease, any waste stored at the site must be properly managed in accordance with these regulations within 90 days. The director can approve longer ~~time frames~~ timeframes with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.

14. Storage of nonhazardous solid wastes and hazardous wastes, or hazardous wastes from conditionally exempt small quantity generators as defined in Virginia Hazardous Waste Management Regulations (9VAC20-60) at a transportation terminal or transfer station in closed containers meeting the U.S. Department of Transportation specifications is exempt from this section and the permitting provisions of Part V (9VAC20-81-400 et seq.) of this chapter provided such wastes are removed to a permitted storage or disposal facility within 10 days from the initial receipt from the waste generator. To be eligible for this exemption, each shipment must be properly documented to show the name of the generator, the date of receipt by the transporter, and the date and location of the final destination of the shipment. The documentation shall be kept at the terminal or transfer station for at least three years after the shipment has been completed and shall be made available to the department upon request. All such activities shall comply with any local ordinances.

15. Open burning of solid wastes as provided in the following:

a. For forest management, agriculture practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board.

b. For training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. Buildings that have not been demolished may be burned under the provisions of this subdivision only. Additionally, burning rubber tires, asphaltic materials, crankcase oil, impregnated wood, or other rubber-based or petroleum-based wastes is permitted when conducting bona fide firefighting instruction.

c. For the destruction of classified military documents under the supervision of the designated official.

d. For campfires or other fires using clean wood or vegetative waste that are used solely for recreational purposes, for ceremonial occasions, for outdoor preparation of food, and for warming of outdoor workers.

e. For the onsite destruction of vegetative waste located on the premises of private property, provided that no regularly scheduled collection service for such vegetative waste is available at the adjacent street or public road.

f. For the onsite destruction of household waste by homeowners or tenants, provided that no regularly scheduled collection service for such household waste is available at the adjacent street or public road.

g. For the onsite destruction of clean wood waste and debris waste resulting from property maintenance; from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills; or from any other clearing operations.

16. Open burning of vegetative waste is allowed at a closed landfill that has not been released from postclosure care. The activity shall be included in the text of the postclosure plan and conducted in accordance with § 10.1-1410.3 of the Code of Virginia.

17. Placement of trees, brush, or other vegetation from land used for agricultural or silvicultural purposes on the same property or other property of the same landowner.

18. Using fossil fuel combustion products that are not CCR in one or more of the following applications or when handled, processed, transported, or stockpiled for the following uses:

a. As a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with ~~VDOT~~ Virginia Department of Transportation specifications, and

exposed slopes not directly under the surface of the pavement must have a minimum of 18 inches of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year flood plain;

b. Processed with a cementitious binder to produce a stabilized structural fill product that is spread and compacted with proper equipment for the construction of a project with a specified end use; or

c. For the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

E. The following solid wastes are exempt from this chapter provided that they are managed in accordance with the requirements promulgated by other applicable state or federal agencies:

1. Management of wastes regulated by the State Board of Health, the State Water Control Board, the Air Pollution Control Board, the Department of Mines, Minerals and Energy, Department of Agriculture and Consumer Services, or any other state or federal agency with such authority.

2. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal.

4. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) when used in accordance with the standards.

5. Solid waste management practices that involve only the onsite placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the DMME, that do not include any municipal solid waste, are accomplished in an environmentally sound manner, and do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter.

6. Waste or byproduct derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner, or horticultural growing medium as defined in § 3.2-3600 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.2-3700 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services.

7. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface

material if the use is consistent with Virginia Department of Transportation practices. This exemption does not apply to CCR used in this manner.

8. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles provided that such storage complies with requirements set forth in § 10.1-1418.2 of the Code of Virginia and such storage does not pose a hazard or nuisance.

9. Tire chips used as the drainage material in construction of septage drain fields regulated under the authority of the Virginia Department of Health.

F. The following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance:

1. Paper and paper products;

2. Clean wood waste that is to undergo size reduction in order to produce a saleable product, such as mulch;

3. Cloth;

4. Glass;

5. Plastics;

6. Tire chips, tire shred, ground rubber; and

7. Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section.

9VAC20-81-97. Beneficial use demonstrations.

A. The department may consider other waste materials and uses to be beneficial. The generator or proposed user of such materials may request that the department make a case-specific determination that the solid waste may be beneficially used in a manufacturing process to make a product or as an effective substitute for a commercial product. In all such cases, the materials will be managed so they do not create an open dump, hazard, or public nuisance.

1. The requestor shall provide the following information:

a. A description of the solid waste under review and its proposed use;

b. Chemical and physical characteristics of the solid waste under review and of each type of proposed product;

c. A demonstration that there is a known or reasonably probable market for the intended use of the solid waste under review and of all proposed products by providing one or more of the following:

(1) A description of how the proposed product will be used;

(2) A demonstration that the proposed product complies with industry standards and specifications for that product if any; or

Regulations

(3) Other documentation that a market for the proposed product or use exists; and

d. A demonstration that the management of the solid waste under review will not adversely affect human health and safety, the environment, and natural resources by providing:

(1) A solid waste control plan that describes the following:

(a) The source of the solid waste under review;

(b) Procedures for periodic testing of the solid waste under review and the proposed product to ensure that the proposed product's composition has not changed significantly;

(c) The disposition of any solid waste that may result from the manufacture of the product into which the solid waste under review is intended to be incorporated;

(d) A description of the type of storage (e.g., container, tank, or pile) and the maximum anticipated inventory of the solid waste under review (not to exceed 90 days) before being used;

(e) Procedures for run-on and run-off control of the storage areas for the solid waste under review; and

(f) A program and implementation schedule of best management practices designed to minimize uncontrolled dispersion of the solid waste under review before and during all aspects of its storage as inventory ~~and/or~~ and during beneficial use; ~~and~~.

2. Upon receipt of complete information required under subdivision 1 of this subsection, the department will determine in writing within 90 days, on a case-by-case basis, whether the proposal constitutes a beneficial use based on a showing that all of the following criteria have been met:

a. The proposed use of the material constitutes a reuse rather than disposal;

b. For a material that is proposed for incorporation into a manufacturing process, the material is not required to be decontaminated or otherwise specially handled or processed before such incorporation, in order to minimize loss of material or to provide adequate protection, as needed, of public health, safety, or welfare; the environment; or natural resources; and

c. Other criteria as the department shall determine in its discretion to be appropriate. Conversely, the department may determine that owing to the nature of the use, reuse, or reclamation process, some of the informational materials required under subdivision 1 of this subsection may not be required to make the determination.

3. The department will either approve the request, disapprove it, or allow the proposed use of the solid waste under review subject to such conditions as the department may impose. When granting a beneficial use

determination, the department shall determine, on a case-by-case basis, the precise point at which the solid waste under review ceases to be solid waste. Unless otherwise determined for the particular solid waste under review, that point occurs when it is used in a manufacturing process to make a product or used as an effective substitute for a commercial product or a fuel. As part of its request, the generator or the proposed user may request that such point occur elsewhere. In such a request, the proponent shall include a demonstration that there is little potential for improper disposal of the material or little potential for the handling, transportation, or storage of the solid waste under review to have an adverse impact upon the public health, safety, or welfare; the environment; or natural resources.

4. The department may revoke any determination made if it finds that one or more of the items of information submitted serving as the basis for the department's determination was incorrect or is no longer valid, the department finds that there has been a violation of any condition that the department attached to such determination, or that the use, reuse, or reclamation process has become a public nuisance.

B. Beneficial use determinations granted by the department before March 16, 2011, shall remain in effect, subject to all conditions contained therein, unless specifically addressed by subsequent department action.

C. Beneficial use determinations involving coal combustion residuals must meet the requirements of beneficial use of CCR as defined in 40 CFR 257.53. Beneficial use determinations for CCR projects involving over 12,400 tons of CCR must provide the required demonstrations identified in the definition of "beneficial use of CCR" to the department for review and approval.

9VAC20-81-110. Applicability.

A. Sanitary landfills. Sanitary landfills may receive only nonhazardous solid waste unless there are other wastes specifically authorized by the landfill permit.

B. Construction/demolition/debris (CDD) landfills. CDD landfills may only receive demolition waste, construction waste, debris waste, land-clearing debris, split tires, and white goods. No other wastes are authorized for the CDD landfill except industrial waste specifically authorized by the landfill permit.

C. Industrial waste disposal facilities. Industrial waste disposal facilities may only receive nonhazardous industrial waste and are subject to design and operational requirements dependent on the volume and the physical, chemical, and biological nature of the waste. No other wastes are authorized for the industrial waste landfill except construction, demolition, and debris waste specifically authorized by the landfill permit. Coal combustion residual landfills are a specific type of industrial landfill and must meet the requirements in Part VIII (9VAC20-81-800 et seq.) of this chapter in addition to industrial landfill requirements found in

Part III (9VAC20-81-100 et seq.) and Part V (9VAC20-81-400 et seq.) of this chapter.

Part IV

Other Solid Waste Management Facility Standards:

Compost Facilities; Solid Waste Transfer Stations; Centralized Waste Treatment Facilities; Materials Recovery Facilities; Waste to Energy; Incineration Facilities; Surface Impoundments and Lagoons; Waste Piles; Remediation Waste Management Units; Landfill Mining; Miscellaneous Units; and Exempt Management Facilities

9VAC20-81-300. General.

A. Any person who designs, constructs, or operates any solid waste treatment or storage facility not otherwise exempt under 9VAC20-81-95 shall comply with the requirements of this part. In addition, this part sets forth conditions that yard waste composting facilities must meet to maintain their exempt status, where applicable, under 9VAC20-81-95 D 6. Further, all applications pursuant to these standards shall demonstrate specific means proposed for compliance with requirements set forth in this part.

B. All facilities, except exempted facilities, shall be maintained and operated in accordance with the permit issued or permit-by-rule status pursuant to this regulation. All facilities shall be maintained and operated in accordance with the approved design and intended use of the facility.

C. Hazardous wastes shall not be disposed or managed in facilities subject to this regulation unless specified in the permit or by specific approval of the executive director.

D. Solid waste management facilities regulated under this part that place solid wastes or residues on site for disposal, or leave such wastes or residues in place after closure, are subject to the provisions of Part III (9VAC20-81-100 et seq.) and Part VIII (9VAC20-81-800 et seq.) of this chapter, as applicable, including:

1. Groundwater monitoring requirements in 9VAC20-81-250 or 9VAC20-81-800;
2. Closure and postclosure care requirements in 9VAC20-81-160 and 9VAC20-81-170, or 9VAC20-81-800; and
3. Permitting requirements of Part V (9VAC20-81-400 et seq.) of this chapter.

E. All other facilities shall close in accordance with the closure plan prepared per the requirements described in this part and 9VAC20-81-480, as applicable.

F. Control program for unauthorized waste. Facilities managing solid waste per activities exempted under the provisions of 9VAC20-81-95 are not required to implement the control program for unauthorized waste as provided in this section.

1. Solid waste treatment or storage facilities regulated under this part shall implement a control program for unauthorized waste in accordance with the following provisions. The owner or operator of the facility shall:

- a. Place a written description of the control program for unauthorized waste in the facility's operating manual;
- b. Institute a control program (including measures such as signs at all maintained access points indicating hours of operation and the types of solid waste accepted and not accepted, monitoring, alternate collection programs, passage of local laws, etc.) to assure that only solid waste authorized by the department to be managed at the solid waste management facility is being managed there; and
- c. Develop and implement a program to teach the solid waste management facility's staff to recognize, remove, and report receipt of solid waste not authorized by the department to be managed at the solid waste management facilities.

2. If unauthorized waste is observed in the waste delivered to the facility prior to unloading, the owner or operator may refuse to accept the waste. If the unauthorized waste is observed in the waste delivered to the facility, the owner or operator shall segregate it, notify the generator, document the incident in the operating record, make necessary arrangements to have the material managed in accordance with applicable federal and state laws, and notify the department of the incident to include the means of proper handling. If the unauthorized waste is accepted, the owner or operator shall remove it, segregate it, and provide to the department a record identifying that waste and its final disposition. Any unauthorized waste accepted by the owner or operator shall be managed in accordance with applicable federal or state laws and regulations. Unauthorized waste that has been segregated shall be adequately secured and contained to prevent leakage or contamination to the environment. The solid waste management facility owner or operator shall have the unauthorized waste removed or properly managed as soon as practicable, but not to exceed 90 days after discovery. Removal shall be by a person authorized to transport such waste to a waste management facility approved to receive it for treatment, disposal, or transfer.

3. Owners or operators of waste to energy or incinerator facilities receiving waste generated outside of Virginia shall also comply with the increased random inspection provisions in 9VAC20-81-340 E 3.

G. Solid waste management facilities regulated under this part that store waste tires shall also adhere to the requirements of 9VAC20-81-640 for the waste tire storage.

9VAC20-81-310. Applicability.

A. Solid waste compost facilities.

1. The standards in this part shall apply to owners and operators of facilities producing compost from municipal solid waste/refuse or combinations of municipal solid waste/refuse with animal manures.
 - a. Composting facilities that employ the enclosed vessel method are referred to as Type A (confined) compost

Regulations

facilities. Facilities that employ the windrow or aerated static pile method are referred to as Type B compost facilities. The only composting processes that may be employed are those with prior operational performance in the United States. Any other proposed composting process shall conform to the standards contained in 9VAC20-81-395 and will require an experimental solid waste management facility permit.

b. Use of solid waste containing hazardous waste, regulated medical waste, or nonbiodegradable waste is prohibited.

2. The standards contained in this part are not applicable to composting exempt under 9VAC20-81-95.

3. The feedstocks for composting are classified on the basis of the type of waste used in the composting process. The categories of feedstocks are as follows:

a. Category I - Plant or plant-derived preconsumer materials such as:

(1) Agriculture crop residues including, but not limited to, harvesting residuals, straw, and cornstalks;

(2) Livestock feed including, but not limited to, hay, grain, silage, cottonseed meal, soybean meal;

(3) Nonfood agricultural processing waste including, but not limited to, cotton gin trash, wool carding residue, field corn cobs;

(4) Source-separated preconsumer food wastes including but not limited to wholesale and retail market residuals (e.g., overripe, damaged, or otherwise rejected fruit or vegetables, food preparation wastes including prepared but unserved foods) and institutional kitchen culls;

(5) Food processing wastes including culls, peelings, hulls, stems, pits, seed, pulp, shucks, nut shells, apple pomace, corn cobs, cranberry filter cake, olive husks, potato tops, cocoa shells, fruit and vegetable processing waste, rejected products, and bakery wastes;

(6) Source-separated clean waste paper;

(7) Vegetative waste; and

(8) Yard waste.

b. Category II - Animal-derived waste material such as:

(1) Dairy processing wastes including but not limited to spoiled milk, cheese, curd, and yogurt.

(2) Fish processing wastes including but not limited to eggs, fish gurry and racks, clam bellies, fish shells, fish processing sludge, fish breeding crumbs, mussel, crab, lobster, and shrimp wastes.

c. Category III - Animal and postconsumer food wastes with pathogen potential such as:

(1) Source-separated wastes including but not limited to restaurant waste, institutional kitchen wastes, plate scrapings;

(2) Animal manures including but not limited to spoiled stable straw bedding, livestock feedlot, holding pen and cage scrapings, dairy manure semi-solids, poultry litter and manure; and

(3) Rendered animals.

d. Category IV - Other wastes such as:

(1) Nonrendered animal meat waste including but not limited to animal carcasses, slaughterhouse waste, paunch manure;

(2) Mixed nonsource separated organic wastes including but not limited to municipal solid waste; and

(3) Industrial sludge.

B. Solid waste transfer stations. The standards in this part shall apply to owners and operators of solid waste transfer stations.

C. Centralized waste treatment facilities. The standards in this part shall apply to owners and operators of solid waste management facilities who operate a treatment system to solidify nonhazardous solid waste to meet the disposal criteria of 9VAC20-81-140 where the waste is generated offsite, and such treatment system must have no discharge. The requirements of this section shall not apply to solidification operations at active landfills that are authorized in the landfill's solid waste permit.

D. Materials recovery facilities.

1. The standards in this part shall apply to owners and operators of solid waste management facilities that operate to reclaim solid waste.

2. The regulations of this part do not apply to:

a. The landfill gas recovery systems operated at active and closed solid waste disposal facilities that are regulated under 9VAC20-81-200;

b. The storage and treatment facilities associated with the management of materials conditionally exempt from this chapter on the basis of 9VAC20-81-95 F;

c. The facilities that use materials in a manner that constitutes disposal that are regulated under Part VI (9VAC20-81-610 et seq.) of this chapter; or

d. The disposal of residues from the materials recovery facilities that is regulated under Part III (9VAC20-81-100 et seq.) of this chapter.

E. Waste to energy and incineration facilities.

1. The standards in this part shall apply to owners and operators of solid waste and process residue storage and handling facilities associated with the energy recovery from or incineration of solid wastes.

2. The regulations of this part do not apply to:

a. The design and operation of the combustor units regulated by the Air Pollution Control Board; or

b. The disposal of residues from the waste to energy or incineration facilities that is regulated under Part III (9VAC20-81-100 et seq.) of this chapter.

F. Surface impoundments and lagoons.

1. Lagoons and surface impoundments are regulated under State Water Control Law. During the operating life of these facilities, this chapter does not apply. If the operator intends to close such a facility by burial of sludges and residue in place, this chapter shall not apply where the regulating agency establishes the closure requirements in accordance with water pollution control regulations. The standards in this section shall apply to owners and operators of lagoons and surface impoundments only if new wastes, not contained in the lagoon or impoundment, are proposed to be disposed with the residue. In those cases, the operation and closure of the facility constitutes construction and operation of a landfill and must be accomplished as specified in Part III (9VAC20-81-100 et seq.) of this chapter.

2. Leachate lagoons are regulated under Part III (9VAC20-81-100 et seq.) of this chapter and are subject to the requirements for liners in 9VAC20-81-210 C.

3. Notwithstanding the provisions of subdivision 1 of this subsection, this chapter, in accordance with 9VAC20-81-45, applies to CCR surface impoundments in addition to the requirements under the State Water Control Law.

G. Waste piles.

1. The standards in this part shall apply to owners and operators of facilities that store or treat nonputrescible solid waste in piles.

2. Owners or operators of waste piles that will be closed with wastes left in place are subject to regulations contained in Part III (9VAC20-81-100 et seq.) of this chapter.

3. This part does not apply if materials will be actively composted according to all the requirements for compost facilities in Part IV (9VAC20-81-300 et seq.) of this chapter.

4. The regulations in this part do not apply to the management of industrial co-products in piles. A material shall be considered an industrial co-product if a demonstration can be made consistent with 9VAC20-81-95 or 9VAC20-81-97 that the material is not a solid waste.

5. The regulations in this part do not apply to active logging operations subject to regulation under the provisions of §§ 10.1-1181.1 ~~through and~~ 10.1-1181.2 of the Code of Virginia.

9VAC20-81-370. Closure requirements for surface impoundments and lagoons.

A. Closure. At closure, the owner or operator shall:

1. Remove all waste residue, contaminated containment system components (liners, etc.), contaminated subsoils,

and decontaminate structures and equipment contaminated with waste, and manage them as solid waste (or hazardous waste, if applicable) unless exempt under Part III (9VAC20-81-100 et seq.) of this chapter; or

2. Close the impoundment and provide postclosure care for a landfill under Part III (9VAC20-81-100 et seq.) of this chapter, including the following:

a. Eliminate free liquids by removing liquid waste and waste residue;

b. Install a groundwater monitoring system and initiate groundwater monitoring in accordance with the requirements of 9VAC20-81-250;

c. Stabilize remaining waste residues to a bearing capacity necessary to support the final cover; and

d. Cover the surface impoundment with a final cover designed and constructed in accordance with the requirements of 9VAC20-81-160 D 2.

3. Close inactive, new, and existing CCR surface impoundments in accordance with the requirements of Part VIII (9VAC20-81-800 et seq.) of this chapter or this subsection, whichever is more stringent.

B. Inspection. The department shall inspect all solid waste management facilities at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory and shall require any necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with this chapter.

9VAC20-81-450. Permit application procedures.

A. Any person who proposes to establish a new solid waste management facility (SWMF) or modify an existing SWMF shall submit a permit application to the department, using the procedures set forth in this section and other pertinent sections of this part.

B. Notice of intent.

1. To initiate the permit application process, any person who proposes to establish a new solid waste management facility (SWMF) or modify an existing SWMF or to modify an existing permit shall file a notice of intent with the director stating the desired permit or permit modification, the precise location of the proposed facility, and the intended use of the facility. The notice shall be in letter form and be accompanied by an area map and a site location map.

2. No application for a new solid waste management facility permit or application for a modification for a noncaptive industrial landfill to expand or increase capacity shall be deemed complete unless it is accompanied by DEQ Form DISC-01 and 02 (Disclosure Statement) for all key personnel.

3. No application for a new solid waste management facility permit or application for a modification for a

Regulations

noncaptive industrial landfill to expand or increase capacity shall be considered complete unless the notice of intent is accompanied by a certification from the governing body of the county, city, or town in which the facility is to be located stating that the location and operation of the facility are consistent with all applicable local ordinances, as well as with the local or regional solid waste management plan (SWMP) approved by the department or has initiated the process of amending the SWMP to include the new or expanded facility or an increase in capacity. No certification shall be required for the application for a modification of an existing permit (not including increase in capacity or expansion) other than for a noncaptive industrial landfill in this subdivision. DEQ Form SW-11-1 (Request for Local Government Certification) is provided for the use of the regulated community. Permit and permit-by-rule applicants shall comply with the statutory requirements for consistency with solid waste management plans as recorded in § 10.1-1408.1 of the Code of Virginia.

4. If the applicant proposes to operate a new sanitary landfill or transfer station, the notice of intent shall include a statement describing the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the department the notice of intent.

a. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality at a time convenient to the public to identify issues of concern, to facilitate communication, and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station.

b. At a minimum, the public notice shall include:

(1) A statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station;

(2) The proposed sanitary landfill or transfer station site location;

(3) The date, time, and location of the public meeting the applicant will hold; and

(4) The name, address, and telephone number of a person employed by an applicant who can be contacted by interested persons to answer questions or receive comments on siting and operation of the proposed sanitary landfill or transfer station.

c. The first publication of the public notice shall be at least 14 days prior to the public meeting date.

d. In addition, the applicant shall adhere to the applicable requirements of § 10.1-1408.1 B of the Code of Virginia.

5. Disposal capacity guarantee. If the applicant proposes to construct a new sanitary landfill or expand an existing sanitary landfill, a signed statement must be submitted by the applicant guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with their solid waste management plans developed pursuant to 9VAC20-130 and certifying that such localities will be allowed to contract for and reserve disposal capacity in the facility. This provision does not apply to permit applications from one or more political subdivisions for new or expanded landfills that will only accept municipal solid waste generated within those jurisdictions or from other jurisdictions under an interjurisdictional agreement.

6. Host agreement. If a host agreement is required, as noted in § 10.1-1408.1 B 7 of the Code of Virginia, it shall contain all the requirements specified in that section of the law.

7. If the application is for a locality owned and operated sanitary landfill, or the expansion of such a landfill, the applicant shall provide information on:

a. The daily travel routes and traffic volumes that correlate with the daily disposal limit;

b. The daily disposal limit; and

c. The service area of the facility.

8. If the application is for a new solid waste management facility or a modification allowing a facility expansion or an increase in capacity, the director shall evaluate whether there is a need for the additional capacity in accordance with § 10.1-1408.1 D 1 of the Code of Virginia. The information in either subdivision 8 a or b of this subsection must be provided with the notice of intent to assist the director with the required investigation and analysis. Based on the information submitted, the owner or operator will demonstrate how the additional capacity will be utilized over the life of the facility.

a. For any solid waste management facility including a sanitary landfill, information demonstrating that there is a need for the additional capacity. Such information shall include the following. If a certain item is not applicable for a facility, it may be indicated so with reasonable justifications.

(1) The anticipated area to be served by the facility;

(2) Similar or related solid waste management facilities that are in the same service area and could impact the proposed facility, and the capacity and service life of those facilities;

(3) The present quantity of waste generated within the proposed service area;

- (4) The waste disposal needs specified in the local solid waste plan;
- (5) The projected future waste generation rates for the anticipated area to be served during the proposed life of the facility;
- (6) The recycling, composting, or other waste management activities within the proposed service area;
- (7) The additional solid waste disposal capacity and anticipated site life that the facility would provide to the proposed area of service;
- (8) Information demonstrating that the capacity is needed to enable localities to comply with solid waste plans developed pursuant to § 10.1-1411 of the Code of Virginia; and

(9) Any additional factors that provide justification for the additional capacity provided by the facility.

b. As an alternative, for sanitary landfills, based on current or projected disposal rates, information demonstrating there is less than 10 years of capacity remaining in the facility and information demonstrating either of the following:

- (1) The available permitted disposal capacity for the state is less than 20 years based on the most current reports submitted pursuant to the Waste Information and Assessment Program in 9VAC20-81-80; or
- (2) The available permitted disposal capacity is less than 20 years in either:
 - (a) The planning region, or regions, immediately contiguous to the planning region of the host community; or
 - (b) The facilities within a 75-mile radius of the proposed facility.

9. If the location and operation of the facility is stated by the local governing body to be consistent with all its ordinances, without qualifications, conditions, or reservations, and the notice intent is complete, the applicant will be notified that he may submit his application for a SWMF permit. This application shall be submitted in two parts, identified as Part A and Part B.

10. The applicant shall submit certification from the State Corporation Commission that the business entity pursuing the solid waste management permit is a valid entity, authorized to transact its business in Virginia. This requirement does not apply to those facilities owned solely by governmental units.

11. If the application is for an existing CCR landfill or existing CCR surface impoundment, a complete permit application must be submitted no later than October 17, 2017, to continue operation.

C. Part A application. Part A application provides the information essential for assessment of the site suitability for the proposed facility. It contains information on the proposed

facility to be able to determine site suitability for intended uses. It provides information on all siting criteria applicable to the proposed facility.

1. The applicant shall complete, sign, and submit three copies of the Part A application containing required information and attachments as specified in 9VAC20-81-460 to the department and shall submit to the department the applicable permit fee under the provisions of 9VAC20-90.

2. The Part A application will be reviewed for completeness. The applicant will be notified within 30 days whether the application is administratively complete or incomplete. If complete information is not provided within 60 days after the applicant is notified, or an alternate timeframe approved by the department, the application will be returned to the applicant without further review. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered as a new application, unless an alternate timeline has been approved by the department.

3. Upon receipt of a complete Part A application, the department shall conduct a technical review of the submittal. Additional information may be required or the site may be visited before the review is completed. The director shall notify the applicant in writing of approval or disapproval of the Part A application or provide conditions to be made a part of the approval.

4. For sanitary landfills, the director's notification must indicate that the site on which the landfill will be located is suitable for the construction and operation of a landfill. In making this determination, the director will consider the information presented in the site hydrogeologic and geotechnical report (9VAC20-81-460 F), the landfill impact statement (9VAC20-81-460 H 1) and the adequacy of transportation facilities (9VAC20-81-460 G). The director may also consider other factors at his discretion.

5. In case of the approval or conditional approval, the applicant may submit the Part B application provided the required conditions are addressed in the submission.

D. Part B application. The Part B application involves the submission of the detailed engineering design and operating plans for the proposed facility.

1. The applicant, after receiving Part A approval, may submit to the department a Part B application to include the required documentation for the specific solid waste management facility as provided for in 9VAC20-81-470 or 9VAC20-81-480. The Part B application and supporting documentation shall be submitted in three copies and must include the applicable permit fee under the provisions of 9VAC20-90 and the financial assurance documentation as required by 9VAC20-70.

Regulations

2. The Part B application shall be reviewed for administrative completeness before technical evaluation is initiated. The applicant shall be advised in writing within 30 days whether the application is complete or what additional documentation is required. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered a new application, unless an alternate timeline has been approved by the department. The Part B application will not be evaluated until an administratively complete application is received.

3. The administratively complete application will be coordinated with other state agencies according to the nature of the facility. The comments received shall be considered in the permit review by the department. The application will be evaluated for technical adequacy and regulatory compliance. In the course of this evaluation, the department may require the applicant to provide additional information. At the end of the evaluation, the department will notify the applicant that the application is technically adequate and in regulatory compliance, or that the department intends to deny the application.

4. The procedures addressing the denial are contained in 9VAC20-81-550.

E. Permit issuance.

1. If the application is found to be technically adequate and in full compliance with this chapter, a draft permit shall be developed by the department.

2. Copies of the draft permit will be available for viewing at the applicant's place of business or at the regional office of the department, or both, upon request. A notice announcing the beginning of the public comment period and the availability of the draft permit shall be made in a newspaper with general circulation in the area of the facility. A copy of the notice of availability will be provided to the chief administrative officer of all cities and counties that are contiguous to the host community.

3. If the application is for a new landfill or an increase in landfill capacity (includes expansion), then the department shall hold a public hearing and the notice in subdivision 2 of this subsection will include such information.

4. For any application (other than subdivision 3 of this subsection), the notice shall notify the public of the 30-day public comment period and include the opportunity to request a public hearing. The department shall hold a public hearing on the draft permit whenever the department finds, on the basis of requests, that:

- a. There is a significant public interest in the issuance, denial, modification, or revocation of the permit in question;
- b. There are substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

c. The action requested is not, on its face, inconsistent with, or in violation of, these regulations, the Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), or federal law or regulations.

5. The department also may hold a public hearing when it is believed that such a hearing might clarify one or more issues involved in a permit decision.

6. If a public hearing is to be held, the department shall convene it 30 days or more after the notice is published in the local newspaper. The public hearing shall be conducted within the local government jurisdiction of the facility. A comment period shall extend for a 15-day period after the conclusion of the public hearing.

7. A decision to permit, to deny a permit, or to modify the draft permit shall be rendered by the director within 90 days of the close of the hearing comment period.

8. The permit applicant and the persons who commented during the public participation period shall be notified in writing of the decision on the draft permit. That decision may include denial of the permit (see also 9VAC20-81-550), issuance of the permit as drafted, or modification of the draft permit and issuance.

9. No permit for a new solid waste management facility nor any modification to a permit allowing a facility expansion or an increase in capacity shall be issued until the director has made a written determination, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the proposed solid waste management facility, facility expansion, or additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411 of the Code of Virginia.

10. For nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator the following determination shall apply in lieu of subdivision 9 of this subsection. No new permit for a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator, shall be issued until the director has determined, after investigation and evaluation of comments by the local

government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The department shall hold a public hearing within the county, city, or town where the facility is to be located prior to the issuance of any such permit for the management of nonhazardous industrial solid waste.

11. Where either subdivision 9 or 10 of this subsection apply, the director may request updated information during the review of the permit application if the information on which the director's determination is based is no longer current. If, based on the analysis of the materials presented in the permit application, the determination required in § 10.1-1408.1 of the Code of Virginia cannot be made, the application will be denied in accordance with ~~9VAC20-81-560~~ 9VAC20-81-550 A 6.

12. Any permit for a new sanitary landfill and any permit modification authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in § 10.1-1408.1 of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

9VAC20-81-460. Part A permit application.

The following information shall be included in the Part A permit application for all solid waste management facilities unless otherwise specified in this section. All plans and drawings of the Part A application shall be certified by a professional engineer or professional geologist.

A. The Part A permit application consists of a letter stating the type of the facility for which the permit application is made and the certification required in subsection I of this section. The applicant shall submit the completed DEQ Form SW PTA (Part A Permit Application Form) and all required information and attachments as detailed in this section.

B. A key map of the Part A permit application, delineating the general location of the proposed facility, shall be prepared and attached as part of the application. The key map shall be plotted on a seven and one-half minute ~~United States~~ U.S. Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of one mile from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted.

C. A vicinity map shall be prepared and attached as part of the application. This vicinity map shall have a minimum scale of one inch equals 200 feet (1" = 200') and shall delineate an area of 500 feet from the perimeter of the property line of the proposed facility. A vicinity map may be prepared with a reduced scale if it does not fit in a sheet with the required minimum scale and multiple sheets may be used to meet the

requirement of minimum scale. The vicinity maps may be an enlargement of a ~~United States~~ U.S. Geological Survey topographical quadrangle or a recent aerial photograph. Notes may be provided in the map if one or more of the following are not present within the delineated area. The vicinity map shall depict the following:

1. All homes, buildings, or structures including the layout of the buildings that will compose the proposed facility;
2. The surveyed boundaries for the property boundary, facility boundary, and waste management boundary, and the acreages within these boundaries;
3. The limits of the actual disposal operations within the boundaries of the proposed facility;
4. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;
5. The base floodplain, where it passes through the map area; or, otherwise, a note indicating the expected flood occurrence period for the area;
6. Existing land uses and zoning classification;
7. All water supply wells, springs or intakes, both public and private;
8. All utility lines, pipelines or land-based facilities (including mines and wells); and
9. All parks, recreation areas, surface water bodies, dams, historic areas, wetlands areas, monument areas, cemeteries, wildlife refuges, unique natural areas, or similar features.

D. Any applicant must demonstrate legal control over the site for the permit life.

E. For solid waste disposal facilities regulated under Part III (9VAC20-81-100 et seq.), site hydrogeologic and geotechnical reports by professional geologist or professional engineer.

1. The site investigation for a proposed landfill facility shall provide information regarding the geotechnical and hydrogeologic conditions at the site to allow a reasonable determination of the usefulness of the site for development as a landfill. The geotechnical exploration efforts shall be designed to provide information regarding the availability and suitability of onsite soils for use in the various construction phases of the landfill including liner, cover, drainage material, and cap. The hydrogeologic information shall be sufficient to determine the characteristics of the uppermost aquifer underlying the facility. Subsurface investigation programs conducted shall meet the minimum specifications here.

a. Borings shall be located to identify the uppermost aquifer within the proposed facility boundary, determine the ability to perform groundwater monitoring at the site, and provide data for the evaluation of the physical properties of soils and soil availability. Borings completed for the proposed facility shall be sufficient in number and depth to identify the thickness of the

Regulations

uppermost aquifer and the presence of any significant underlying impermeable zone in the waste management boundary. Impermeable zone shall not be fully penetrated within the anticipated fill areas, whenever possible. The number of borings shall be at a minimum in accordance with Table 5.1 as follows:

Table 5.1

Waste Management Boundary Acreage	Total Number of Borings
Less than 10	4
10 - 49	8
50 - 99	14
100 - 200	20
More than 200	24 + 1 boring for each additional 10 acres

b. The department reserves the right to require additional borings in areas in which the number of borings required by Table 5.1 is not sufficient to describe the geologic formations and groundwater flow patterns below the proposed solid waste disposal facility.

c. In highly uniform geological formations, the number of borings may be reduced, as approved by the department.

d. The borings shall employ a grid pattern, wherever possible, such that there is, at a minimum, one boring in each major geomorphic feature. The borings pattern shall enable the development of detailed cross sections through the proposed landfill site.

e. Subsurface data obtained by borings shall be collected by standard soil sampling techniques. Diamond bit coring, air rotary drilling, or other appropriate methods, or a combination of methods shall be used as appropriate to characterize competent bedrock. The borings shall be logged from the surface to the lowest elevation (base grade) or to bedrock, whichever is shallower, according to standard practices and procedures. In addition, the borings required by Table 5.1 shall be performed on a continuous basis for the first 20 feet below the lowest elevation of the solid waste disposal facility or to the bed rock. Additional samples as determined by the professional geologist or professional engineer shall be collected at five-foot intervals thereafter.

f. Excavations, test pits, and geophysical methods may be employed to supplement the soil boring investigation.

g. At a minimum, four of the borings shall be converted to water level observations wells, well nests, piezometers, or piezometer nests to allow determination of the rate and direction of groundwater flow across the site. All groundwater monitoring points or water level

measurement points shall be designed to allow proper abandonment by backfilling with an impermeable material. The total number of wells or well nests shall be based on the complexity of the geology of the site.

h. Field analyses shall be performed in representative borings to determine the in situ hydraulic conductivity of the uppermost aquifer.

i. All borings not to be utilized as permanent monitoring wells, and wells within the active solid waste disposal area, shall be sealed and excavations and test pits shall be backfilled and properly compacted to prevent possible paths of leachate migration. Boring sealing procedures shall be documented in the hydrogeologic report.

2. The geotechnical and hydrogeologic reports shall at least include the following principal sections:

a. Field procedures. Boring records and analyses from properly spaced borings in the facility portion of the site. Final boring logs shall be submitted for each boring, recording soils or rock conditions encountered. Each log shall include the type of drilling and sampling equipment, date the boring was started, date the boring was finished, a soil or rock description in accordance with the United Soil Classification System or the Rock Quality Designation, the method of sampling, the depth of sample collection, the water levels encountered, and the Standard Penetration Test blow counts, if applicable. Boring locations and elevations shall be surveyed with a precision of 0.01 foot. At least one surveyed point shall be indelibly marked by the surveyor on each well. All depths of soil and rock as described within the boring log shall be corrected to National Geodetic Vertical Datum, if available.

b. Geotechnical interpretations and report including complete engineering description of the soil units underlying the site.

(1) Soil unit descriptions shall include estimates of soil unit thickness, continuity across the site, and genesis. Laboratory determination of the soil unit's physical properties shall be discussed.

(2) Soil units that are proposed for use as a drainage layer, impermeable cap, or impermeable liner material shall be supported by laboratory determinations of the remolded permeability. Remolded hydraulic conductivity tests require a Proctor compaction test (ASTM D698) soil classification liquid limit, plastic limit, particle size distribution, specific gravity, percent compaction of the test sample, remolded density and remolded moisture content, and the percent saturation of the test sample. Proctor compaction test data and hydraulic conductivity test sample data shall be plotted on standard moisture-density test graphs.

(3) The geotechnical report shall provide an estimate of the available volume of materials suitable for use as liner,

cap, and drainage layer. It shall also discuss the anticipated uses of the onsite materials, if known.

c. Hydrogeologic report.

(1) The report shall include water table elevations, direction, and calculated rate of groundwater flow and similar information on the hydrogeology of the site. All raw data shall be submitted with calculations.

(2) The report shall contain a discussion of field test procedures and results, laboratory determinations made on undisturbed samples, recharge areas, discharge areas, adjacent or areal usage, and typical radii of influence of pumping wells.

(3) The report shall also contain a discussion of the regional geologic setting, the site geology, and a cataloging and description of the uppermost aquifer from the site investigation and from referenced literature. The geologic description shall include a discussion of the prevalence and orientation of fractures, faults, and other structural discontinuities, and presence of any other significant geologic features. The aquifer description shall address homogeneity, horizontal and vertical extent, isotropy, the potential for groundwater remediation, if required, and the factors influencing the proper placement of a groundwater monitoring network.

(4) The report shall include a geologic map of the site prepared from one of the following sources as available, in order of preference:

- (a) Site specific mapping prepared from data collected during the site investigation;
- (b) Published geologic mapping at a scale of 1:24,000 or larger;
- (c) Published regional geologic mapping at a scale of 1:250,000 or larger; or
- (d) Other published mapping.

(5) At least two generally orthogonal, detailed site specific cross sections, which shall describe the geologic formations identified by the geologic maps prepared in accordance with subdivision 2 c (4) of this subsection at a scale that clearly illustrates the geologic formations, shall be included in the hydrogeologic report. Cross sections shall show the geologic units, approximate construction of existing landfill cells base grades, water table, surficial features, and bedrock along the line of the cross section. Cross section locations shall be shown on an overall facility map.

(6) Potentiometric surface maps for the uppermost aquifer that define the groundwater conditions encountered below the proposed solid waste disposal facility area based upon stabilized groundwater elevations. Potentiometric surface maps shall be prepared for each set of groundwater elevation data available. The applicant shall include a discussion of the effects of site modifications, seasonal variations in precipitation, and

existing and future land uses of the site on the potentiometric surface.

(7) If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

F. For solid waste management facilities regulated under Part IV (9VAC20-81-300 et seq.) of this chapter:

1. A cataloging and description of aquifers, geological features or any similar characteristic of the site that might affect the operation of the facility or be affected by that operation.

2. If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

G. For a new sanitary landfill or for an increase in daily disposal limit, an adequacy report prepared by the Virginia Department of Transportation or other responsible agency. As required under § 10.1-1408.4 A 1 of the Code of Virginia, the report will address the adequacy of transportation facilities that will be available to serve the landfill, including daily travel routes and traffic volumes that correlate with the daily disposal limit, road congestion, and highway safety. The department may determine an adequacy report is not required for small increases in the daily disposal limit.

H. For a new sanitary landfill or an expansion of an existing sanitary landfill or an increase in capacity by expanding an existing facility vertically upward, a Landfill Impact Statement (LIS).

1. A report must be provided to the department that addresses the potential impact of the landfill on parks, recreational areas, wildlife management areas, critical habitat areas of endangered species as designated by applicable local, state, or federal agencies, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism. This report shall comply with the statutory requirements for siting landfills in the vicinity of public water supplies or wetlands as set forth in §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia.

2. The report will include a discussion of the landfill configuration and how the facility design addresses any impacts identified in the report required under subdivision 1 of this subsection.

3. The report will identify all of the areas identified under subdivision 1 of this subsection that are within five miles of the facility.

I. For a new facility or an expansion of an existing facility, or an increase in capacity by expanding an existing facility vertically upward, a signed statement by the applicant that he has sent written notice to all adjacent property owners or occupants that he intends to develop a SWMF or expand laterally or vertically upward of an existing facility on the

Regulations

site, a copy of the notice and the names and addresses of those to whom the notices were sent.

J. The total capacity of the solid waste management facility.

K. One or more of the following indicating that the public interest would be served by a new facility or a facility expansion, which includes:

1. Cost effective waste management for the public within the service area comparing the costs of a new facility or facility expansion to waste transfer, or other disposal options;
2. The facility provides protection of human health and safety and the environment;
3. The facility provides alternatives to disposal including reuse or reclamation;
4. The facility allows for the increased recycling opportunities for solid waste;
5. The facility provides for energy recovery or the subsequent use of solid waste, or both, thereby reducing the quantity of solid waste disposed;
6. The facility will support the waste management needs expressed by the host community; or
7. Any additional factors that indicate that the public interest would be served by the facility.

L. For CCR surface impoundments regulated under Part VIII (9VAC20-81-800 et seq.) of this chapter, site hydrogeologic and geotechnical reports by a professional geologist or professional engineer that meet the requirements of 9VAC20-81-800.

9VAC20-81-470. Part B permit application for solid waste disposal facilities.

Part B permit application requirements for all solid waste disposal facilities regulated under Part III (9VAC20-81-100 et seq.) are contained in this section. The Part B applications shall include the following requirements and documentation:

A. Plans submitted as part of the Part B application shall include the following:

1. Design plans. Design plans shall be certified by a professional engineer and shall consist of, at least, the following:
 - a. A title sheet indicating the project title, who prepared the plans, the person for whom the plans were prepared, a table of contents, and a location map showing the location of the site and the area to be served.
 - b. An existing site conditions plans sheet indicating site conditions prior to development.
 - c. A base grade plan sheet indicating site base grades or the appearance of the site if it were excavated in its entirety to the base elevation, before installation of any engineering modifications or the beginning of any filing.
 - d. An engineering modification plan sheet indicating the appearance of the site after installation of engineering

modifications. More than one plan sheet may be required for complicated sites. This plan is required only for those sites with engineering modifications.

e. A final site topography plan sheet indicating the appearance of the site, and final contours of the site at closing including the details necessary to prepare the site for long-term care.

f. A series of phasing plan sheets showing the progression of site development through time. At a minimum, a separate plan shall be provided for initial site preparations and for each subsequent major phase or new area where substantial site preparation must be performed. Each such plan shall include a list of construction items and quantities necessary to prepare the phase indicated.

g. A site monitoring plan showing the location of all devices for the monitoring of leachate production, groundwater quality, and gas production and venting. This plan shall include a table indicating the parameters to be monitored for the frequency of monitoring before and during site development. The groundwater monitoring plan shall include information as applicable under 9VAC20-81-250 or 9VAC20-81-260.

h. A series of site cross-sections shall be drawn perpendicular and parallel to the site base line at a maximum distance of 500 feet between cross-sections and at points of grade break and important construction features. The location of the cross-sections shall be shown on the plan sheets and the section labeled using the site grid system. Where applicable, each cross-section shall show existing, proposed base and final grades; soil borings and monitoring wells that the section passes through or is adjacent to; soil types, bedrock and water table; leachate control, collection, and monitoring systems; limits of filling for each major waste type; drainage control structures; access roads and ramps on the site perimeter and within the active fill area; the filling sequence or phases; and other site features.

i. Detailed drawings and typical sections for drainage control structures, access roads, fencing, leachate and gas control systems, and monitoring devices, buildings, signs, and other construction details.

j. Plan sheets shall include:

- (1) A survey grid with base lines and bench marks to be used for field control.
- (2) Limits of filling for each major waste type or fill area.
- (3) All drainage patterns and surface water drainage control structures both within the actual fill area and at the site perimeter. Such structures may include berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets, velocity breaks, sodding, erosion matting, or other methods of erosion control.

- (4) Ground surface contours at the time represented by the drawing. Spot elevations shall be indicated for key features.
- (5) Areas to be cleared and grubbed and stripped of topsoil.
- (6) Borrow areas for liner materials, gas venting materials, berms, roadway construction, daily cover, and final cover.
- (7) All soil stockpiles including daily and final cover, topsoil, liner materials, gas venting materials, and other excavation.
- (8) Access roads and traffic flow patterns to and within the active fill area.
- (9) All temporary and permanent fencing.
- (10) The methods of screening such as berms, vegetation, or special fencing.
- (11) Leachate collection, control, storage, and treatment systems that may include pipes, manholes, trenches, berms, collection sumps, storage units, pumps, risers, liners, and liner splices.
- (12) Gas, leachate, and groundwater monitoring devices and systems.
- (13) Severe weather solid waste disposal areas.
- (14) Support buildings, scale, utilities, gates, and signs.
- (15) Special waste handling areas.
- (16) Construction notes and references to details.
- (17) Other site features.
2. Closure plan. A detailed closure plan shall be prepared and submitted. Such a plan shall be prepared in two parts, one reflecting those measures to be accomplished at the midpoint of the permit period, and the other when the useful life of the landfill is reached. The plan shall show how the facility will be closed to meet the requirements of 9VAC20-81-160 and 9VAC20-81-170, or 9VAC20-81-800. The plan shall include the procedures to be followed in closing the site, sequence of closure, time schedules, final plans of completion of closure to include final contours, and long-term care plan sheets showing the site at the completion of closing and indicating those items anticipated to be performed during the period of long-term care for the site. The plans shall include a table listing the items and the anticipated schedule for monitoring and maintenance. In many instances this information can be presented on the final site topography sheet.
3. Postclosure plan. A postclosure care plan containing shall contain long-term care information including a discussion of the procedures to be utilized for the inspection and maintenance of: run-off control structures; settlement; erosion damage; gas and leachate control facilities; monitoring for gas, leachate, and groundwater; and other long-term care needs.
- B. A design report shall be submitted, which shall include supplemental discussions and design calculations, to facilitate department review and provide supplemental information including the following information:
1. The design report shall identify the project title; engineering consultants; site owner, permittee and operator; proposed permitted acreage; hours of operation; wastes to be accepted; site life; design capacity; and the daily disposal limit. It shall also identify any variances desired by the applicant.
 2. A discussion of the basis for the design of the major features of the site, such as traffic routing, base grade and relationships to subsurface conditions, anticipated waste types and characteristics, phases development, liner design, leachate management system design, facility monitoring, and similar design features shall be provided. A list of the conditions of site development as stated in the department determination of site feasibility and the measures taken to meet the conditions shall be included. A discussion of all calculations, such as refuse-cover balance computations, stockpile sizing estimates, estimate of site life, and run-off and leachate volume estimates shall be included. The calculations shall be summarized with the detailed equations presented in an appendix.
 3. Specifications, including detailed instructions to the site operator for all aspects of site construction.
 - a. Initial site preparations including specifications for clearing and grubbing, topsoil stripping, other excavations, berm construction, drainage control structures, leachate collection system, access roads and entrance, screening, fencing, groundwater monitoring, and other special design features.
 - b. A plan for initial site preparation including a discussion of the field measurements, photographs to be taken, sampling and testing procedures to be utilized to verify that the in-field conditions encountered were the same as those defined in the feasibility report, and to document that the site was constructed according to the engineering plans and specifications submitted for department approval.
- C. Financial assurance documentation. When required by the Financial Assurance Regulations of Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70), the applicant shall provide the completed documentation to demonstrate compliance with those regulations; proof of financial responsibility must be for the entity identified in accordance with 9VAC20-81-450 B 10.
- D. DEQ Form SW PTB (Part B Permit Application Form). The applicant shall submit a completed DEQ Form SW PTB. **9VAC20-81-475. Part B permit application requirements for CCR surface impoundments.**
- A. Part B permit application requirements for CCR surface impoundments regulated under Part VIII (9VAC20-81-800 et**

Regulations

seq.) of this chapter are contained in this section. The Part B applications shall include the requirements and documentation described in this section.

B. A detailed design plan shall be prepared and submitted that describes how the CCR surface impoundment meets the design criteria found in 40 CFR 257.71 (existing CCR surface impoundments), 40 CFR 257.72 (new or lateral expansions of CCR surface impoundments), 40 CFR 257.73 (existing CCR surface impoundments), 40 CFR 257.74 (new or lateral expansions of CCR surface impoundments), as applicable;

C. An operating plan meeting the requirements of 40 CFR 257.80, 40 CFR 257.82, and 40 CFR 257.83 shall be prepared and submitted;

D. A site groundwater monitoring plan shall be prepared and submitted that meets the requirements of 40 CFR 257.90, 40 CFR 257.91, 40 CFR 257.93, 40 CFR 257.94, 40 CFR 257.95, 40 CFR 257.96, 40 CFR 257.97, and 40 CFR 257.98; and

E. A detailed closure plan and post-closure plan meeting the requirements found in 40 CFR 257.101, 40 CFR 257.102, 40 CFR 257.103, 40 CFR 257.104 shall be prepared and submitted.

9VAC20-81-485. Operations manual requirements for solid waste management facilities.

A. Solid waste disposal facilities. An operations manual shall be prepared and maintained in the operating record. The operations manual shall include a certification page signed by a responsible official. This signature shall certify the manual meets the requirements of this chapter. This manual shall be reviewed and recertified annually (by December 31 of each calendar year) to ensure consistency with current operations and regulatory requirements, and shall be made available for review by the department upon request. The operations manual for disposal facility operation shall contain at least the following plans:

1. An operations plan that at a minimum includes:
 - a. Explanation of how the design and construction plans will be implemented from the initial phase of operation until closure;
 - b. Municipalities, industries, and collection and transportation agencies served;
 - c. Waste types and quantities to be disposed;
 - d. Detailed instructions to the site operator regarding all aspects of site operation in order to ensure that the operational requirements of Part III (9VAC20-81-100 et seq.) of this chapter are achieved. References to specifications on the plan sheet shall be pointed out as well as additional instructions included, where appropriate. At a minimum, the plan specifications shall include:
 - (1) Daily operations including a discussion of the timetable for development, waste types accepted or

excluded, inspection of incoming waste, typical waste handling techniques, hours of operation, traffic routing, drainage and erosion control, windy, wet and cold weather operations, fire protection equipment, manpower, methods for handling of any unusual waste types, methods for vector, dust and odor control, daily cleanup, direction of filling, salvaging, recordkeeping, parking for visitors and employees, monitoring, maintenance, closure of filled areas, gas and leachate control methods, backup equipment with names and telephone numbers where equipment may be obtained, and other special design features;

(2) Development of subsequent phases; and

(3) Site closing information consisting of a discussion of those actions necessary to prepare the site for long-term care and final use in the implementation of the closure plan.

2. An inspection plan that at a minimum includes:

a. A schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of Part III (9VAC20-81-100 et seq.) of this chapter.

b. The frequency of inspection based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. The plan shall establish the minimum frequencies for inspections required in 9VAC20-81-140. This plan shall identify areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs.

c. A schedule for inspecting monitoring, safety, and emergency equipment; security devices; and process operating and structural equipment.

d. The types of potential problems that may be observed during the inspection and any maintenance activities required as a result of the inspection.

3. A health and safety plan that includes description of measures to protect the facility and other personnel from injury and is consistent with the requirements of 29 CFR Part 1910.

4. An unauthorized waste control plan that includes, at a minimum, the methods to be used by the operator to prevent unauthorized disposal of hazardous wastes, bulk liquids, or other wastes not authorized for management or disposal in the facility in order to meet the requirements of 9VAC20-81-140.

5. An emergency contingency plan that includes:

a. Delineation of procedures for responding to fire, explosions, or any unplanned sudden or nonsudden releases of harmful constituents to the air, soil, or surface water;

- b. Description of the actions facility personnel shall take in the event of various emergency situations;
- c. Description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; and
- d. A list of names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

6. A landscaping plan that shall:

- a. Delineate existing site vegetation to be retained;
- b. Discuss methods to be employed in order to ensure protection of vegetation to be retained during the clearing, grading and construction phases of the project and the supplemental vegetation to be planted; and
- c. ~~Information~~ Provide information relating to vegetation type, location and purpose, such as for buffer, screening or aesthetics, and schedules for planting, shall accompany the plan.

B. Other solid waste management facilities. An operations manual shall be prepared and maintained in the operating record. The Operations Manual shall include a certification page signed by a responsible official. This signature shall certify the manual meets the requirements of this chapter. This manual shall be reviewed and re-certified annually (by December 31 of each calendar year) to ensure consistency with current operations and regulatory requirements and shall be made available to the department upon request. The manual for facility operation shall contain at least the following plans:

- 1. An operations plan that at a minimum includes:
 - a. An explanation of how the design and construction plans will be implemented from the initial phase of operation until closure.
 - b. Detailed instructions to the site operator regarding all aspects of site operation in order to ensure that the applicable operational requirements of Part IV (9VAC20-81-300 et seq.) are achieved. Daily operations including a discussion of the timetable for development, waste types accepted or excluded, typical waste handling techniques, hours of operation, traffic routing, drainage and erosion control, windy, wet and cold weather operations, fire protection equipment, manpower, methods for handling of any unusual waste types, methods for vector, dust and odor control, daily cleanup, salvaging, record keeping, parking for visitors and employees, monitoring, backup equipment with names and telephone numbers where equipment may be obtained, and other special design

features. The daily operations section of the operations manual may be developed as a removable section to improve accessibility for the site operator.

- c. Development of subsequent phases of the facility, if applicable.
 - d. Site closing information consisting of a discussion of those actions necessary to prepare the site for long-term care and final use in the implementation of the closure plan.
- 2. An inspection plan that at a minimum includes:
 - a. A schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of Part IV (9VAC20-81-300 et seq.) of this chapter.
 - b. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. The plan shall establish the minimum frequencies for inspections required in 9VAC20-81-340. This plan shall identify areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs.
 - c. A schedule for inspecting monitoring, safety, and emergency equipment; security devices; and process operating and structural equipment.
 - d. The types of potential problems that may be observed during the inspection and any maintenance activities required as a result of the inspection.
 - 3. A health and safety plan that includes description of measures to protect the facility and other personnel from injury and is consistent with the requirements of 29 CFR Part 1910.
 - 4. An unauthorized waste control plan that includes, at a minimum, the methods to be used by the operator to prevent unauthorized disposal of hazardous wastes, bulk liquids, or other wastes not authorized for management or disposal in the facility in order to meet the applicable requirements of 9VAC20-81-340.
 - 5. An emergency contingency plan that includes:
 - a. Delineation of procedures for responding to fire, explosions, or any unplanned sudden or nonsudden releases of harmful constituents to the air, soil, or surface water;
 - b. Description of the actions facility personnel shall take in the event of various emergency situations;
 - c. Description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; and

Regulations

d. A list of names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

C. CCR surface impoundments. Operating plans meeting the requirements of 9VAC20-81-800 shall be prepared, implemented, and placed in the facility's operating record.

9VAC20-81-550. Permit denial.

A. A permit shall be denied if:

1. The applicant fails to provide complete information required for an application;
2. The facility does not conform with the siting standards set forth for the facility in 9VAC20-81-120 ~~or~~ 9VAC20-81-320, or 9VAC20-81-800, unless an exemption or variance from the specific siting criteria has been granted;
3. The facility design and construction plans or operating plans, or both, fail to comply with requirements specified for the proposed type of facility unless an exemption or variance from the specific requirement has been granted;
4. The department finds that there is an adverse impact on the public health or the environment by the design, construction, or operation;
5. The applicant is not able to fulfill the financial responsibility requirements as specified in 9VAC20-70; or
6. Current information sufficient to make the determination required in § 10.1-1408.1 D of the Code of Virginia has not been provided.

B. Reasons for the denial of any permit shall be provided to the applicant in writing by the director within 30 days of the decision to deny the permit.

9VAC20-81-600. Modification of permits.

A. Permits may be modified at the request of any interested person or upon the director's initiative. However, permits may only be modified for the reasons specified in subsections E and F of this section. All requests shall be in writing and shall contain facts or reasons supporting the request. Any permit modification authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in § 10.1-1408.1 P of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

B. If the director decides the request is not justified, he shall send the requester a response providing justification for the decision.

C. If the director tentatively decides to modify, he shall prepare a draft permit incorporating the proposed changes.

The director may request additional information and may require the submission of an updated permit application. In a permit modification under subsection E of this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect. During any modification proceeding the permittee shall comply with all conditions of the existing permit until the modified permit is issued.

D. When the director receives any information, he may determine whether or not one or more of the causes listed for modification exist. If cause exists, the director may modify the permit on his own initiative subject to the limitations of subsection E of this section and may request an updated application if necessary. If a permit modification satisfies the criteria in subsection F of this section for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed.

E. Causes for modification. The director may modify a permit upon his own initiative or at the request of a third party:

1. When there are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit;
2. When there is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water, or groundwater;
3. When an investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from adverse effects;
4. If the director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified the application of different permit conditions, the permit may be modified accordingly if in the judgment of the director such modification is necessary to prevent significant adverse effects on public health or the environment;
5. When the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued;
6. When the director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy;
7. When a modification of a closure plan is required under 9VAC20-81-160, ~~or 9VAC20-81-360~~, or 9VAC20-81-800

and the permittee has failed to submit a permit modification request within the specified period;

8. When the corrective action program specified in the permit under 9VAC20-81-260 or 9VAC20-81-800 has not brought the facility into compliance with the groundwater protection standard within a reasonable period of time; or

9. When cause exists for revocation under 9VAC20-81-570 and the director determines that a modification is more appropriate.

F. Permit modification at the request of the permittee.

TABLE 5.2
PERMIT MODIFICATIONS

MAJOR	1. Implementation of a groundwater corrective action program as required by 9VAC20-81-260 or 9VAC20-81-800
	2. Change in the remedy applied as part of the groundwater corrective action program
	3. Groundwater monitoring plan for an existing facility where no written plan has previously been provided
	4. Changes to the design of final closure cover
	5. Landfill mining
	6. Reduction in the postclosure care period
	7. Changes in postclosure use of the property with disturbance of cover
	8. All new or modifications of a leachate collection tank or a leachate collection surface impoundment
	9. Addition of new landfill units
	10. Expansion or increase in capacity
	11. Increase in daily disposal limit
	12. Addition or modification of a liner, leachate collection system, leachate detection system
	13. Incorporation or modification of a Research, Development, and Demonstration Plan

MINOR	Any change not specified as major modification (above) or a permittee change (below)
PERMITTEE CHANGE	1. Correction of typographical errors
	2. Equipment replacement or upgrade with functionally equivalent components
	3. Replacement of an existing leachate tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank
	4. Replacement with functionally equivalent, upgrade, or relocation of emergency equipment
	5. Changes in name, address, or phone number of contact personnel
	6. Replacement of an existing well that has been damaged or rendered nonoperable, without change to location, design, or depth of the well
	7. Changes to the expected year of final closure, where other permit conditions are not changed
	8. Changes in postclosure use of the property, without disturbance of the cover
	9. Modification of a leachate tank management practice

1. Permittee change. Items listed under Permittee Change in Table 5.2 may be implemented without approval of the department. If a permittee changes such an item, the permittee shall:

- a. Notify the department of the change at least 14 calendar days before the change is put into effect, indicating the affected permit conditions; and
- b. Notify the governing body of the county, city, or town in which the facility is located, within 90 calendar days after the change is put into effect.

2. Minor modifications.

- a. Minor modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

Regulations

b. Minor modifications may be requested for changes that will result in a facility being more protective of human health and the environment or equivalent to the standards contained in this chapter, unless otherwise noted in Table 5.2. The request for such a minor permit modification will be accompanied by a description of the desired change and an explanation of the manner in which the health and environment will be protected in a greater degree than required by the chapter.

c. Minor permit modifications may be made only with the prior written approval of the department. The permittee shall notify the department that a minor modification is being requested. Notification of the department shall be provided by certified mail or other means that establish proof of delivery. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall include an explanation of why they are necessary. Along with the notice, the permittee shall provide the applicable information required by 9VAC20-81-460 and 9VAC20-81-470 or as required by 9VAC20-81-480.

d. The permittee shall send a notice of the modification to the governing body of the county, city or town in which the facility is located. This notification shall be made within 90 days after the department approves the request.

3. Major modifications.

a. Major modifications substantially alter the facility or its operation. Major modifications are listed in Table 5.2.

b. The permittee shall submit a modification request to the department that:

(1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(2) Identifies that the alteration is a major modification;

(3) Contains an explanation of why the modification is needed; and

(4) Provides the applicable information required by 9VAC20-81-460 and 9VAC20-81-470, by 9VAC20-81-460 and 9VAC20-81-475, or as required by 9VAC20-81-480.

c. No later than 90 days after receipt of the notification request, the director will determine whether the information submitted under subdivision 3 b (4) of this subsection is adequate to formulate a decision. If found to be inadequate, the permittee will be requested to furnish additional information within 30 days of the request by the director to complete the modification request record. The 30-day period may be extended at the request of the applicant. After the completion of the record, the director will either:

(1) Approve the modification request, with or without changes, and draft a permit modification accordingly;

(2) Deny the request; or

(3) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days in accordance with subdivision 3 of this subsection.

d. If the director proposes to approve the permit modification, he will proceed with the permit issuance in accordance with 9VAC20-81-450 E.

e. The director may deny or change the terms of a major permit modification request under subdivision F 3 b of this section for the following reasons:

(1) The modification request is incomplete;

(2) The requested modification does not comply with the appropriate requirements of Part III (9VAC20-81-100 et seq.) ~~or~~, Part IV (9VAC20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter or other applicable requirements; or

(3) The conditions of the modification fail to protect human health and the environment.

4. Temporary authorizations.

a. Upon request of the permittee, the director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with the requirements of subdivision 4 of this subsection. Temporary authorizations shall have a term of not more than 180 days.

b. (1) The permittee may request a temporary authorization for any major modification that meets the criteria in subdivision 4 c (2) (a) or (b) of this subsection; or that meets the criteria in subdivision 4 c (2) (c) and (d) of this subsection and provides improved management or treatment of a solid waste already listed in the facility permit.

(2) The temporary authorization request shall include:

(a) A description of the activities to be conducted under the temporary authorization;

(b) An explanation of why the temporary authorization is necessary; and

(c) Sufficient information to ensure compliance with the standards of Part III (9VAC20-81-100 et seq.) ~~or~~, Part IV (9VAC20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) standards of this chapter.

(3) The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list. This notification shall be made within seven days of submission of the authorization request.

c. The director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the director shall find:

(1) The authorized activities are in compliance with the standards of Part III (9VAC20-81-100 et seq.) ~~or~~, Part IV

(9VAC20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter.

(2) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on an modification request:

- (a) To facilitate timely implementation of closure or corrective action activities;
- (b) To prevent disruption of ongoing waste management activities;
- (c) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or
- (d) To facilitate other changes to protect human health and the environment.

d. A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a major permit modification for the activity covered in the temporary authorization, and the director determines that the reissued temporary authorization involving a major permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subdivision 3 of this subsection are conducted.

5. The director's decision to grant or deny a permit modification request under subdivision of this subsection may be appealed under the case decision provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

6. Newly defined or identified wastes. The permitted facility is authorized to continue to manage wastes defined or identified as solid waste under 9VAC20-81-95 if:

- a. It was in existence as a solid waste management facility with respect to the newly defined or identified solid waste on the effective date of the final rule defining or identifying the waste; and
- b. It is in compliance with the standards of Part III (9VAC20-81-100 et seq.) ~~or~~ Part IV (9VAC 20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter, as applicable, with respect to the new waste, submits a minor modification request on or before the date on which the waste becomes subject to the new requirements; or
- c. It is not in compliance with the standards of Part III (9VAC 20-81-100 et seq.) ~~or~~ Part IV (9VAC 20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter, as applicable, with respect to the new waste, also submits a complete permit modification request within 180 days after the effective date of the definition or identifying the waste.

7. Research, development and demonstration plans. Research, development and demonstration (RDD) plans may be submitted for sanitary landfills that meet the

applicability requirements. These plans shall be submitted as a major permit modification application for existing sanitary landfills or as a part of the Part B application for new sanitary landfills.

a. Applicability.

(1) RDD shall be restricted to permitted sanitary landfills designed with a composite liner system, as required by 9VAC20-81-130 J 1. The effectiveness of the liner system and leachate collection system shall be demonstrated in the plan and shall be assessed at the end of the testing period in order to compare the effectiveness of the systems to the start of the RDD testing period.

(2) Operating permitted sanitary landfills that have exceeded groundwater protection standards at statistically significant levels in accordance with 9VAC20-81-250 B, from any waste unit on site shall have implemented a remedy in accordance with 9VAC20-81-260 C prior to the RDD plan submittal. Operating permitted sanitary landfills that have an exceedance in the concentration of methane gas migrating from the landfill in accordance with 9VAC20-81-200 shall have a gas control system in place per 9VAC20-81-200 B prior to the RDD plan submittal.

(3) An owner or operator of a sanitary landfill that disposes of 20 tons of municipal solid waste per day or less, based on annual average, may not apply for a modification to include a RDD plan.

(4) The sanitary landfill shall have a leachate collection system designed and constructed to maintain less than a 30 cm depth of leachate on the liner.

b. Requirements.

(1) RDD Plans may be submitted for activities such as:

- (a) The addition of liquids in addition to leachate and gas condensate from the same landfill for accelerated decomposition of the waste mass;
- (b) Allowing run-on water to flow into the landfill waste mass;
- (c) Allowing testing of the construction and infiltration performance of alternative final cover systems; and
- (d) For other measures to be taken to enhance stabilization of the waste mass.

(2) No landfill owner or operator may continue to implement an RDD plan beyond any time limit placed in the initial plan approval or any renewal without issuance of written prior approval by the department. Justification for renewals shall be based upon information in annual and final reports as well as research and findings in technical literature.

(3) RDD plans may not include changes to the approved design and construction of subgrade preparation, liner system, leachate collection and removal systems, final cover system, gas and leachate systems outside the limits

Regulations

of waste, run-off controls, run-on controls, or environmental monitoring systems exterior to the waste mass.

(4) Implementation of an approved RDD plan shall comply with the specific conditions of the RDD Plan as approved in the permit for the initial testing period and any renewal.

(5) Structures and features exterior to the waste mass or waste final grades shall be removed at the end of the testing period, unless otherwise approved by the department in writing.

(6) The RDD plan may propose an alternate final cover installation schedule.

c. An RDD plan shall include the following details and specifications. Processes other than adding liquids to the waste mass and leachate recirculation may be practiced in conjunction with the RDD plan.

(1) Initial applications for RDD plans shall be submitted for review and approval prior to the initiation of the process to be tested. These plans shall specify the process that will be tested, describe preparation and operation of the process, describe waste types and characteristics that the process will affect, describe desired changes and end points that the process is intended to achieve, define testing methods and observations of the process or waste mass that are necessary to assess effectiveness of the process, and include technical literature references and research that support use of the process. The plans shall specify the time period for which the process will be tested. The plans shall specify the additional information, operating experience, data generation, or technical developments that the process to be tested is expected to generate.

(2) The test period for the initial application shall be limited to a maximum of three years.

(3) Renewals of testing periods shall be limited to a maximum of three years each. The maximum number of renewals shall be limited to three.

(4) Renewals shall require department review and approval of reports of performance and progress on achievement of goals specified in the RDD plan.

(5) RDD Plans for addition of liquids, in addition to leachate and gas condensate from the same landfill, for accelerated decomposition of the waste mass ~~and/or~~ or for allowing run-on water to flow into the landfill waste mass shall demonstrate that there is no increased risk to human health and the environment. The following minimum performance criteria shall be demonstrated.

(a) Risk of contamination to groundwater or surface water will not be greater than the risk without an approved RDD plan.

(b) Stability analysis demonstrating the physical stability of the landfill.

(c) Landfill gas collection and control in accordance with applicable Clean Air Act requirements (i.e., Title V, NSPS or EG rule, etc.).

(d) For RDD plans that include the addition of offsite nonhazardous waste liquids to the landfill, the following information shall be submitted with the RDD plan:

(i) Demonstration of adequate facility liquid storage volume to receive the offsite liquid;

(ii) A list of proposed characteristics for screening the accepted liquids is developed; and

(iii) The quantity and quality of the liquids are compatible with the RDD plan.

If offsite nonhazardous liquids are certified by the offsite generator as stormwater uncontaminated by solid waste, screening is not required for this liquid.

(6) RDD plans for testing of the construction and infiltration performance of alternative final cover systems shall demonstrate that there is no increased risk to human health and the environment. The proposed final cover system shall be as protective as the final cover system required by 9VAC20-81-160 D. The following minimum performance criteria shall be demonstrated:

(a) No build up of excess liquid in the waste and on the landfill liner;

(b) Stability analysis demonstrating the physical stability of the landfill;

(c) No moisture will escape from the landfill to the surface water or groundwater; and

(d) Sufficient reduction in infiltration so that there will be no leakage of leachate from the landfill.

(7) RDD plans that evaluate introduction of liquids in addition to leachate or gas condensate from the same landfill shall propose measures to be integrated with any approved leachate recirculation plan and compliance with requirements for leachate recirculation.

(8) RDD plans shall include a description of warning symptoms and failure thresholds that will be used to initiate investigation, stand-by, termination, and changes to the process and any other landfill systems that might be affected by the process, such as gas extraction and leachate recirculation. Warning symptoms shall result in a reduction or suspension of liquids addition, leachate recirculation, investigation, and changes to be implemented before resuming the process being tested. Failure thresholds shall result in termination of the process being tested, investigation, and changes that will be submitted to the department for review and approval in writing prior to resumption of the process being tested.

(9) RDD plans shall include an assessment of the manner in which the process to be tested might alter the impact that the landfill may have on human health or environmental quality. The assessment shall include both

beneficial and deleterious effects that could result from the process.

(10) RDD plans shall include a geotechnical stability analysis of the waste mass and an assessment of the changes that the implementation of the plan are expected to achieve. The geotechnical stability analysis and assessment shall be repeated at the end of testing period, with alteration as needed to include parameters and parameter values derived from field measurements. The plan shall define relevant parameters and techniques for field measurement.

(11) RDD plans shall propose monitoring parameters, frequencies, test methods, instrumentation, recordkeeping and reporting to the department for purposes of tracking and verifying goals of the process selected for testing.

(12) RDD plans shall propose monitoring techniques and instrumentation for potential movements of waste mass and settlement of waste mass, including proposed time intervals and instrumentation, pertinent to the process selected for testing.

(13) RDD plans shall propose construction documentation, construction quality control and construction quality assurance measures, and recordkeeping for construction and equipment installation that is part of the process selected for testing.

(14) RDD plans shall propose operating practices and controls, staffing, monitoring parameters, and equipment needed to support operations of the process selected for testing.

(15) RDD plans that include aeration of the waste mass shall include a temperature monitoring plan, a fire drill and safety program, instructions for use of liquids for control of temperature and fires in the waste mass, and instructions for investigation and repair of damage to the liner and leachate collection system.

(16) RDD plans may include an alternate interim cover system and final cover installation schedule. The interim cover system shall be designed to account for weather conditions, slope stability, and leachate and gas generation. The interim cover shall also control, at a minimum, disease vectors, fires, odors, blowing litter, and scavenging.

d. Reporting. An annual report shall be prepared for each year of the RDD testing period, including any renewal periods, and a final report shall be prepared for the end of the testing period. These reports shall assess the attainment of goals proposed for the process selected for testing, recommend changes, recommend further work, and summarize problems and their resolution. Reports shall include a summary of all monitoring data, testing data and observations of process or effects and shall include recommendations for continuance or termination

of the process selected for testing. Annual reports shall be submitted to the department within three months after the anniversary date of the approved permit or permit modification. Final reports shall be submitted at least 90 days prior to the end of the testing period for evaluation by the department. The department shall review this report within 90 days. If the department's evaluation indicates that the goals of the project have been met, are reliable and predictable, the department will provide a minor permit modification to incorporate the continued operation of the project with the appropriate monitoring.

e. Termination. The department may require modifications to or immediate termination of the RDD process being tested if any of the following conditions occur:

- (1) Significant and persistent odors;
- (2) Significant leachate seeps or surface exposure of leachate;
- (3) Significant leachate head on the liner;
- (4) Excessively acidic leachate chemistry or gas production rates or other monitoring data indicate poor waste decomposition conditions;
- (5) Instability in the waste mass; or
- (6) Other persistent and deleterious effects.

The RDD program is an optional participation program, by accepting the modification or new permit, the applicant acknowledges that the program is optional; and that they are aware the department may provide suspension or termination of the RDD program for any reasonable cause, without a public hearing. Notice of suspension or termination will be by letter for a cause related to a technical problem, nuisance problem, or for protection of human health or the environment as determined by the department.

G. Facility siting. The suitability of the facility location will not be considered at the time of permit modification unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance or the modification is for an expansion or increase in capacity.

Part VI Special Wastes

9VAC20-81-610. General.

A. The requirements and standards contained in this part apply to solid waste that requires special handling and precautions and are in addition to the general requirements contained in Part III (9VAC20-81-100 et seq.) ~~and~~ Part IV (9VAC20-81-300 et seq.), and Part VIII (9VAC20-81-800 et seq.) of this chapter, as applicable.

1. Facilities may receive solid waste that requires special handling for processing or disposal only with specific

Regulations

approval of the director or by specific provisions within the facility permit. The operator should contact the department for advice about new or unusual wastes and proper handling techniques. If it is not clear that a particular waste is within the authorized wastes that a permitted facility may receive, it is required that the operator receive a letter of clarification from the department before receiving the waste.

2. Nothing in this part shall limit or affect the power of the director, by his order, to prohibit storage, treatment, or disposal of any waste or require special handling requirements he determines are necessary to protect the public health or the environment.

B. The requirements and standards contained in this part also apply to specific materials that are used in a manner that constitutes disposal.

Part VII

Variance Application Procedures

9VAC20-81-700. General.

A. Any person affected by this chapter may apply to the department for a variance from any requirement of this chapter. Variance determinations shall be subject to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The department shall not accept any variance application relating to:

1. Equivalent testing or analytical methods contained in EPA Publication SW-846;
2. Definition of solid waste contained in 9VAC20-81-95;
3. Criteria used for classification of solid waste disposal facilities contained in 40 CFR Parts 257 and 258, as amended; ~~and~~
4. A change in the regulatory requirements that the applicant is currently violating until such time as the violation has been resolved through the enforcement process; and
5. Any of the requirements of Part VIII (9VAC20-81-800 et seq.) of this chapter.

Part VIII

Requirements for the Management of Coal Combustion Residuals

9VAC20-81-800. Adoption of 40 CFR Part 257 Subpart D by reference - Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments.

A. Except as otherwise provided, those regulations of the U.S. Environmental Protection Agency set forth in Subpart D of 40 CFR Part 257, wherein they relate to standards for the disposal of coal combustion residuals in landfills and surface impoundments, are hereby incorporated as part of the Virginia Solid Waste Management Regulations, 9VAC20-81. Except as otherwise provided, all material definitions,

reference materials, and other ancillaries that are a part of incorporated sections of 40 CFR Part 257 are also hereby incorporated as part of the Virginia Solid Waste Management Regulations.

B. In all locations in this chapter where text from 40 CFR Part 257 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into this chapter. The following terms, where they appear in the Code of Federal Regulations shall, for the purpose of this chapter, have the following meanings or interpretations:

1. "Director" shall supplant the "State Director" wherever it appears.
2. "Qualified professional engineer" or "engineer" means a "professional engineer" certified to practice in the Commonwealth of Virginia as defined in 9VAC20-81-10.

C. Definitions in 40 CFR 257.53 are incorporated by reference into this part and are applicable to CCR landfills and CCR surface impoundments.

9VAC20-81-810. Permits for CCR landfills and CCR surface impoundments.

A. CCR landfills are a specific type of industrial landfill. Permit requirements for industrial landfills are outlined in Part III (9VAC20-81-100 et seq.) and Part V (9VAC20-81-400 et seq.) of this chapter and must be complied with in addition to the requirements applicable to CCR landfills found in this part. Existing CCR landfills shall submit a complete permit application no later than October 17, 2017. Owners and operators of new CCR landfills are required to submit to the director a permit application for an industrial landfill that meets the requirements of this chapter and receive a permit for an industrial landfill prior to the initial receipt of CCR in the CCR unit. An application for a CCR landfill or lateral expansion of a CCR landfill shall include the following:

1. Location restriction demonstrations required by 40 CFR 257.60, 40 CFR 257.61, 40 CFR 257.62, 40 CFR 257.63, and 40 FR 257.64, as applicable;
2. Description of the CCR landfill's design criteria required by 40 CFR 257.70 (new CCR landfill or lateral expansion of a CCR landfill);
3. Description of how the CCR landfill's operating criteria required by 40 CFR 257.80, 40 CFR 257.81, and 40 CFR 257.84 are met;
4. Explanation of how groundwater monitoring and corrective action criteria required by 40 CFR 257.90, 40 CFR 257.91, 40 CFR 257.93, 40 CFR 257.94, 40 CFR 257.95, 40 CFR 257.96, 40 CFR 257.97, and 40 CFR 257.98 are met;
5. Explanation of how closure and post-closure care requirements found in 40 CFR 257.101, 40 CFR 257.102, 40 CFR 257.103, and 40 CFR 257.104 will be met;

6. Website address for information required to be posted by 40 CFR 257.105, 40 CFR 257.106, and 40 CFR 257.107; and

7. Part III requirements concerning industrial landfills. If more than one standard is listed, the more stringent standard is to be complied with unless the director has granted a variance to a more stringent state specific standard.

B. Existing CCR surface impoundments are required to submit to the director a permit application for a CCR surface impoundment permit that meets the requirements of this chapter before October 17, 2017. New CCR surface impoundments are required to submit to the director a permit application for a surface impoundment that meets the requirements of this chapter prior to the initial receipt of CCR in the CCR unit. An application for a CCR surface impoundment shall include the following:

1. Location restriction demonstrations required by 40 CFR 257.60, 40 CFR 257.61, 40 CFR 257.62, 40 CFR 257.63, and 40 FR 257.64;

2. Description of the CCR surface impoundment's design criteria required by 40 CFR 257.71 (existing CCR surface impoundments), 40 CFR 257.72 (new CCR surface impoundments and lateral expansions), 40 CFR 257.73 (existing CCR surface impoundments), and 40 CFR 257.74 (new CCR surface impoundments and lateral expansions) as applicable;

3. Description of how the CCR surface impoundment's operating criteria required by 40 CFR 257.80, 40 CFR 257.82, and 40 CFR 257.83 are met;

4. Explanation of how groundwater monitoring and corrective action criteria required by 40 CFR 257.90, 40 CFR 257.91, 40 CFR 257.93, 40 CFR 257.94, 40 CFR 257.95, 40 CFR 257.96, 40 CFR 257.97, and 40 CFR 257.98 are met;

5. Explanation of how closure and post-closure care requirements found in 40 CFR 257.101, 40 CFR 257.102, 40 CFR 257.103, and 40 CFR 257.104 will be met; and

6. Website address for information required to be posted by 40 CFR 257.105, 40 CFR 257.106, and 40 CFR 257.107.

C. CCR landfills and new and existing surface impoundments are required to comply with the applicable permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter, including Virginia public participation requirements.

D. Inactive CCR surface impoundments were not subject to (i) this chapter during their operating life or (ii) a solid waste permit for operation. Inactive CCR surface impoundments are subject to a solid waste permit to address closure and post-closure, as applicable, except where the applicable requirements are included in an existing solid waste permit or a permit issued under State Water Control Law.

9VAC20-81-820. Inactive surface impoundments.

A. No later than December 17, 2015, the owner or operator of an inactive surface impoundment must prepare and place in the facility's operating record a notification of intent to initiate closure of the CCR surface impoundment.

B. An owner or operator of an inactive CCR surface impoundment shall complete closure of the CCR unit as specified in 40 CFR 257.100 no later than April 17, 2018, or submit a permit application for an existing CCR surface impoundment.

VA.R. Doc. No. R16-4272; Filed December 7, 2015, 4:01 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-85. Coal Combustion Byproduct Regulations (amending 9VAC20-85-10, 9VAC20-85-20, 9VAC20-85-40, 9VAC20-85-70, 9VAC20-85-90).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 257.

Effective Date: January 27, 2016.

Agency Contact: Justin Williams, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4185, FAX (804) 698-4234, or email justin.williams@deq.virginia.gov.

Summary:

On April 17, 2015, the U.S. Environmental Protection Agency published a final rule in the Federal Register titled "Disposal of Coal Combustion Residuals from Electric Utilities." The federal rule became effective on October 19, 2015. Virginia previously adopted regulations concerning the use of coal combustion byproducts (9VAC20-85), which need to be revised to be consistent with the new federal rule. Virginia's rule regulates the use of coal combustion byproducts (CCB) and the federal rule regulates coal combustion residuals (CCR). CCR are a specific type of CCB, and definitions, applicability, and a locational restriction are being revised to be consistent with the federal rule.

Regulations

Part I Definitions

9VAC20-85-10. Definitions as established in Solid Waste Management Regulations.

The definitions set out in ~~Part I~~ of the Solid Waste Management Regulations, 9VAC20-81, are incorporated by reference.

9VAC20-85-20. Definitions.

In addition to the definitions incorporated by reference, the following words and terms shall have, for the purpose of this chapter, the following meanings:

"ASTM" means the American Society for Testing and Materials.

"CCB" means coal combustion byproducts.

"Closure" means the act of securing a fossil fuel combustion products site pursuant to the requirements of this chapter.

"Coal combustion byproducts" or "CCB" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by ~~coal fired electrical or steam generating units~~ burning coal. CCB includes both CCR and non-CCR wastes identified by this definition.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. CCR is a specific type of CCB.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or the Director of the Department of Mines, Minerals and Energy depending on the context.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Fossil fuel combustion products site" means all land and structures, other appurtenances, and improvements on them used to manage fossil fuel combustion products by the methods included in either 9VAC20-85-40 A or B.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or

in anticipation of potential use, reuse, or reclamation. Fossil fuel combustion products are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the accumulated fossil fuel combustion products are being removed from the storage annually.

"TCLP" means a chemical analytical procedure described in the Virginia Hazardous Waste Management Regulations, 9VAC20-60.

"Waste derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be ~~"Refuse Derived Fuel"~~ "refuse derived fuel (RDF)" as defined in 9VAC5-40-890.

9VAC20-85-40. Applicability.

A. This chapter applies to all persons who use, reuse, or reclaim fossil fuel combustion products by applying them to or placing them on land in a manner other than addressed in 9VAC20-81-95 of the Solid Waste Management Regulations. 9VAC20-81-95 provides for the beneficial use of waste materials such as fossil fuel combustion products, and provides for conditional exemptions from regulation for fossil fuel combustion products. This chapter also applies to all persons who use, reuse, or reclaim 12,400 tons or less of unencapsulated CCR on the land in nonroadway applications.

B. This chapter establishes minimum standards for the owners or operators of coal mining facilities that accept CCB for mine reclamation or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) unless otherwise exempt under 9VAC20-81-95 D 18 of the Solid Waste Management Regulations. If the permit issued by the DMME in accordance with the Virginia Coal Surface Mining Reclamation Regulations, 4VAC25-130-700.1 et seq., specifies the applicable conditions set forth in Parts III (9VAC20-85-70 et seq.) and IV (9VAC20-85-150 et seq.) of this chapter, the permittee is exempt from this chapter.

C. Conditions of applicability are as follows:

1. Persons using fossil fuel combustion products other than in a manner prescribed under this chapter, or managing fossil fuel combustion products containing any constituent at a level exceeding levels set forth in Table 1 in Part IV of this chapter, shall manage their waste in accordance with all applicable provisions of the Solid Waste Management Regulations, 9VAC20-81;

2. Materials which are accumulated speculatively, materials which are not utilized in a manner described in the operation plan required by 9VAC20-85-90 of this chapter, and off-specification materials which cannot be utilized or reprocessed to make them usable shall be managed in accordance with all appropriate provisions of the Solid Waste Management Regulations, 9VAC20-81; and

3. Storage, stockpiling, and other processing or handling of fossil fuel combustion products, which may need to occur prior to their final placement or use, reuse, or reclamation, shall be in a manner necessary to protect human health and safety and the environment. For projects permitted by the DMME, the storage, stockpiling, or handling of CCB shall be managed in accordance with the Virginia Coal Surface Mining Reclamation Regulations, 4VAC25-130-700.1 et seq.

4. Use, reuse, or reclamation of greater than 12,400 tons of unencapsulated CCR on the land in nonroadway applications shall be managed in accordance with all applicable provisions of the Solid Waste Management Regulations, 9VAC20-81.

Part III
Management Standards
Article 1
Locational Restrictions

9VAC20-85-70. Locational restrictions.

Fossil fuel combustion products used, reused, or reclaimed on or below ground shall not be placed:

1. In areas subject to base floods unless it can be shown that fossil fuel combustion products can be protected from inundation or washout and that flow of water is not restricted, except for unamended coal combustion byproduct which shall not be placed in areas subject to base floods;
2. With the vertical separation between the fossil fuel combustion products and the maximum seasonal water table less than five feet or bedrock less than two feet;
3. Closer than:
 - a. 100 feet of any perennial stream,
 - b. 100 feet of any water well (other than a monitoring well) in existence at the onset of the project,
 - c. 25 feet of a bedrock outcrop, unless the outcrop is properly treated to minimize infiltration into fractured zones,
 - d. 100 feet of a sinkhole, or
 - e. 25 feet from any property boundary or, in the case of projects permitted by the DMME, 25 feet from the permit boundary.

(NOTE: All distances are to be measured in the horizontal plane.)

4. In wetlands, unless applicable federal, state and local permits are obtained; and
5. On the site of an active or inactive dump, unpermitted landfill, lagoon, or similar facility, even if such facility is closed.

Article 3
Operations

9VAC20-85-90. Operations.

The owner or operator of a fossil fuel combustion products site shall prepare an operation plan. At a minimum, the plan shall address the requirements contained in this section.

1. Tracking of mud or fossil fuel combustion products onto public roads from the site shall be controlled at all times to minimize nuisances.
2. The addition of any solid waste including but not limited to hazardous, infectious, construction, debris, demolition, industrial, petroleum-contaminated soil, or municipal solid waste to fossil fuel combustion products is prohibited. This prohibition does not apply to solid wastes from the extraction, beneficiation and processing of ores and minerals conditionally exempted under 9VAC20-81-95 E 3 of the Solid Waste Management Regulations.
3. Fugitive dust shall be controlled at the site so it does not constitute nuisances or hazards.
4. After preparing the subbase, fossil fuel combustion products shall be placed uniformly and compacted to standards, including insitu density, compaction effort and relative density as specified by a registered professional engineer based on the intended use of the fossil fuel combustion products. The placement and compaction of CCB on coal mine sites shall be subject to the applicable requirements of the Coal Surface Mining Reclamation Regulations, 4VAC25-130-700.1 et seq.
5. A surface run on and runoff control program shall be implemented to control and reduce the infiltration of surface water through the fossil fuel combustion products and to control the runoff from the placement area to other areas and to surface waters.
6. Runoff shall not be permitted to drain or discharge into surface waters except when in accordance with 9VAC25-10-10 ~~et seq.~~, of the State Water Control Board, or otherwise approved by the department.
7. Fossil fuel combustion products site development shall be in accordance with the ~~Virginia~~ Erosion and Sediment Control Regulations, 4VAC50-30 9VAC25-840, or the Coal Surface Mining Reclamation Regulations, 4VAC25-130-700.1 ~~et seq.~~, as applicable.

VA.R. Doc. No. R16-4371; Filed December 7, 2015, 4:02 p.m.



Regulations

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: 12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-10, 12VAC30-90-36, 12VAC30-90-37, 12VAC30-90-41, 12VAC30-90-44, 12VAC30-90-55, 12VAC30-90-60, 12VAC30-90-65, 12VAC30-90-170, 12VAC30-90-180, 12VAC30-90-306; adding 12VAC30-90-267; repealing 12VAC30-90-20).

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: January 27, 2016.

Effective Date: February 11, 2016.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@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. DMAS is relying on this general authority to recommend the addition of the new text in 12VAC30-90-267 concerning private room differential payments.

Based on authority under Item 301 KKK of Chapter 2 of the 2014 Acts of the Assembly, Special Session I, and Item 301 KKK of Chapter 665 of the 2015 Acts of the Assembly, this action replaces the existing cost-based nursing facility payment methodology with a price-based methodology and adjusts the reimbursement for capital. This legislative mandate also directed DMAS to reimburse the price-based operating rate rather than the transition operating rate to any nursing facility whose licensed bed capacity decreased by at least 30 beds after 2011 and occupancy increased from less than 70% in 2011 to more than 80% in 2013.

Purpose: The purpose of this action is to replace the current cost-based methodology with the recommended price-based methodology. This action does not directly affect the health, safety, and welfare of citizens of the Commonwealth. It does

affect nursing facility providers who provide care to their residents.

Rationale for Using Fast-Track Process: This regulatory action is being promulgated using the fast-track rulemaking process as the affected industry has agreed to the department using this part of the regulatory process. The nursing home industry has been actively consulted about these changes and its comments have been addressed in this proposal.

Substance: The current cost-based payment methodology reimburses nursing facilities based on each facility's operating costs in the prior year inflated to the rate year subject to ceilings for defined peer groups. Other costs, including capital, nurse aide training, and administrative costs, are also reimbursed on a retrospective basis. Currently, there is no additional reimbursement provided when a nursing facility resident has a medical need to be placed in a private room.

12VAC30-90-10, 12VAC30-90-41, 12VAC30-90-55, 12VAC30-90-60, 12VAC30-90-65 are being amended and 12VAC30-90-44 is being established to convert nursing facility reimbursement from cost-based reimbursement to a price-based payment methodology. The new price-based payment methodology creates prospective payment components for direct and indirect operating costs by peer group. The cost per day will be 105.000% of the direct operating day-weighted median for each direct peer group and 100.735% of the indirect operating day-weighted median for each indirect peer group. These price-based rates for the operating components will be calculated using nursing facility cost report data in a base year and rebased at least every three years. The price-based rates will also be adjusted by a spending floor to limit the potential gain of low cost facilities, thereby making it possible to implement higher adjustment factors for other facilities at less cost.

The direct operating component will be adjusted by the Resource Utilization Group (RUG) weights as defined in 12VAC30-90-306 case-mix index (CMI) to reflect the RUG for each nursing facility resident. DMAS shall transition from the RUG-III 34 Medicaid grouper in 12VAC30-90-306 to the RUG-IV 48 grouper in state fiscal year (SFY) 2018.

DMAS will transition to the new methodology over the next four years in 25% increments. For the first transition period, the direct operating rates from July 1, 2014, through October 31, 2014, shall be case-mix adjusted on a facility basis using the two most recent facility average quarterly CMI scores. Effective November 1, 2014, nursing facility claims will be reimbursed based on the RUG submitted on individual claims. The RUG weight will be applied to direct operating components to adjust the claim payment for the individual's CMI score.

12VAC30-90-36 and 12VAC30-90-37 are being amended to convert the existing capital reimbursement to a fully prospective reimbursement using the same fair rental value (FRV) methodology. These sections are also being amended to reduce the FRV rental rate from 8.5% to 8.0%. The new

methodology also establishes a \$3,000 per bed threshold for major renovation and a mid-year process for adjusting the FRV rate.

12VAC30-90-170 is being amended to reimburse nurse aide training competency evaluation programs (NATCEPs) costs in a prospective manner. The NATCEPs per diem will be calculated by dividing costs by days and inflating to the rate year.

12VAC30-90-180 is being amended to reimburse criminal records checks (CRC) costs in a prospective per diem. CRC costs will be calculated by dividing total costs by days and paid prospectively.

The capital, NATCEPs, and CRC rate components shall be recalculated annually from one year more recent cost report data.

The total per diem amount paid to nursing facilities will be the sum of the case-mix adjusted direct operating per diem, the indirect operating per diem, the capital per diem, the NATCEPs per diem, and the CRC per diem.

The proposed changes were estimated to be budget neutral in the aggregate prior to the additional reductions in the rental rate floor. Individual facility payments may increase or decrease under the new methodology; however, the new payment methodology is not expected to increase or reduce annual payments for nursing facilities in aggregate.

12VAC30-90-267 is established to authorize a private room differential for individuals when the accommodation is medically necessary. The additional payment amount shall be authorized based on medical necessity criteria established by DMAS.

Issues: The actions identified in this action do not impact the public so there are no advantages or disadvantages for citizens. These actions change the reimbursement methodology for nursing facilities. The primary advantage to the agency and the Commonwealth is replacing an outdated cost-based methodology with more efficient and effective prospective reimbursement. There is no disadvantage to the agency or the Commonwealth. There are no other pertinent matters of interest to the regulated community, government officials, or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Item 301 KKK of Chapter 2 of the 2014 Acts of the Assembly and Item 301 KKK of Chapter 665 of the 2015 Acts of the Assembly, the proposed changes replace the existing cost-based nursing facility payment methodology with a price-based methodology and adjust the reimbursement for capital costs. The proposed changes have already been implemented between July 1, 2014, and November 1, 2014.

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

Estimated Economic Impact. Prior to July 1, 2014, nursing facilities were reimbursed according to a cost-based payment methodology based on each facility's operating costs in the prior year inflated to the rate year subject to ceilings for defined peer groups. Other costs, including capital, nurse aide training, and administrative costs, were also reimbursed on a retrospective basis. Moreover, there was no additional reimbursement provided when a nursing facility resident had a medical need to be placed in a private room.

Pursuant to Item 301 KKK of Chapter 2 of the 2014 Acts of the Assembly and Item 301 KKK of Chapter 665 of the 2015 Acts of the Assembly, the proposed changes replace the existing cost-based nursing facility payment methodology with a price-based methodology and adjust the reimbursement for capital costs. The Department of Medical Assistance Services (DMAS) implemented the new methodology between July 1, 2014, and November 1, 2014. The proposed changes will update the regulations to reflect the new price-based methodology.

The new price-based payment methodology creates prospective payment components for direct and indirect operating nursing home costs by peer group. The cost per day will be 105.000 percent of the direct operating day-weighted median for each direct peer group and 100.735 percent of the indirect operating day-weighted median for each indirect peer group. These price-based rates for the operating components will be calculated using nursing facility cost report data in a base year and rebased at least every three years. The price-based rates will also be adjusted by a spending floor to limit the potential gain of low cost facilities, thereby making it possible to implement higher adjustment factors for other facilities at less cost.

The direct operating component will be adjusted by the Resource Utilization Group (RUG) weights to reflect the RUG for each nursing facility resident. RUG is a resident classification system that groups nursing facility residents according to resource utilization and assigns weights related to the resource utilization for each classification. DMAS will also transition from the RUG-III 34 Medicaid grouper to a newer RUG-IV 48 grouper in fiscal year (FY) 2018.

Moreover, DMAS will transition to the new methodology over the next four years in 25 percent increments. For the first transition period, the direct operating rates from July 1, 2014, to October 31, 2014, will be case-mix adjusted on a facility basis using the two most recent facility average quarterly Case Mix Index (CMI) scores. The RUG weight will be applied to direct operating component to adjust the claim payment for the individual's CMI score. Effective November 1, 2014, nursing facility claims have been reimbursed based on the RUG submitted on individual claims.

The legislative mandate also directs DMAS to reimburse the price-based operating rate rather than the transition operating rate to any nursing facility whose licensed bed capacity decreased by at least 30 beds after 2011 and occupancy

Regulations

increased from less than 70 percent in 2011 to more than 80 percent in 2013.

Additionally, the existing capital reimbursement methodology will be converted to a fully prospective reimbursement using the same Fair Rental Value (FRV) methodology. The capital reimbursement methodology is being amended to reduce the FRV rental rate from 8.5 percent to 8.0 percent. The new methodology also establishes a \$3,000 per bed threshold for major renovation and a mid-year process for adjusting the FRV rate.

The Nurse Aide Training Competency Evaluation Programs (NATCEPs) will also be reimbursed their costs in a prospective manner also. The NATCEPs per diem will be calculated by dividing costs by days and inflating to the rate year.

Criminal Records Checks (CRC) costs will be reimbursed based on a prospective per diem rate. CRC costs will be calculated by dividing total costs by days and paid prospectively.

The capital, NATCEPs, and CRC rate components will be recalculated annually from one year more recent cost report data.

A private room differential for individuals when the accommodation is medically necessary will also be allowed. The additional payment amount will be allowed based on medical necessity criteria established by DMAS.

In summary, the total per diem amount paid to nursing facilities will be the sum of the case-mix adjusted direct operating per diem, the indirect operating per diem, the capital per diem, the NATCEPs per diem, and the CRC per diem.

This action will likely increase the efficiency of reimbursement for nursing home services to some extent. Under the new system, nursing homes will receive a fixed payment for a specific service for a period of three years between the rebasing. During the three-year rebasing period, payments will be adjusted periodically to account for inflation, for cost of living in certain geographical locations, etc., but will not accommodate individual nursing facilities. Each facility will receive the same base payment for the same service adjusted for geographic location regardless of facility specific costs. Since the base reimbursement rate is calculated using cost data from all nursing homes, inefficient facilities will receive less than what they receive under the cost-based methodology and efficient facilities will receive more than what they receive under the cost-based methodology. Thus, all nursing facilities will have an incentive to keep their costs as low as possible to maximize their profit. Lower costs, in turn, will lead to lower reimbursement rates when the rates are rebased every three years. Over time, inefficient nursing homes will be forced to improve their efficiency and reduce costs which in turn will push reimbursement rates down to a lower level on a continuing basis.

The proposed changes were estimated to be budget neutral in the aggregate prior to the additional reductions in the rental rate floor. In FY 2015, the total Medicaid reimbursement to nursing homes was approximately \$866 million. However, the reimbursements to individual nursing homes may increase or decrease under the new methodology. Based on FY 2015 data and assuming full implementation, 90 nursing homes will receive \$100,000 to \$1.9 million less, 66 nursing homes will receive \$0 to \$99,999 less, 27 nursing homes will receive \$1 to \$99,999 more, and 83 nursing homes will receive \$100,000 to \$1.3 million more in their reimbursements compared to payments under the old methodology.

To some extent, this action will also increase the predictability of reimbursement during the three-year rebasing period. Since fixed rates will be paid for services, the total reimbursement will be driven mainly by utilization and not by hospital specific cost factors.

The new methodology is also expected to reduce DMAS's administrative costs associated with cost settlement of claims for about \$500,000 per year after the second year of implementation. On the other hand, approximately \$640,000 in additional administrative costs on DMAS is expected to modify its information technology to incorporate this methodology. The impact on administrative costs of providers is expected to be minimal as they will continue to submit claims in the same manner.

Businesses and Entities Affected. The proposed changes apply to approximately 266 nursing facilities. DMAS estimates that about 24 facilities may qualify as small businesses because they have less than 120 beds and are not part of a nursing home national chain, a hospital, or a continuing care retirement community.

Localities Particularly Affected. The regulations apply throughout the Commonwealth.

Projected Impact on Employment. The new methodology will reduce reimbursement for inefficient nursing homes while increasing reimbursement for efficient nursing homes. Inefficient facilities may reduce their demand for labor while efficient facilities may increase their demand for labor.

Effects on the Use and Value of Private Property. The new methodology will reduce reimbursement for 156 nursing homes while increasing reimbursement for 110 facilities. The asset values of the affected nursing homes would be affected depending on the impact on their revenues.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Small Businesses¹:

Costs and Other Effects. About 24 nursing homes are estimated to be small businesses. The costs and other effects on them would be the same as discussed above.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that would minimize the adverse impact

on inefficient nursing facilities while accomplishing the same goals.

Adverse Impacts:

Businesses: Majority of nursing homes are not small businesses. The costs and other effects on them would be the same as discussed above.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments are expected to introduce approximately \$640,000 in additional administrative costs on DMAS to modify its information technology to incorporate the new methodology.

¹Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding Nursing Facility Price Based Reimbursement (12VAC30-90). The agency raises no issues with this analysis.

Summary:

Pursuant to Item 301 KKK of Chapter 2 of the 2014 Acts of the Assembly, Special Session I, and Item 301 KKK of Chapter 665 of the 2015 Acts of the Assembly, the amendments replace the existing cost-based nursing facility payment methodology with a price-based methodology and adjust the reimbursement for capital costs.

Part I

Methods and Standards for Establishing Payment Rates for Long-Term Care

12VAC30-90-10. Methods and standards for establishing payment rates for long-term care.

The policy and the method to be used in establishing payment rates for nursing facilities listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs.

1. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the Program so that eligible persons can receive the medical care and services included in the Plan to the extent these are available to the general population.
2. Participation in the Program will be limited to providers of services who accept, as payment in full, the amounts so paid.
3. Payment for care of service will not exceed the amounts indicated to be reimbursed in accord with the policy and the methods described in the Plan and payments will not be made in excess of the upper limits described in 42 CFR

~~447.253(b)(2). The state agency has continuing access to data identifying the maximum charges allowed. Such data will be made available to the Secretary of Health and Human Services upon request.~~

4. Payments for services to nonstate-owned nursing facilities shall be on the basis of reasonable cost in accordance with the standards and principles set forth in 42 CFR 447.252 as follows: based on methodologies set out in 12VAC30-90-44 of the Nursing Home Payment System (Part II (12VAC30-90-19 et seq.) of this chapter for nursing facilities and in Subpart XVII (12VAC30-90-264 et seq.) of the Nursing Home Payment System for specialized care facilities.

5. Facilities operated by the Department of Behavioral Health and Developmental Services and facilities operated by the Department of Veterans Services shall be reimbursed retrospectively based on cost.

6. Reimbursement to Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) shall be retrospective on the basis of reasonable costs in accordance with Medicare principles of reimbursement. Nonstate facilities shall be limited to a ceiling based on the highest as filed rate paid to an ICF/IID institution in state fiscal year 2012 and annually adjusted thereafter with the application of the NF inflation factor, as set out in 12VAC30-90-41 B.

7. Except as specifically modified in this section, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate methodologies. Allowable costs shall be classified in accordance with the DMAS uniform chart of accounts (see 12VAC30-90-270 through 12VAC30-90-276) and shall be identifiable and verifiable by contemporaneous documentation. All matters of reimbursement that are part of the DMAS reimbursement system shall supersede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence.

8. All nursing facilities and intermediate care facilities shall submit cost reports on the basis of reasonable cost in accordance with the standards and principles set forth in 42 CFR 447.252 as follows:

- a. A uniform annual cost report which itemizes allowable cost will be required to be filed within 150 days of each provider's fiscal year end.
- b. The determination of allowable costs will be in accordance with Medicare principles as established in the Provider Reimbursement Manual (PRM-15) except where otherwise noted in this Plan.
- c. Field audits will be conducted on the cost data submitted by the provider to verify the accuracy and reasonableness of such data. Audits will be conducted for

Regulations

each facility on a periodic basis as determined from internal desk audits and more often as required. Audit procedures are in conformance with SSA standards set forth in PRM-13-2. Internal desk audits are conducted annually within six months of receipt of a completed cost report from the provider.

d. Reports of field audits are retained by the state agency for at least three years following submission of the report.

~~e. Facilities are paid on a cost related basis in accordance with the methodology described in the Plan.~~

f. e. Modifications to the Plan for reimbursement will be submitted as Plan amendments.

~~g.~~ f. Covered cost will include such items as:

- (1) Cost of meeting certification standards.
- (2) Routine services, which include items expense providers normally incur in the provision of services.
- (3) The cost of such services provided by related organizations except as modified in the payment system at ~~Part II (12VAC30-90-20 et seq.)~~ Subpart 2 (12VAC30-90-29 et seq.) of this chapter.

~~h.~~ g. Bad debts, charity and courtesy allowances shall be excluded from allowable cost.

~~i. Effective for facility cost reporting periods beginning on or after October 1, 1978, the reimbursable amount will be determined prospectively on a facility by facility basis, except that facilities operated by the Department of Behavioral Health and Developmental Services and by the Department of Veterans Services shall be reimbursed retrospectively. The prospective rate will be based on the prior period's actual cost (as determined by an annual cost report and verified by audit as set forth in subdivision 4 c of this section) plus an inflation factor.~~ h. Payments will be made to facilities no less than monthly based on claims submitted by the facility.

~~j. The payment level calculated by the prospective rate will~~ i. Payments shall be adequate to reimburse in full such actual allowable costs that an economically and efficiently operated facility must incur. ~~In addition, an incentive plan will be established as described in the payment system at 12VAC30-90.~~

~~k. Upper limits for payment within the prospective payment system shall be as follow:~~

- ~~(1) Allowable cost shall be determined in accordance with Medicare principles as defined in PRM 15, except as may be modified in this plan.~~
- ~~(2) Reimbursement for operating costs will be limited to regional ceilings.~~
- ~~(3) Reimbursement, in no instance, will exceed the charges for private patients receiving the same services. In accordance with § 1903(a)(2)(B) of the Social Security Act, nursing facility costs incurred in relation to training~~

~~and competency evaluation of nurse aides will be considered as State administrative expenses and, as such, shall be exempted from this provision.~~

~~l.~~ j. In accordance with 42 CFR 447.205, an opportunity for public comment was permitted before final implementation of rate setting processes.

~~m. A detailed description of the prospective reimbursement formula is attached for supporting detail.~~

~~n. Item 398D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return~~ k. Return on equity capital to proprietary providers shall not be an allowable expense.

~~5.~~ 9. Reimbursement of nonenrolled ~~long-term~~ long-term care facilities.

a. Nonenrolled providers of institutional ~~long-term~~ long-term care services shall be reimbursed based upon the average per diem cost, updated annually, reimbursed to enrolled nursing facility providers.

b. Prior approval must be received from the DMAS for recipients to receive institutional services from nonenrolled long-term care facilities. Prior approval can only be granted:

- (1) When the nonenrolled long-term care facility with an available bed is closer to the recipient's Virginia residence than the closest facility located in Virginia with an available bed;
- (2) When long-term care special services, such as intensive rehabilitation services, are not available in Virginia; or
- (3) If there are no available beds in Virginia facilities.

~~6. Specialized care services. The payment methodology for specialized care services is contained in Part XVII (12VAC30-90-350 et seq.) of the Nursing Home Payment System.~~

12VAC30-90-20. Nursing home payment system; generally. (Repealed.)

A. Effective July 1, 2001, the payment methodology for nursing facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in this part.

B. Three separate cost components are used: plant or capital, as appropriate, cost; operating cost; and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility by facility basis, shall be based on annual cost reports filed by each provider.

C. Effective July 1, 2001, in determining the ceiling limitations, there shall be direct patient care medians established for nursing facilities in the Virginia portion of the Washington DC MD VA Metropolitan Statistical Area (MSA), the Richmond Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be

~~indirect patient care medians established for nursing facilities in the Virginia portion of the Washington DC MD VA MSA, for NFs with less than 61 beds in the rest of the state, and for NFs with more than 60 beds in the rest of the state. The Washington DC MD VA MSA and the Richmond Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Centers for Medicare and Medicaid Services (CMS). A nursing facility located in a jurisdiction which CMS adds to or removes from the Washington DC MD VA MSA or the Richmond Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.~~

~~D. Nursing facilities operated by the Department of Behavioral Health and Developmental Services (DBHDS) and the Department of Veterans Services (DVS) shall be exempt from the prospective payment system as defined in Articles 1 (12VAC30-90-29), 3 (12VAC30-90-35 et seq.), 4 (12VAC30-90-40 et seq.), 6 (12VAC30-90-60 et seq.), and 8 (12VAC30-90-80) of this subpart. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities operated by DBHDS and DVS shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare principles of reimbursement.~~

~~E. Reimbursement to Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) shall be retrospective on the basis of reasonable costs in accordance with Medicare principles of reimbursement. Nonstate facilities shall be limited to a ceiling based on the highest as filed rate paid to an ICF/IID institution in state fiscal year 2012 and annually adjusted thereafter with the application of the NF inflation factor, as set out in 12VAC30-90-41 B.~~

~~F. Except as specifically modified in this section, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see 12VAC30-90-270 through 12VAC30-90-276) and must be identifiable and verifiable by contemporaneous documentation.~~

~~All matters of reimbursement which are part of the DMAS reimbursement system shall supersede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.~~

12VAC30-90-36. Nursing facility capital payment methodology.

A. Applicability. The capital payment methodology described in this article shall be applicable to freestanding nursing facilities and specialized care facilities but not to hospital-based facilities. Hospital-based facilities shall continue to be reimbursed under the methodology contained in Article 2 (12VAC30-90-30 et seq.) of this subpart. For

purposes of this provision, a hospital-based nursing facility shall be one for which a combined cost report is submitted on behalf of both the hospital and the nursing facility.

B. Definitions. The following words and terms when used in this article shall have the following meaning unless the context clearly indicates otherwise:

"Capital costs" means costs that include the cost elements of depreciation, interest, financing costs, rent and lease costs for property, building and equipment, property insurance and property taxes.

"Date of acquisition" means the date legal title passed to the buyer. If a legal titling date is not determinable for a nursing facility building, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

"Facility average age" means for a facility the weighted average of the ages of all capitalized assets of the facility, with the weights equal to the expenditures for those assets. The calculation of average age shall take into account land improvements, building and fixed equipment, and major movable equipment. The basis for the calculation of average age shall be the schedule of assets submitted annually to the department in accordance with the provisions of this section.

"Facility imputed gross square feet" means a number that is determined by multiplying the facility's number of nursing facility ~~licensed~~ beds licensed by the Virginia Department of Health by the imputed number of gross square feet per bed. The imputed number of gross square feet per bed shall be 461 for facilities of 90 or fewer beds, and 438 for facilities of more than 90 beds. The number of licensed nursing facility beds shall be the number on the last day of the provider's most recent fiscal year end for which a cost report has been filed.

"Factor for land and soft costs" means a factor equaling 1.429 that adjusts the construction cost amount to recognize land and capitalized costs associated with construction of a facility that ~~are~~ is not part of the R.S. Means construction cost amount.

"Fixed capital replacement value" means an amount equal to the R.S. Means 75th percentile nursing home construction cost per square foot, times the applicable R.S. Means historical cost index factor, times the factor for land and soft costs, times the applicable R.S. Means location factor times facility imputed gross square feet.

"FRV depreciation rate" means a depreciation rate equal to 2.86% per year.

"Hospital-based facility" means one for which a single combined Medicare cost report is filed that includes the costs of both the hospital and the nursing home.

"Major renovation" means an increase in capital of \$3,000 per bed.

Regulations

"Movable capital replacement value" means a value equal to \$3,475 per bed in SFY 2001, and shall be increased each July 1 by the same R.S. Means historical cost index factor that is used to calculate the fixed capital replacement value. Each year's updated movable capital replacement value shall be used in the calculation of each provider's rate for the provider year beginning on or after the date the new value becomes effective.

"R.S. Means 75th percentile nursing construction cost per square foot" means the 75th percentile value published in the 59th Annual Edition of the R.S. Means Building Construction Cost Data, 2001. In the 2000 edition of the R.S. Means publication this value is \$110, which is reported as a January 2000 value.

"R.S. Means historical cost index factor" means the ratio of the two most recent R.S. Means Historical Cost Indexes published in the 59th Annual Edition of the R.S. Means Building Construction Cost Data, 2001. In the 2000 edition of this R.S. Means publication these two values are 117.6 (for 1999) and 115.1 (for 1998). The ratio of these values, and therefore the factor to be used, would be 1.022. This factor would be used to adjust the January 2000 value for the one year of change from January 2000 to January 2001, the mid-point of the prospective rate year (SFY 2001). The resulting cost value that would be used in SFY 2001 is \$112.42. The indexes used in this calculation do not match the time period for which a factor is needed. They relate to 1998 and 1999, while 2000 and 2001 would be ideal. However, R.S. Means does not publish index forecasts, so the most recent available indexes shall be used.

"R.S. Means location factors" means those published in the 22nd Annual Edition of the R.S. Means Square Foot Costs, 2001. The 2000 location factors are shown in the following Table 1. They will be updated annually and distributed to providers based upon the most recent available data.

233-235	Norfolk	0.82
236	Newport News	0.82
237	Portsmouth	0.81
238	Petersburg	0.84
239	Farmville	0.74
240-241	Roanoke	0.77
242	Bristol	0.75
243	Pulaski	0.70
244	Staunton	0.76
245	Lynchburg	0.77
246	Grundy	0.70

"Rental rate" means for a prospective year a rate equal to two percentage points plus the yield on U.S. Treasury Bonds with maturity over 10 years, averaged over the most recent three calendar years for which data are available, as published by the Federal Reserve (Federal Reserve Statistical Release H.15 Selected Interest Rates (www.Federalreserve.gov/releases/)). The rate will be published and distributed to providers annually. Changes in the rental rate shall be effective for the ~~providers'~~ provider's fiscal year beginning on or after July 1. Rental rates may not fall below 9.0% or exceed 11% and will be updated annually on or about July 1 each year. Effective July 1, 2010, through September 30, 2010, the floor for the nursing facility rental rates may not fall below 8.75%. Effective October 1, 2010, through June 30, 2011, the floor for the nursing facility rental rates may not fall below 9.0%. Effective July 1, 2011, through June 30, 2012, the floor for the nursing facility rental rates may not fall below 8.0%. Effective July 1, 2012, through June 30, 2014, the floor for the nursing facility rental rates may not fall below 8.5%. Effective July 1, 2014, the floor for the nursing facility rental rates may not fall below 8.0%. The rate will be published and distributed to providers annually. Changes in the rental rate shall be effective for the ~~providers'~~ provider's fiscal year beginning on or after July 1. Effective July 1, 2014, the rental rate shall be effective for the state fiscal year.

"Required occupancy percentage" means the ratio of nursing facility total patient days to total potential patient days for all available licensed beds. The required occupancy percentage shall be 90% for dates of service on or before June 30, 2013. The required occupancy percentage for dates of service on or after July 1, 2013, shall be 88%.

"SFY" means State Fiscal Year (July 1 through June 30).

~~4. C. Fair Rental Value rental value (FRV) Payment payment for Capital capital.~~

**TABLE 1.
R.S. MEANS COMMERCIAL CONSTRUCTION COST
LOCATION FACTORS (2000).**

Zip Code	Principal City	Location Factor
220-221	Fairfax	0.90
222	Arlington	0.90
223	Alexandria	0.91
224-225	Fredericksburg	0.85
226	Winchester	0.80
227	Culpeper	0.80
228	Harrisonburg	0.77
229	Charlottesville	0.82
230-232	Richmond	0.85

1. Effective for dates of service on or after July 1, 2001, DMAS shall pay nursing facility capital related costs under a FRV methodology. The payment made under this methodology shall be the only payment for capital related costs, and no separate payment shall be made for depreciation or interest expense, lease costs, property taxes, insurance, or any other capital related cost, including home office capital costs. This payment is considered to cover costs related to land, buildings and fixed equipment, major movable equipment, and any other capital related item. This shall be the case regardless of whether the property is owned or leased by the operator. ~~The department shall review the operation and performance of the FRV methodology every two years.~~

2. ~~FRV Rate~~ Year rate year. The FRV payment rate shall be a per diem rate determined each year for each facility using the most recent available data from settled cost reports, or from other verified sources as specified herein. The per diem rate shall be determined prospectively and shall apply for the entire fiscal year. Each provider shall receive a new capital per diem rate each year effective at the start of the provider's fiscal year, except that the capital per diem rate shall be revised for the rental rate changes effective July 1, 2010, through June 30, 2012. Data elements that are provider specific shall be revised at that time and shall rely on the settled cost report and schedule of assets of the previous year. Data elements that are not provider specific, including those published by R.S. Means and the rental rate, shall be determined annually on or about July 1, and shall apply to provider fiscal years beginning on or after July 1. That is, each July 1 DMAS shall determine the R.S. Means values and the rental rate, and these shall apply to all provider fiscal years beginning on or after July 1. Effective July 1, 2014, the FRV rate year shall be the same as the state fiscal year.

3. Mid-year FRV rate change. Facilities may apply for a mid-year FRV payment rate change for rate years on or after SFY 2015 if putting into service a major renovation or new beds. The nursing facility may submit complete pro forma documentation at least 60 days prior to the effective date and the new rate shall be effective at the beginning of the month following the end of the 60 days. If the initial mid-year FRV rate is not based on final documentation, the nursing facility shall submit final documentation within 60 days of the new rate effective date and DMAS shall review final documentation and modify the rate if necessary effective 90 days after the implementation of the initial new rate. Only one mid-year FRV rate change will be made in any one fiscal year. Mid-year rate changes for an effective date after April 30 of the fiscal year shall be made effective the following July 1.

4. The capital per diem rate for hospital-based nursing facilities shall be the last settled capital per diem.

12VAC30-90-37. Calculation of FRV per diem rate for capital; calculation of FRV rental amount; change of ownership.

A. Calculation of FRV per diem rate for capital.

1. The facility FRV per diem rate shall be equal to the sum of the facility FRV rental amount and the facility's allowable property tax and insurance cost from the most recent settled cost report, divided by the greater of actual patient days or the required occupancy percentage of the potential patient days for all licensed beds throughout the cost reporting period. For facilities that also provide specialized care services, see subdivision 9 of 12VAC30-90-264 for special procedures for computing the number of patient days required to meet the required occupancy percentage requirement.

2. Effective July 1, 2014, facilities shall be required to submit a calendar year FRV report covering both NF and specialized care beds to be used to set a prospective FRV rate effective the following July 1 for both the NF and the specialized care facility. The calendar year FRV report shall be submitted by the end of February following the end of the calendar year. FRV reports shall be settled within 90 days of filing the FRV report. For late FRV reports, the prospective rate may be effective 90 days after the date of filing even if after July 1. No capital rate shall be paid between July 1 and the effective date of the prospective FRV rate for a late report.

B. Calculation of FRV rental amount. The facility FRV rental amount shall be equal to the facility prospective year total value times the rental rate. Effective July 1, 2014, fair rental value per diem rates for the prospective state fiscal year shall be calculated for all freestanding nursing facilities based on the prior calendar year information aged to the state fiscal year and using R.S. Means factors and rental rates corresponding to the state fiscal year. There shall be no separate calculation for beds subject to or not subject to transition.

1. The facility prospective year total value shall be equal to the facility prospective year replacement value minus FRV depreciation. FRV depreciation equals the prospective year replacement value multiplied by the product of facility average age and the depreciation rate. FRV depreciation cannot exceed 60% of the prospective year replacement value.

2. The facility prospective year replacement value shall be equal to the fixed capital replacement value plus the movable equipment replacement value.

C. Change of ownership. As provided in connection with schedule of assets reporting, the sale of nursing facility assets after June 30, 2000, shall not result in a change to the schedule of assets or to the calculation of average age for purposes of reimbursement under the FRV methodology. Therefore, any sale or transfer of assets after this date shall not affect the FRV per diem rate.

Regulations

12VAC30-90-41. Nursing facility reimbursement formula.

A. Effective on and after July 1, 2002, all NFs subject to the prospective payment system shall be reimbursed under "The Resource Utilization Group-III (RUG-III) System as defined in Appendix IV (12VAC30-90-305 through 12VAC30-90-307)." RUG-III is a resident classification system that groups NF residents according to resource utilization. Case-mix indices (CMIs) are assigned to RUG-III groups and are used to adjust the NF's per diem rates to reflect the intensity of services required by a NF's resident mix. See 12VAC30-90-305 through 12VAC30-90-307 for details on the Resource Utilization Groups.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings and rates.

a. ~~In accordance with 12VAC30-90-20 C, direct~~ Direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA, and the rest of the state. Direct patient care operating costs shall be as defined in 12VAC30-90-271.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, for the rest of the state for facilities with less than 61 licensed beds, and for the rest of the state for facilities with more than 60 licensed beds.

3. Each facility's average case-mix index shall be calculated based upon data reported by that nursing facility to the Centers for Medicare and Medicaid Services (CMS) (~~formerly HCFA~~) Minimum Data Set (MDS) System. See 12VAC30-90-306 for the case-mix index calculations.

4. The normalized facility average Medicaid CMI shall be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal year. See 12VAC30-90-306 D 2 for the calculation of the normalized facility average Medicaid CMI.

a. A ~~NF's~~ NF's direct patient care operating cost prospective ceiling shall be the product of the ~~NF's~~ NF's peer group direct patient care ceiling and the ~~NF's~~ NF's normalized facility average Medicaid CMI. A ~~NF's~~ NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

b. A CMI rate adjustment for each semiannual period of a nursing facility's prospective fiscal year shall be applied by multiplying the nursing facility's normalized facility average Medicaid CMI applicable to each prospective semiannual period by the nursing facility's case-mix neutralized direct patient care operating cost

base rate for the preceding cost reporting period (see 12VAC30-90-307).

c. See 12VAC30-90-307 for the applicability of case-mix indices.

5. Direct and indirect ceiling calculations.

a. Effective for services on and after July 1, 2006, the direct patient care operating ceiling shall be set at 117% of the respective peer group day-weighted median of the facilities' case-mix neutralized direct care operating costs per day. The calculation of the medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group direct patient care operating ceilings shall be revised and case-mix neutralized every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

b. The indirect patient care operating ceiling shall be set at 107% of the respective peer group day-weighted median of the facility's specific indirect operating cost per day. The calculation of the peer group medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group indirect operating ceilings shall be revised every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

6. Reimbursement for use of specialized treatment beds. Effective for services on and after July 1, 2005, nursing facilities shall be reimbursed an additional \$10 per day for those recipients who require a specialized treatment bed due to their having at least one Stage IV pressure ulcer. Recipients must meet criteria as outlined in 12VAC30-60-350, and the additional reimbursement must be preauthorized as provided in 12VAC30-60-40. Nursing facilities shall not be eligible to receive this reimbursement for individuals whose services are reimbursed under the specialized care methodology. Beginning July 1, 2005, this additional reimbursement shall be subject to adjustment for inflation in accordance with 12VAC30-90-41 B, except that the adjustment shall be made at the beginning of each state fiscal year, using the inflation factor that applies to provider years beginning at that time. This additional payment shall not be subject to direct or indirect ceilings and shall not be adjusted at year-end settlement.

B. Adjustment of ceilings and costs for inflation. Effective for provider fiscal years starting on and after July 1, 2002, ceilings and rates shall be adjusted for inflation each year using the moving average of the percentage change of the Virginia-Specific Nursing Home Input Price Index, updated quarterly, published by Standard & Poor's DRI. For state

fiscal year 2003, peer group ceilings and rates for indirect costs will not be adjusted for inflation.

1. For provider years beginning in each calendar year, the percentage used shall be the moving average for the second quarter of the year, taken from the table published for the fourth quarter of the previous year. For example, in setting prospective rates for all provider years beginning in January through December 2002, ceilings and costs would be inflated using the moving average for the second quarter of 2002, taken from the table published for the fourth quarter of 2001.
2. Provider specific costs shall be adjusted for inflation each year from the cost reporting period to the prospective rate period using the moving average as specified in subdivision 1 of this subsection. If the cost reporting period or the prospective rate period is less than 12 months long, a fraction of the moving average shall be used that is equal to the fraction of a year from the midpoint of the cost reporting period to the midpoint of the prospective rate period.
3. Ceilings shall be adjusted from the common point established in the most recent rebasing calculation. Base period costs shall be adjusted to this common point using moving averages from the DRI tables corresponding to the provider fiscal period, as specified in subdivision 1 of this

subsection. Ceilings shall then be adjusted from the common point to the prospective rate period using the moving ~~average(s)~~ averages for each applicable second quarter, taken from the DRI table published for the fourth quarter of the year immediately preceding the calendar year in which the prospective rate years begin. Rebased ceilings shall be effective on July 1 of each rebasing year, so in their first application they shall be adjusted to the midpoint of the provider fiscal year then in progress or then beginning. Subsequently, they shall be adjusted each year from the common point established in rebasing to the midpoint of the appropriate provider fiscal year. For example, suppose the base year is made up of cost reports from years ending in calendar year 2000, the rebasing year is SFY2003, and the rebasing calculation establishes ceilings that are inflated to the common point of July 1, 2002. Providers with years in progress on July 1, 2002, would receive a ceiling effective July 1, 2002, that would be adjusted to the midpoint of the provider year then in progress. In some cases this would mean the ceiling would be reduced from the July 1, 2002, ceiling level. The following table shows the application of these provisions for different provider fiscal periods.

Table I
Application of Inflation to Different Provider Fiscal Periods

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of First PFY	Second PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of Second PFY
3/31	7/1/02	3/31/03	+ 1/4 year	3/31/04	+ 1-1/4 years
6/30	7/1/02	6/30/03	+ 1/2 year	6/30/04	+ 1-1/2 years
9/30	7/1/02	9/30/02	- 1/4 year	9/30/03	+ 3/4 year
12/31	7/1/02	12/31/02	-0-	12/31/03	+ 1 year

The following table shows the DRI tables that would provide the moving averages for adjusting ceilings for different prospective rate years.

Table II
Source Tables for DRI Moving Average Values

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Source DRI Table for First PFY Ceiling Inflation	Second PFYE After Rebasing Date	Source DRI Table for Second PFY Ceiling Inflation
3/31	7/1/02	3/31/03	Fourth Quarter 2001	3/31/04	Fourth Quarter 2002
6/30	7/1/02	6/30/03	Fourth Quarter 2001	6/30/04	Fourth Quarter 2002
9/30	7/1/02	9/30/02	Fourth Quarter 2000	9/30/03	Fourth Quarter 2001
12/31	7/1/02	12/31/02	Fourth Quarter 2000	12/31/03	Fourth Quarter 2001

Regulations

In this example, when ceilings are inflated for the second PFY after the rebasing date, the ceilings will be inflated from July 1, 2002, using moving averages from the DRI table specified for the second PFY. That is, the ceiling for years ending June 30, 2004, will be the June 30, 2002, base period ceiling, adjusted by 1/2 of the moving average for the second quarter of 2002, compounded with the moving average for the second quarter of 2003. Both these moving averages will be taken from the fourth quarter 2002 DRI table.

C. The RUG-III Nursing Home Payment System shall require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rate or prospective operating ceiling.

D. Nonoperating costs. Plant or capital, as appropriate, costs shall be reimbursed in accordance with Articles 1 ([12VAC30-90-29](#)), 2 ([12VAC30-90-30 et seq.](#)), and 3 ([12VAC30-90-35 et seq.](#)) of this subpart. Plant costs shall not include the component of cost related to making or producing a supply or service.

NATCEPs cost shall be reimbursed in accordance with 12VAC30-90-170.

E. The prospective rate for each NF shall be based upon operating cost and ~~plant/capital~~ plant or capital cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant or capital, as appropriate, costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. Effective July 1, 2001, for those NFs whose indirect operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable indirect operating cost rates and the indirect peer group ceilings.

1. The following table presents four incentive examples:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$3.00	10%	\$0.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. Efficiency incentives shall be calculated only for the indirect patient care operating ceilings and costs. Effective July 1, 2001, a direct care efficiency incentive shall no longer be paid.

G. Quality of care requirement. A cost efficiency incentive shall not be paid for the number of days for which a facility is out of substantial compliance according to the Virginia Department of Health survey findings as based on federal regulations.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

J. Effective July 1, 2005, the total per diem payment to each nursing home shall be increased by \$3.00 per day. This increase in the total per diem payment shall cease effective July 1, 2006. Effective July 1, 2006, when cost data that include time periods before July 1, 2005, are used to set facility specific rates, a portion of the \$3.00 per day amount identified ~~above~~ in this subsection, based on the percentage of patient days in the provider's cost reporting period that fall before July 1, 2005, adjusted for appropriate inflation and multiplied times the provider's Medicaid utilization rate, shall be allocated to the facility specific direct and indirect cost per day prior to comparison to the peer group ceilings. For purposes of this subsection, \$1.68 of the \$3.00 shall be considered direct costs and \$1.32 of the \$3.00 shall be considered indirect costs.

K. Effective July 1, 2008, and ending after June 30, 2009, the operating rate for nursing facilities shall be reduced by 1.329%.

L. Effective July 1, 2009, through June 30, 2010, there will be no inflation adjustment for nursing facility operating rates and ceilings and specialized care operating rates and ceilings. Exempt from this are government-owned nursing facilities with Medicaid utilization of 85% or greater in provider fiscal year 2007.

M. Effective July 1, 2010, through June 30, 2012, there shall be no inflation adjustment for nursing facility and specialized care operating rates. Nursing facility and specialized care ceilings shall freeze at the same level as the ceilings for nursing facilities with provider fiscal year ends of June 30, 2010.

N. Effective July 1, 2010, through September 30, 2010, the operating rate for nursing facilities shall be reduced 3.0% below the rates otherwise calculated.

O. Effective July 1, 2012, through June 30, 2014, the inflation adjustment for nursing facility and specialized care operating rates shall be 2.2%. Nursing facility and specialized care ceilings in effect in SFY 2012 shall be increased 3.2% in SFY 2013 and 2.2% in SFY 2014.

P. The reimbursement methodology described in this section shall be utilized for dates of service through June 30, 2014. Effective July 1, 2014, nursing facilities shall be reimbursed the price-based methodology described in 12VAC30-90-44. The last cost report with a fiscal year end before June 30, 2014, shall be used to establish the operating per diem rates for payment for the remainder of state fiscal year 2014. The last cost report with a fiscal year end on or after June 30, 2014, shall be used to settle reimbursement for plant costs, NATCEPs, and criminal records check costs for periods in state fiscal year 2014. Reimbursement for these components shall be prorated based on the number of cost report months prior to July 1, 2014, as a percentage of total months in the cost report. Settlement for these components will be based on two months of run-out from the end of the provider's fiscal year. Claims for services paid after the cost report run-out period will not be settled.

12VAC30-90-44. [Reserved.] Nursing facility price-based reimbursement methodology.

A. Effective July 1, 2014, DMAS shall convert nursing facility operating rates in 12VAC30-90-41 to a price-based methodology. The department shall calculate prospective operating rates for direct and indirect costs in the following manner:

1. The department shall calculate the cost per day in the base year for direct and indirect operating costs for each nursing facility. The department shall use existing definitions of direct and indirect costs.
2. The initial base year for calculating the cost per day shall be cost reports ending in calendar year 2011. The department shall rebase prices in fiscal year 2018 and every three years thereafter using the most recent, reliable calendar year cost-settled cost reports for freestanding nursing facilities that have been completed as of September 1. No adjustments will be made to the base year data for purposes of rate setting after that date.
3. Each nursing facility's direct cost per day shall be neutralized by dividing the direct cost per day by the raw Medicaid facility case-mix that corresponds to the base year by facility.
4. Costs per day shall be inflated to the midpoint of the fiscal year rate period using the moving average Virginia Nursing Home inflation index for the fourth quarter of each year (the midpoint of the fiscal year). Costs in the 2011 base year shall be inflated from the midpoint of the cost report year to the midpoint of fiscal year 2012 by prorating fiscal year 2012 inflation and annual inflation after that. Annual inflation adjustments shall be based on the last available report prior to the beginning of the fiscal year and corrected for any revisions to prior year inflation.
5. Prices will be established for the following peer groups using a combination of Medicare wage regions and Medicaid rural and bed size modifications based on similar costs.

6. The following definitions shall apply to direct peer groups. The Northern Virginia peer group shall be defined as localities in the Washington DC-MD-VA MSA as published by the Centers for Medicare and Medicaid Services (CMS) for skilled nursing facility rates. The Other MSA peer group includes localities in any MSA defined by CMS other than the Northern Virginia MSA and non-MSA designations. The Rural peer groups are non-MSA areas of the state divided into Northern and Southern Rural peer groups based on drawing a line between the following points on the Commonwealth of Virginia map with the coordinates: 37.4203914 Latitude, -82.0201219 Longitude and 37.1223664 Latitude, -76.3457773 Longitude. Direct peer groups are:

- a. Northern Virginia.
- b. Other MSAs.
- c. Northern Rural, and
- d. Southern Rural.

7. The following definitions shall apply to indirect peer groups. The indirect peer group for Northern Virginia is the same as the direct peer group for Northern Virginia. Rest of State peer groups shall be defined as any localities other than localities in the Northern Virginia peer group for nursing facilities with greater than 60 beds or 60 beds or less. Rest of State - Greater than 60 Beds shall be further subdivided into Other MSA, Northern Rural and Southern Rural peer groups using the locality definitions for direct peer groups. Indirect peer groups are:

- a. Northern Virginia MSA.
- b. Rest of State - Greater than 60 Beds.
- c. Other MSAs.
- d. Northern Rural, and
- e. Southern Rural.

Rest of State - 60 Beds or Less.

8. Any changes to peer group assignment based on changes in bed size or MSA will be implemented for reimbursement purposes the July 1 following the effective date of the change.

9. The direct and indirect price for each peer group shall be based on the following adjustment factors:

- a. Direct adjustment factor - 105.000% of the peer group day-weighted median neutralized and inflated cost per day for freestanding nursing facilities.
- b. Indirect adjustment factor - 100.735% of the peer group day-weighted median inflated cost per day for freestanding nursing facilities.

10. Facilities with costs projected to the rate year below 95% of the price shall have an adjusted price equal to the price minus the difference between the facility's cost and 95% of the unadjusted price. Adjusted prices will be established at each rebasing. New facilities after the base

Regulations

year shall not have an adjusted price until the next rebasing.

11. Individual claim payment for direct costs shall be based on each resident's Resource Utilization Group (RUG) during the service period times the facility direct price.

12. Resource Utilization Group (RUG) is a resident classification system that groups nursing facility residents according to resource utilization and assigns weights related to the resource utilization for each classification. The department shall use RUGs to determine facility case-mix for cost neutralization as defined in 12VAC30-90-306 in determining the direct costs used in setting the price and for adjusting the claim payments for residents.

a. The department shall neutralize direct costs per day in the base year using the most current RUG grouper applicable to the base year.

b. The department shall utilize RUG-III, version 34 groups and weights in fiscal years 2015 through 2017 for claim payments.

c. Beginning in fiscal year 2018, the department shall implement RUG-IV, version 48 Medicaid groups and weights for claim payments.

d. RUG-IV, version 48 weights used for claim payments will be normalized to RUG-III, version 34 weights as long as base year costs are neutralized by the RUG-III 34 group. In that the weights are not the same under RUG-IV as under RUG-III, normalization will ensure that total direct operating payments using the RUG-IV 48 weights will be the same as total direct operating payments using the RUG-III 34 grouper.

B. Transition. The department shall transition to the price-based methodology over a period of four years, blending the adjusted price-based rate with the facility-specific case-mix neutral cost-based rate calculated according to 12VAC30-90-41 as if ceilings had been rebased for fiscal year 2015. The cost-based rates are calculated using the 2011 base year data, inflated to 2015 using the inflation methodology in 12VAC30-90-41 and adjusted to state fiscal year 2015. In subsequent years of the transition, the cost-based rates shall be increased by inflation described in this section.

1. Based on a four-year transition, the rate will be based on the following blend:

a. Fiscal year 2015 - 25% of the adjusted price-based rate and 75% of the cost-based rate.

b. Fiscal year 2016 - 50% of the adjusted price-based rate and 50% of the cost-based rate.

c. Fiscal year 2017 - 75% of the adjusted price-based rate and 25% of the cost-based rate.

d. Fiscal year 2018 - 100% of the adjusted price-based (fully implemented).

2. During the first transition year for the period July 1, 2014, through October 31, 2014, DMAS shall case-mix

adjust each facility's direct cost component of the rates using the average facility case-mix from the two most recent finalized quarters (September and December 2013) instead of adjusting this component claim by claim.

3. Cost-based rates to be used in the transition for facilities without cost data in the base year but placed in service prior to July 1, 2013, shall be determined based on the most recently settled cost data. If there is no settled cost report at the beginning of a fiscal year, then 100% of the price-based rate shall be used for that fiscal year. Facilities placed in service after June 30, 2013, shall be paid 100% of the price-based rate.

C. Prospective capital rates shall be calculated in the following manner:

1. Fair rental value per diem rates for the fiscal year shall be calculated for all freestanding nursing facilities based on the prior calendar year information aged to the fiscal year and using RS Means factors and rental rates corresponding to the fiscal year as prescribed in 12VAC30-90-36. There will be no separate calculation for beds subject to or not subject to transition.

2. Nursing facilities that put into service a major renovation or new beds may request a mid-year fair rental value per diem rate change.

a. A major renovation shall be defined as an increase in capital of \$3,000 per bed. The nursing facility shall submit complete pro forma documentation at least 60 days prior to the effective date, and the new rate shall be effective at the beginning of the month following the end of the 60 days.

b. The provider shall submit final documentation within 60 days of the new rate effective date, and the department shall review final documentation and modify the rate if necessary effective 90 days after the implementation of the new rate. No mid-year rate changes shall be made for an effective date after April 30 of the fiscal year.

3. These FRV changes shall also apply to specialized care facilities.

4. The capital per diem rate for hospital-based nursing facilities shall be the last settled capital per diem.

12VAC30-90-55. Provider payments.

A. Limitations and effective for dates of service beginning July 1, 2001, through June 30, 2014:

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) a nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these

charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. For cost reports filed on or after August 1, 1992, ~~an~~ and used for cost reimbursement or rate setting based on cost:

1. An interim settlement shall be made by DMAS within 180 days after receipt and review of the cost report. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

~~However, an~~ 2. An interim settlement shall not be made when one of the following conditions exists:

- ~~1. a.~~ Cost report filed by a terminated provider;
- ~~2. b.~~ Insolvency of the provider at the time the cost report is submitted;
- ~~3. c.~~ Lack of a valid provider agreement and decertification;
- ~~4. d.~~ Moneys owed to DMAS;
- ~~5. e.~~ Errors or inconsistencies in the cost report; or
- ~~6. f.~~ Incomplete/nonacceptable cost report.

Article 6
New Nursing Facilities

12VAC30-90-60. Interim rate.

A. A new facility shall be defined as follows:

- 1. A facility that is newly enrolled and new construction has taken place through the COPN process; or
- 2. A facility that is newly enrolled that was previously denied payments for new admissions and was subsequently terminated from the program.

B. The following provisions sunset effective July 1, 2015, when applied to indirect reimbursement but remain in effect when applied to capital reimbursement.

1. Upon a showing of good cause, and approval of DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate or being treated as a new NF.

~~2.~~ 2. A replacement facility or one that has changed location may not be considered a new facility if it serves the same inpatient population. An exception may be granted by DMAS if the provider can demonstrate that the occupancy substantially changed as a result of the facility being replaced or changing location. A decline in the replacement facility's total occupancy of 20 percentage points, in the replacement facility's first cost reporting period, shall be considered to indicate a substantial change when compared to the lower of the old facility's previous two prior cost reporting periods. The replacement facility shall receive the previous operator's operating rates if it does not qualify to be considered a new facility.

~~3.~~ 3. A change in either ownership or adverse financial conditions (e.g., bankruptcy), or both, of a provider does not change a nursing facility's status to be considered a new facility.

~~4.~~ 4. Effective July 1, 2001, for all new NFs the required occupancy percentage for indirect and capital costs shall be waived for establishing the first cost reporting period interim rate. The required occupancy percentage for dates of service on or before June 30, 2013, shall be 90%, and for dates of service on or after July 1, 2013, shall be 88%. This first cost reporting period shall not exceed 13 months from the date of the NF's certification.

~~5.~~ 5. The required occupancy percentage for indirect and capital costs shall be applied to the first and subsequent cost reporting periods' actual indirect and capital costs for establishing such NFs second and future cost reporting periods' prospective reimbursement rates. The required occupancy percentage shall be considered as having been satisfied if the new NF achieved the required occupancy percentage at any point in time during the first cost reporting period.

~~a.~~ a. The department may grant an exception to the minimum occupancy requirement for reimbursement purposes for beds taken out of service for the purpose of renovation. In this case, the occupancy requirement shall be calculated as the required occupancy percentage of available bed days for the period of the exception plus the required occupancy percentage of licensed bed days for the remainder of the cost report year.

~~b.~~ b. The provider shall notify DMAS and the Virginia Department of Health (VDH), Division of Long Term Care Services, Office of Licensure and Certification in advance and present a renovation plan including a

Regulations

reasonable timetable for when the beds will be placed back into service.

~~3.~~ c. The provider shall keep the appropriate documentation of available beds and days during the renovation period, which will provide the evidence of the beds and days taken out of service for renovation purposes. This supporting documentation, along with a copy of the provider's notification letter to the VDH Division of Long Term Care Services, Office of Licensure and Certification shall be submitted with the filing of the provider's cost report, as applicable. The provider's notification letter shall account for the number of beds not in use for the defined period of time.

~~G.~~ 6. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by DMAS, or the appropriate operating ceilings or charges.

~~H.~~ 7. Effective July 1, 2001, on the first day of its second cost reporting period, a new nursing facility's interim plant or capital, as appropriate, rate shall be converted to a per diem amount by dividing its allowable ~~plant/capital~~ plant or capital costs for its first cost reporting period by the required occupancy percentage of the potential number of patient days for all licensed beds during the first cost reporting period.

~~I.~~ 8. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned CMI based upon its peer group's normalized average Medicaid CMI for direct patient care. An expanded NF receiving new NF treatment shall receive the CMI calculated for its last semiannual period prior to obtaining new NF status.

12VAC30-90-65. Final rate and effective for dates of services beginning July 1, 2001, through June 30, 2014.

A. This section shall apply to dates of services beginning July 1, 2001, through June 30, 2014.

B. DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined in subdivisions 4, 5, and 6 of 12VAC30-90-60 E, F, and H.

C. Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If indirect costs are below the ceiling, an efficiency incentive shall be paid at settlement of the first year cost report.

D. This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable indirect operating cost and the peer group ceiling used to set the interim rate. (Refer to 12VAC30-90-41 F.)

Subpart VII

Nurse Aide Training and Competency Evaluation Programs (NATCEPs)

12VAC30-90-170. NATCEPs costs.

A. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

B. NATCEPs costs shall be as defined in Appendix I (12VAC30-90-270 through 12VAC30-90-276).

C. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

D. The NATCEPs interim reimbursement rate determined in subsection C of this section shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

E. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs ~~which are~~ that is properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in subsection C of this section times the Medicaid patient days from the DMAS MMR-240.

F. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

G. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in 12VAC30-90-55 A.

H. Effective July 1, 2014, prospective NATCEPs per diem rates for each facility shall be the NATCEPs per diem rate in the base year inflated to the rate year based on inflation in 12VAC30-90-44. To calculate the NATCEPs per diem rate, NATCEPs costs in the base year shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days. In non-rebasing years, the prospective rate calculation shall be revised annually using costs from the next available year. The NATCEPs reimbursement rate determined in this subsection shall be added to the prospective operating cost, criminal records checks, and plant cost components.

Subpart VIII

Criminal Records Checks for Nursing Facility Employees

12VAC30-90-180. Criminal records checks.

A. This section implements the requirements of § 32.1-126.01 of the Code of Virginia and Chapter 994 of the Acts of Assembly of 1993 (Item 313 T).

B. A licensed nursing facility shall not hire for compensated employment persons who have been convicted of:

1. Murder;
2. Abduction for immoral purposes as set out in § 18.2-48 of the Code of Virginia;
3. Assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;
4. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 of the Code of Virginia;
5. Pandering as set out in § 18.2-355 of the Code of Virginia;
6. Crimes against nature involving children as set out in § 18.2-361 of the Code of Virginia;
7. Taking indecent liberties with children as set out in §§ 18.2-370 or 18.2-370.1 of the Code of Virginia;
8. Abuse and neglect of children as set out in § 18.2-371.1 of the Code of Virginia;
9. Failure to secure medical attention for an injured child as set out in § 18.2-314 of the Code of Virginia;
10. Obscenity offenses as set out in § 18.2-374.1 of the Code of Virginia; or
11. Abuse or neglect of an incapacitated adult as set out in § 18.2-369 of the Code of Virginia.

C. The provider shall obtain a sworn statement or affirmation from every applicant disclosing any criminal convictions or pending criminal charges for any of the offenses specified in subsection B of this section regardless of whether the conviction or charges occurred in the Commonwealth.

D. The provider shall obtain an original criminal record clearance or an original criminal record history from the Central Criminal Records Exchange for every person hired. This information shall be obtained within 30 days from the date of employment and maintained in the employees' files during the term of employment and for a minimum of five years after employment terminates for whatever reason.

E. The provider may hire an applicant whose misdemeanor conviction is more than five years old and whose conviction did not involve abuse or neglect or moral turpitude.

F. Reimbursement to the provider will be handled through the cost reporting form provided by the DMAS and will be limited to the actual charges made by the Central Criminal Records Exchange for the records requested. Such actual

charges will be a pass-through cost which is not a part of the operating or plant cost components.

G. Effective July 1, 2014, a prospective per diem rate shall be calculated. In a rebasing year, the calculation shall be based on the base year described in 12VAC30-90-44. In non-rebasing years, the prospective rate calculation shall be revised annually using the next available year. No adjustment for inflation shall be made. The criminal records checks rate shall be added to the prospective operating rate, nurse aide training and competency evaluation programs (NATCEPs), and plant cost components.

12VAC30-90-267. Private room differential.

A. Payment shall be made for a private room or other accommodations more expensive than semi-private (two or more bed accommodations) only when such accommodations are medically necessary. Private rooms will be considered necessary when the resident's condition requires the resident to be isolated for his own health or that of others.

B. Physician certification justifying the private room must be on file prior to the resident's discharge from the semi-private room. The term "isolation" applies when treating a number of physical and mental conditions. These conditions include communicable diseases that require isolation of the resident for certain periods. Private room accommodations may also be necessary for residents whose symptoms or treatments are likely to alarm or disturb others in the same room.

C. Reimbursement for private rooms will only be made when authorized by the Virginia Department of Medical Assistance Services.

D. The Medicaid private room differential shall be calculated by applying the percentage difference between the facility's private and semi-private room charges to the total case-mix neutral Medicaid rate for the facility.

12VAC30-90-306. Case-mix index (CMI).

A. Effective for dates of service beginning July 1, 2001, through June 30, 2014, nursing facility case-mix indices shall be applied as described in this subsection. Each resident in a Virginia Medicaid certified nursing facility on the last day of the calendar quarter with an effective assessment date during the respective quarter shall be assigned to one of the RUG-III 34 groups.

B. Effective for dates of service on or after July 1, 2014, nursing facility reimbursement described in 12VAC30-90-44 shall be based on the case-mix or RUG weights as described in this subsection. Standard case-mix indices, developed by CMS for the Medicaid population (B01), shall be assigned to each of the RUG-III 34 groups as indicated in Table III.

Regulations

Table III Case-Mix Indices (CMI)		
RUG Category	RUG Description	CMS "Standard" B01 CMI Set
RAD	Rehabilitation All Levels / ADL 17-18	1.66
RAC	Rehabilitation All Levels / ADL 14-16	1.31
RAB	Rehabilitation All Levels / ADL 10-13	1.24
RAA	Rehabilitation All Levels / ADL 4-9	1.07
SE3	Extensive Special Care 3 / ADL >6	2.10
SE2	Extensive Special Care 2 / ADL >6	1.79
SE1	Extensive Special Care 1 / ADL >6	1.54
SSC	Special Care / ADL 17-18	1.44
SSB	Special Care / ADL 15-16	1.33
SSA	Special Care / ADL 4-14	1.28
CC2	Clinically Complex with Depression / ADL 17-18	1.42
CC1	Clinically Complex / ADL 17-18	1.25
CB2	Clinically Complex with Depression / ADL 12-16	1.15
CB1	Clinically Complex / ADL 12-16	1.07
CA2	Clinically Complex with Depression / ADL 4-11	1.06
CA1	Clinically Complex / ADL 4-11	0.95
IB2	Cognitive Impairment with Nursing Rehab / ADL 6-10	0.88
IB1	Cognitive Impairment / ADL 6-10	0.85
IA2	Cognitive Impairment with Nursing Rehab / ADL 4-5	0.72
IA1	Cognitive Impairment / ADL 4-5	0.67

BB2	Behavior Problem with Nursing Rehab / ADL 6-10	0.86
BB1	Behavior Problem / ADL 6-10	0.82
BA2	Behavior Problem with Nursing Rehab / ADL 4-5	0.71
BA1	Behavior Problem / ADL 4-5	0.60
PE2	Physical Function with Nursing Rehab / ADL 16-18	1.00
PE1	Physical Function / ADL 16-18	0.97
PD2	Physical Function with Nursing Rehab / ADL 11-15	0.91
PD1	Physical Function / ADL 11-15	0.89
PC2	Physical Function with Nursing Rehab / ADL 9-10	0.83
PC1	Physical Function / ADL 9-10	0.81
PB2	Physical Function with Nursing Rehab / ADL 6-8	0.65
PB1	Physical Function / ADL 6-8	0.63
PA2	Physical Function with Nursing Rehab / ADL 4-5	0.62
PA1	Physical Function / ADL 4-5	0.59

C. There shall be four "picture dates" for each calendar year: March 31, June 30, September 30 and December 31. Each resident in each Medicaid-certified nursing facility on the picture date with a completed assessment that has an effective assessment date within the quarter shall be assigned a case-mix index based on the resident's most recent assessment for the picture date as available in the DMAS MDS database.

D. Using the individual Medicaid resident case-mix indices, a facility average Medicaid case-mix index shall be calculated four times per year for each facility. The facility average Medicaid case-mix indices shall be used for case-mix neutralization of resident care costs and for case-mix adjustment.

1. During the time period beginning with the implementation of RUG-III up to the ceiling and rate setting effective July 1, 2004, the case-mix index calculations shall be based on assessments for residents for whom Medicaid is the principal payer. The statewide

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

average Medicaid case-mix index shall be a simple average, carried to four decimal places, of all case-mix indices for nursing facility residents in Virginia Medicaid certified nursing facilities for whom Medicaid is the principal payer on the last day of the calendar quarter. The facility average Medicaid case-mix index shall be a simple average, carried to four decimal places, of all case-mix indices for nursing facility residents in the Virginia Medicaid-certified nursing facility for whom Medicaid is the principal payer on the last day of the calendar quarter.

2. The facility average Medicaid case-mix index shall be normalized across all of Virginia's Medicaid-certified nursing facilities for each picture date. To normalize the facility average Medicaid case-mix index, the facility average Medicaid case-mix index is divided by the statewide average Medicaid case-mix index for the same picture date.

3. The department shall monitor the case-mix, including the ~~ease-mix~~ case-mix normalization and the neutralization processes, indices during the first two years following implementation of the RUG-III system. Effective July 1, 2004, the statewide average case-mix index may be changed to recognize the fact that the costs of all residents are related to the ~~ease-mix~~ case-mix of all residents. The statewide average case-mix index of all residents, regardless of principal payer on the effective date of the assessment, in a Virginia Medicaid certified nursing facility may be used for case-mix neutralization. The use of the facility average Medicaid case-mix index to adjust the prospective rate would not change.

4. There shall be a correction period for Medicaid-certified nursing facilities to submit correction assessments to the CMS MDS database following each picture date. A report that details the picture date RUG category and CMI score for each resident in each nursing facility shall be mailed to the facility for review. The nursing facility shall have a 30-day time period to submit any correction assessments to the MDS database or to contact the Department of Medical Assistance Services regarding other corrections. Corrections submitted in the 30-day timeframe shall be included in the final report of the CMI scores that shall be used in the calculation of the nursing facility ceilings and rates. Any corrections submitted after the 30-day timeframe shall not be included in the final report of the CMI scores that shall be used in the calculation of the nursing facility ceilings and rates.

5. Assessments that cannot be classified to a RUG-III group due to errors shall be assigned the lowest case-mix index score.

6. Assessments shall not be used for any out-of-state nursing facility provider that is enrolled in the Virginia Medical Assistance Program and is required to submit cost reports to the Medicaid program.

VA.R. Doc. No. R16-4185; Filed December 7, 2015, 11:17 a.m.

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-130. Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (amending 14VAC5-130-40 through 14VAC5-130-70, 14VAC5-130-81).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: January 1, 2016.

Agency Contact: Robert Grissom, Chief Insurance Market Examiner, Bureau of Insurance, Life and Health Division, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

Summary:

The amendments define and clarify the requirements applicable to the filing of rates for student health insurance coverage, including that rates (i) may be based on school-specific community rating and (ii) are not included in the Unified Rate Review Template.

AT RICHMOND, DECEMBER 7, 2015

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2015-00174

Ex Parte: In the matter of Amending Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms

ORDER ADOPTING REVISIONS TO RULES

On October 16, 2015, the State Corporation Commission ("Commission") issued an Order to Take Notice ("Order") to consider revisions to the Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms set forth in Chapter 130 of Title 14 of the Virginia Administrative Code ("Rules").¹

These amendments were proposed by the Bureau of Insurance ("Bureau") to define and clarify the requirements applicable to the filing of rates for student health insurance coverage, which is a type of individual health insurance coverage.

Regulations

The Order required that on or before November 30, 2015, any person requesting a hearing on the amendments to the Rules shall have filed such request for a hearing with the Clerk of the Commission ("Clerk"). No request for a hearing was filed with the Clerk.

The Order also required any interested persons to file with the Clerk their comments in support of or in opposition to the amendments to the Rules on or before November 30, 2015. No comments were filed with the Clerk.

The Bureau recommends that the amendments to the Rules be adopted as proposed.

NOW THE COMMISSION, having considered this matter, is of the opinion that the Rules should be adopted as amended.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms at Chapter 130 of Title 14 of the Virginia Administrative Code, which amend the Rules at 14 VAC 5-130-40, 14 VAC 5-130-50, 14 VAC 5-130-60, 14 VAC 5-130-65, 14 VAC 5-130-70, and 14 VAC 5-130-81, and which are attached hereto and made a part hereof, are hereby ADOPTED, to be effective January 1, 2016.

(2) The Bureau forthwith shall give notice of the adoption of the amendments to the Rules by sending, by e-mail or U.S. mail, a copy of this Order, together with a copy of the adopted Rules, to all insurers, health maintenance organizations and health services plans licensed in Virginia to sell accident and sickness insurance, and to all interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the final amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments to the Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements in Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Bureau in care of Deputy Commissioner Althelia P. Battle.

14VAC5-130-40. Definitions.

As used in this chapter:

"Actuarial value" or "AV" means the anticipated covered medical spending for essential health benefits (EHB) coverage paid by a health plan for a standard population, computed in accordance with the plan's cost-sharing, divided by the total anticipated allowed charges for EHB coverage provided to a standard population, and expressed as a percentage.

"Anticipated loss ratio" means the ratio of the present value of the future benefits to the present value of the future premiums of a policy form over the entire period for which rates are computed to provide coverage.

"Grandfathered plan" means coverage provided by a health carrier in which an individual was enrolled on March 23, 2010, for as long as such plan maintains that status in accordance with federal law.

"Group health insurance coverage" means in connection with a group health plan, health insurance coverage offered in connection with such plan.

"Group health plan" means an employee welfare benefit plan (as defined in § 3(1) of the Employee Retirement Income Security Act of 1974 (29 USC § 1002(1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Group Medicare supplement policy" means a group policy of accident and sickness insurance, or a group subscriber contract of hospital, medical or surgical plans, covering individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for payment of hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare. Such term does not include:

1. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or
2. A policy or contract of any professional, trade or occupational association for its members or former retired members, or combination thereof, if such association:
 - a. Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
 - b. Has been maintained in good faith for purposes other than obtaining insurance; and

¹ The Rules can be found at: <http://law.lis.virginia.gov/admincode/title14/agency5/chapter130>.

c. Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members.

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a MEWA, or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

"Health insurance issuer" means an insurance company, or insurance organization (including a health maintenance organization) that is licensed to engage in the business of insurance in this Commonwealth and that is subject to the laws of this Commonwealth that regulate insurance within the meaning of § 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 USC § 1144(b)(2)). Such term does not include a group health plan.

"Health maintenance organization" means:

1. A federally qualified health maintenance organization;
2. An organization recognized under the laws of this Commonwealth as a health maintenance organization; or
3. A similar organization regulated under the laws of this Commonwealth for solvency in the same manner and to the same extent as such a health maintenance organization.

"Individual accident and sickness insurance" means insurance against loss resulting from sickness or from bodily injury or death by accident or accidental means or both when sold on an individual rather than group basis.

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, that includes a health benefit plan provided to individuals through a trust arrangement, association, or other discretionary group that is not an employer plan, but does not include coverage defined as "excepted benefits" in § 38.2-

3431 of the Code of Virginia or short-term limited duration insurance. Student health insurance coverage shall be considered a type of individual health insurance coverage.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan. Coverage that would be regulated as individual market coverage if it were not sold through an association is individual market coverage.

"Individual Medicare supplement policy" means an individual policy of accident and health insurance or a subscriber contract of hospital, medical or surgical plans, offered to individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare.

"Member" means an enrollee, member, subscriber, policyholder, certificate holder, or other individual who is participating in a health benefit plan or covered under health insurance.

"Premium" means all moneys paid by an employer, eligible employee, or member as a condition of coverage from a health insurance issuer, including fees and other contributions associated with a health benefit plan.

"Qualified [~~Actuary~~ actuary]" means a member of the American Academy of Actuaries, or other individual qualified as described in the American Academy of Actuaries' U.S. Qualification Standards and the Code of Professional Conduct to render statements of actuarial opinion in the applicable area of practice.

"SERFF" means the National Association of Insurance Commissioner's (NAIC) System for Electronic Rate and Form Filing.

"Small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer. Coverage that would be regulated as small group market coverage if it were not sold through an association is small group market coverage.

Regulations

"Student health insurance coverage" means a type of individual health insurance coverage offered in the individual market that is provided pursuant to a written agreement between an institution of higher education, as defined by the Higher Education Act of 1965 (Public Law No. 89-329), and a health carrier and provided to students enrolled in that institution of higher education and their dependents, and that does not make health insurance coverage available other than in connection with enrollment as a student or as a dependent of a student in the institution of higher education, and does not condition eligibility for health insurance coverage on any health status-related factor related to a student or a dependent of the student.

14VAC5-130-50. General rules on rate filing; experience records and data.

A. Every policy, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement form shall also be filed.

B. Each rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the anticipated loss ratio. Except for coverage issued in the small group market, interest at a rate consistent with that assumed in the original determination of premiums, shall be used in the calculation of this loss ratio. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and regulations of this Commonwealth and that the benefits are reasonable in relation to the premiums.

C. Health insurance issuers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis,

including all reserves, as required for the Accident and Health Policy Experience Exhibit. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be for each calendar year of experience since the year the form was first issued.

D. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
2. Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
4. The mix of business by risk classification.

E. Rates for coverage issued in the individual or small group markets are required to meet the following:

1. Premium rates with respect to a particular plan or coverage may only vary by:
 - a. Whether the plan or coverage covers an individual or family;
 - b. Rating area, as may be established by the commission;
 - c. Age, consistent with the Uniform Age Rating Curve table below; and
 - d. Tobacco use, except that the rate shall not vary by more than 1.5 to 1. Employees of a small employer may avoid this surcharge by participating in a wellness program that complies with § 2705(j) of the Public Health Service Act (42 USC § 300gg-4).

Uniform Age Rating Curve

AGE	PREMIUM RATIO	AGE	PREMIUM RATIO	AGE	PREMIUM RATIO
0-20	0.635	35	1.222	50	1.786
21	1.000	36	1.230	51	1.865
22	1.000	37	1.238	52	1.952
23	1.000	38	1.246	53	2.040
24	1.000	39	1.262	54	2.135
25	1.004	40	1.278	55	2.230
26	1.024	41	1.302	56	2.333
27	1.048	42	1.325	57	2.437

28	1.087	43	1.357	58	2.548
29	1.119	44	1.397	59	2.603
30	1.135	45	1.444	60	2.714
31	1.159	46	1.500	61	2.810
32	1.183	47	1.563	62	2.873
33	1.198	48	1.635	63	2.952
34	1.214	49	1.706	64 and older	3.000

2. A premium rate shall not vary by any other factor not described in this subsection.

3. With respect to family coverage, the rating variations permitted in this subsection shall be applied based on the portion of the premium that is attributable to each family member covered under the plan. With respect to family members under age 21, the premiums for no more than the three oldest covered children shall be taken into account in determining the total family premium.

4. The premium charged shall not be adjusted more frequently than annually, except that the premium rate may be changed to reflect changes to (i) the family composition of the member, (ii) the coverage requested by the member, or (iii) the geographic location of the member.

5. Premium rates for student health insurance coverage may be based on school-specific community rating and are exempt from subdivisions 1 through 4 of this subsection.

F. In the event of disapproval or withdrawal of approval by the commission of a rate submission, a health insurance issuer may proceed as indicated in § 38.2-1926 of the Code of Virginia.

14VAC5-130-60. Filing of rates for a new policy form.

A. Each rate submission shall include: (i) the applicable policy or certificate form, application and endorsements required by § 38.2-316 of the Code of Virginia, (ii) a rate sheet, (iii) an actuarial memorandum, and (iv) all information required in SERFF. ~~For The Unified Rate Review Template shall also be filed for coverage issued in the individual or small group markets, the Unified Rate Review Template shall also be filed except for student health insurance coverage.~~

B. The actuarial memorandum shall contain the following information:

1. A description of the type of policy or coverage, including benefits, renewability, general marketing method, and issue age limits.
2. A description of how rates were determined, including the general description and source of each assumption used.
3. The estimated average annual premium per policy and per anticipated member.

4. The anticipated loss ratio and a description of how it was calculated.

5. The minimum anticipated loss ratio presumed reasonable in this chapter, as specified in 14VAC5-130-65.

6. If the anticipated loss ratio in subdivision 4 of this subsection is less than the minimum loss ratio in subdivision 5 of this subsection, supporting documentation for the use of such premiums shall also be included.

7. For coverage issued in the individual or small group market, a certification by a qualified actuary of the actuarial value of each plan of benefits included and the AV calculation summary.

8. A certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

14VAC5-130-65. Reasonableness of benefits in relation to initial premiums.

A. Benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio of the policy form, including riders and endorsements, is at least as great as specified below:

1. If the expected average annual premium is at least \$200 but less than \$1,000:

Type of Coverage	Renewal Clause				
	OR	CR	GR	NC	Other
Hospital Confinement Indemnity	60%	55%	55%	50%	60%
Disability Income Protection, Accident Only, Specified Disease and Other, whether paid on an expense incurred or indemnity basis	60%	55%	50%	45%	60%

Regulations

Definitions of renewal clause:

OR - Optionally renewable: individual policy renewal is at the option of the insurance company.

CR - Conditionally renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health or renewal can be declined on a geographic territory basis.

GR - Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC - Noncancellable: renewal cannot be declined nor can rates be revised by the insurance company.

Other - Any other renewal or nonrenewal clauses (e.g., short term nonrenewable policies).

2. If the expected average annual premium is \$100 or more but less than \$200, subtract five percentage points from the numbers in the table in subdivision 1 of this subsection.

3. If the expected average annual premium is less than \$100, subtract 10 percentage points from the numbers in the table in subdivision 1 of this subsection.

4. If the expected average annual premium is \$1,000 or more, add five percentage points to the numbers in the table in subdivision 1 of this subsection.

5. Notwithstanding subdivision 1 of this subsection, group Medicare supplement policies, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 75% of the aggregate amount of premiums collected.

6. Notwithstanding subdivisions 1 and 5 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, as a result of solicitation of individuals through the mails or by mass media advertising, which shall include both print and broadcast advertising, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

7. Notwithstanding subdivision 1 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, sold on an individual rather than group basis shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

8. Notwithstanding subdivisions 1 through 4 of this subsection, all health insurance coverage issued in the individual market shall be originally priced to meet a minimum 75% loss ratio and, except for student health insurance coverage, such coverage shall be guaranteed renewable or noncancellable.

9. Notwithstanding subdivisions 1 through 4 of this subsection, all health insurance coverage issued in the small group market shall be originally priced to meet a

minimum 75% loss ratio and shall be guaranteed renewable or noncancellable.

The above anticipated loss ratio standards do not apply to a type of coverage where such standards are in conflict with specific statutes or regulations.

B. The average annual premium per policy and per member shall be computed by the health insurance issuer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

14VAC5-130-70. Filing a rate revision.

A. Each rate revision submission shall include: (i) a new rate sheet; (ii) an actuarial memorandum; and (iii) all information required in SERFF. ~~For The Unified Rate Review Template shall be filed for coverage issued in the individual or small group markets, the Unified Rate Review Template shall also be filed except for student health insurance coverage.~~

B. The actuarial memorandum shall contain the following information:

1. A description of the type of policy, including benefits, renewability, issue age limits, and if applicable, whether the policy includes grandfathered or nongrandfathered plans or both.

2. The scope and reason for the premium or rate revision.

3. A comparison of the revised premiums with the current premium scale, including all percentage rate changes and any rating factor changes.

4. A statement of whether the revision applies only to new business, only to in-force business, or to both.

5. The estimated average annual premium per policy and per member, before and after the proposed rate revision. Where different changes by rating classification are being requested, the rate filing shall also include (i) the range of changes and (ii) the average overall change with a detailed explanation of how the change was determined.

6. Except for coverage issued in the small group market, historical and projected experience, submitted on Form 130 A, including:

a. Virginia and national historical experience as specified in 14VAC5-130-50 C and projections for future experience;

b. A statement indicating the basis for determining the rate revision (Virginia, national or blended);

c. If the basis is blended, the credibility factor assigned to the national experience;

d. Earned Premiums (EP), Incurred Benefits (IB), Increase in Reserves (IR), and Incurred Loss Ratio = $(IB + IR) \div (EP)$; and

e. Any other available data the health insurance issuer may wish to provide. The additional data may include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates; substitution of actual claim run-offs for claim reserves and liabilities; accumulations of experience funds; substitution of net level policy reserves for preliminary term policy reserves; adjustments of premiums to an annual mode basis; or other adjustments or schedules suited to the form and to the records of the company. All additional data must be reconciled, as appropriate, to the required data.

7. Details and dates of all past rate revisions, including the annual rate revisions members will experience as a result of this filing. For companies revising rates only annually, the rate revision should be identical to the current submission. For companies that have had more frequent rate revisions, the annual revision should reflect the compounding impact of all such revisions for the previous 12 months.

8. A description of how revised rates were determined, including the general description and source of each assumption on Form 130A. For claims, provide historical and projected claims by major service category for both cost and utilization on Form 130B.

9. If the rate revision applies to new business, provide the anticipated loss ratio and a description of how it was calculated.

10. If the rate revision applies to in-force business:

- a. The anticipated loss ratio and a description of how it was calculated; and
- b. The estimated cumulative loss ratio, historical and anticipated, and a description of how it was calculated.

11. The loss ratio that was originally anticipated for the policy.

12. If 9, 10a, or 10b is less than 11, supporting documentation for the use of such premiums or rates.

13. The current number of Virginia and national members to which the revision applies for the most recent month for which such data is available, and either premiums in force, premiums earned, or premiums collected for such members in the year immediately prior to the filing of the rate revision.

14. Certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

15. For coverage issued in the individual or small group markets, a certification by a qualified actuary of the actuarial value of each plan of benefits included and the AV calculation summary.

14VAC5-130-81. Risk pools and index rate.

A. A health insurance issuer shall consider the claims experience of all enrollees in all health benefit plans, other than grandfathered plans and student health insurance coverage, in the individual market to be members of a single risk pool.

B. A health insurance issuer shall consider the claims experience of all enrollees in all health plans, other than grandfathered plans, in the small group market to be members of a single risk pool.

C. Each plan year or policy year, as applicable, a health insurance issuer shall establish an index rate based on the total combined claims costs for providing essential health benefits within the single risk pool of the individual or small group market. The index rate may be adjusted on a market-wide basis based on the total expected market-wide payments and charges under the risk adjustment and reinsurance programs in this Commonwealth and the health benefit exchange user fees. The premium rate for all of the health insurance issuer's plans shall use the applicable index rate, as adjusted in accordance with subsection D of this section.

D. A health insurance issuer may vary premium rates for a particular plan from its index rate for a relevant state market based only on the following actuarially justified plan-specific factors:

- 1. Cost-sharing design of the plan.
- 2. The plan's provider network, delivery system characteristics, and utilization management practices.
- 3. The benefits provided under the plan that are in addition to the essential health benefits. These additional benefits shall be pooled with similar benefits within a single risk pool and the claims experience from those benefits shall be utilized to determine rate variations for plans that offer those benefits in addition to essential health benefits.
- 4. Administrative costs, excluding health benefit exchange user fees.
- 5. With respect to catastrophic plans, the expected impact of the specific eligibility categories for those plans.

VA.R. Doc. No. R16-4264; Filed December 7, 2015, 3:10 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-270. Rules Governing Annual Financial Reporting (amending 14VAC5-270-40, 14VAC5-270-100, 14VAC5-270-110, 14VAC5-270-120, 14VAC5-270-144, 14VAC5-270-174; adding 14VAC5-270-145).

Regulations

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: January 1, 2016.

Agency Contact: Raquel C. Pino, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino@scc.virginia.gov.

Summary:

The amendments address revisions made to the National Association of Insurance Commissioners' Annual Financial Reporting Model Regulation pertaining to the State Corporation Commission's authority to require (i) all large insurers, that is those whose annual premiums exceed \$500 million, and (ii) insurance groups, that is those whose annual premiums exceed \$1 billion, to maintain an internal audit function that provides independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. The audit function is required to be organizationally independent from management and to report at least annually to the audit committee on the results of internal audit activities.

AT RICHMOND, DECEMBER 7, 2015

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2015-00141

Ex Parte: In the matter of
Amending the Rules Governing
Annual Financial Reporting

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered September 21, 2015,¹ all interested parties were ordered to take notice that subsequent to November 18, 2015, the State Corporation Commission ("Commission") would consider the entry of an order to adopt amendments to the rules set forth in Chapter 270 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Annual Financial Reporting, 14 VAC 5-270-10 et seq. ("Rules"), which amend the Rules at 14 VAC 5-270-40, 14 VAC 5-270-100, 14 VAC 5-270-110, 14 VAC 5-270-120, 14 VAC 5-270-144, and 14 VAC 5-270-174, and add a new Rule at 14 VAC 5-270-145.

The amendments to the Rules were proposed by the Commission's Bureau of Insurance ("Bureau") due to the National Association of Insurance Commissioners' adoption of the revisions to the Annual Financial Reporting Model Regulation. The proposed amendments provide the Commission with the authority to require all insurers with annual premiums exceeding \$500 million and insurance groups with annual premiums exceeding \$1 billion to maintain an internal audit function that provides independent,

objective, and reasonable assurance to the audit committee and management regarding the insurer's governance, risk management, and internal controls. The internal audit function is required to be organizationally independent from management and to report at least annually to the audit committee on the results of internal audit activities.

The Order required that on or before November 18, 2015, any person requesting a hearing on the amendments to the Rules shall have filed such request for a hearing with the Clerk of the Commission ("Clerk"). No request for a hearing was filed with the Clerk.

The Order also required all interested persons to file with the Clerk their comments in support of or in opposition to the amendments to the Rules on or before November 18, 2015. No comments were filed with the Clerk.

The Bureau recommends that the amendments to the Rules be adopted as proposed.

NOW THE COMMISSION, having considered this matter, is of the opinion that the Rules should be adopted as amended and revised.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Rules Governing Insurance Holding Companies, which amend the Rules at 14 VAC 5-270-40, 14 VAC 5-270-100, 14 VAC 5-270-110, 14 VAC 5-270-120, 14 VAC 5-270-144, and 14 VAC 5-270-174, and add a new Rule at 14 VAC 5-270-145, which are attached hereto and made a part hereof, are hereby ADOPTED to be effective January 1, 2016.

(2) The Bureau forthwith shall give further notice of the adopted Rules by mailing a copy of this Order to every entity that is licensed, approved, registered, or accredited in the Commonwealth of Virginia ("Virginia") under the provisions of Title 38.2 of the Code of Virginia ("Code") and also subject to solvency regulation in Virginia pursuant to the provisions of Title 38.2 of the Code, as well as to all interested parties.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached adopted Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) This Order and the attached adopted Rules shall be posted on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This matter hereby is dismissed, and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commission's Office of General

Counsel and the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte.

¹Doc. Con. Cen. No. 150940016.

14VAC5-270-40. Definitions.

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

"Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants ("AICPA") and in all states in which the accountant or firm is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

"Affiliate" of a specific person or a person "affiliated" with a specific person means a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the specific person.

"Audit Committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer or group of insurers. The Audit Committee of an entity that controls a group of insurers may be deemed to be the Audit Committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. If an Audit Committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit Committee.

"Audited Financial Report" means and includes those items specified in 14VAC5-270-60.

"Commission" means the State Corporation Commission when acting pursuant to or in accordance with Title 38.2 of the Code of Virginia.

"Due date" means (i) June 1 for all domestic insurers; (ii) June 30 for all foreign or alien companies domiciled or entered through a state in which similar law, regulation, or administrative practice provides for a June 30 filing date; and (iii) for all other insurers, the earlier of June 30 or the date established by the insurer's state of domicile or entry for filing similar audited financial reports.

"Group of insurers" means those licensed insurers included in the reporting requirements of Article 5 (§ 38.2-1322 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia, or a set of insurers as identified by an entity's management, for the purpose of assessing the effectiveness of internal control over financial reporting.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or

firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

"Internal audit function" means a person or persons that provide independent, objective, and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

"Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

1. Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of assets;
2. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
3. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements.

"NAIC" means the National Association of Insurance Commissioners.

"RBC" means risk-based capital.

"RBC Level" means a licensee's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

1. "Company Action Level RBC" means, with respect to any licensee, the product of 2.0 and its Authorized Control Level RBC;
2. "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;
3. "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions; and
4. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level RBC.

"SEC" means the ~~United States~~ U.S. Securities and Exchange Commission.

"Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 (15 USC § 7201 et seq.) and the SEC's rules and regulations promulgated thereunder.

"Section 404 report" means management's report on "internal control over financial reporting" as defined by the

Regulations

SEC and the related attestation report of the independent certified public accountant.

"SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 (15 USC § 7201 et seq.): (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934 (15 USC § 78a et seq.)); (ii) the Audit Committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934 (15 USC § 78a et seq.)); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

"Workpapers" means the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the accountant in the course of the examination of the financial statements of an insurer and which support the accountant's opinion thereof.

14VAC5-270-100. Scope of audit and report of independent certified public accountant.

Financial statements furnished pursuant to 14VAC5-270-60 shall be examined by an accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with U.S. Auditing (AU) Standards - AICPA Clarified (AU-C) Section 315 of the AICPA Professional Standards, ~~Consideration of Internal Control in a Financial Statement Audit~~ Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement, the accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by ~~AU AU-C Section 319~~ AU-C Section 315, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to 14VAC5-270-148, the accountant should consider (as the term should consider is defined in ~~Statements on Auditing Standards (SAS) No. 102~~ AU-C Section 200 of the AICPA Professional Standards, ~~Defining Professional Requirements in Statements on Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards~~) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the NAIC as the accountant deems necessary.

14VAC5-270-110. Notification of adverse financial condition.

A. The insurer required to furnish the annual Audited Financial Report shall require the accountant to report in writing within five business days to the board of directors or its Audit Committee any determination by the accountant that the insurer has materially misstated its financial condition as reported to the commission as of the balance sheet date under examination or that the insurer does not meet its minimum statutory capital and surplus requirements as of that date pursuant to Virginia law. An insurer that has received a report pursuant to this subsection shall forward a copy of the report to the commission within five business days of receipt of the report and shall provide the accountant making the report with evidence of the report being furnished to the commission. If the accountant fails to receive the evidence within the required five-business-day period, the accountant shall furnish to the commission a copy of its report within the next five business days.

B. No accountant shall be liable in any manner to any person for any statement made in connection with subsection A of this section if the statement is made in good faith in compliance with subsection A of this section.

C. If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this chapter, becomes aware of facts which might have affected the report, the commission notes the obligation of the accountant to take action as prescribed in ~~AU AU-C Section 561~~ AU-C Section 560 of the AICPA Professional Standards, ~~Subsequent Discovery of Events and Subsequently Discovered Facts Existing at the Date of the Auditor's Report~~.

14VAC5-270-120. Communicating internal control related matters identified in an audit.

A. In addition to the annual Audited Financial Report, each insurer shall furnish the commission with a written communication as to any unremediated material weaknesses in its internal controls over financial reporting identified during the audit. The communication shall be prepared by the accountant within 60 days after the filing of the annual Audited Financial Report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined in ~~SAS No. 112~~ AU-C Section 265 of the AICPA Professional Standards, Communicating Internal Control Related Matters Identified in an Audit) as of the immediately preceding December 31 (so as to coincide with the Audited Financial Report discussed in 14VAC5-270-50 A) in the insurer's internal control over financial reporting identified by the accountant during the course of the audit of the financial statements. If no unremediated material weaknesses were identified, the communication should so state.

B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated

material weaknesses, if the actions are not described in the accountant's communication.

C. The insurer is expected to maintain information about significant deficiencies communicated by the independent certified public accountant. The information should be made available to the examiner conducting a financial condition examination for review and kept in a manner as to remain confidential.

14VAC5-270-144. Requirements for Audit Committees.

A. This section shall not apply to foreign or alien insurers licensed in Virginia or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

B. The Audit Committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the Audited Financial Report or related work pursuant to this chapter. Each accountant shall report directly to the Audit Committee.

C. The Audit Committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by 14VAC5-270-145.

D. Each member of the Audit Committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection F G of this section.

~~D.~~ E. In order to be considered independent for purposes of this section, a member of the Audit Committee may not, other than in the capacity as a member of the Audit Committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or subsidiary thereof. However, if Virginia law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the Audit Committee and be designated as independent for Audit Committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

~~E.~~ F. If a member of the Audit Committee ceases to be independent for reasons outside the member's reasonable control, that member, with notice by the responsible entity to the commission, may remain an Audit Committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

~~F.~~ G. To exercise the election of the controlling person to designate the Audit Committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commission of the affected insurers. Notification shall be

made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commission by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, unless rescinded.

~~G.~~ H. The Audit Committee shall require the accountant that conducts for an insurer any audit required by this chapter to timely report to the Audit Committee in accordance with the requirements of ~~SAS No. 114~~ AU-C Section 260 of the AICPA Professional Standards, The Auditor's Communication with those Charged with Governance, including:

1. All significant accounting policies and material permitted practices;
2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
3. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

If an insurer is a member of an insurance holding company system, the reports required by this subsection may be provided to the Audit Committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the Audit Committee.

~~H.~~ I. The proportion of independent Audit Committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300 million	Over \$300 million - \$500 million	Over \$500 million
No minimum requirements. See Notes A and B.	Majority (50% or more) of members shall be independent. See Notes A and B.	Supermajority of members (75% or more) shall be independent. See Note A.

Note A: The commission has authority afforded by state law to require the entity's board to enact improvements to the independence of the Audit Committee membership if the insurer is in a RBC level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500 million in prior year direct written and assumed premiums are encouraged to

Regulations

structure their Audit Committees with at least a supermajority of independent Audit Committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

¶ J. An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million may make application to the commission for a waiver from the requirements of this section based upon hardship. The insurer shall file, with its annual statement filing, the commission's letter granting relief from this section with the states in which it is licensed or doing business and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the letter granting relief in an electronic format acceptable to the NAIC.

14VAC5-270-145. Internal audit function requirements.

A. An insurer is exempt from the requirements of this section if:

1. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million; and

2. If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

B. The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the Audit Committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews, and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

C. In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

D. The head of the internal audit function shall report to the Audit Committee regularly, but no less often than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness,

material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

E. If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

14VAC5-270-174. Retention of independent certified public accountant on or after January 1, 2010, and other effective dates.

A. Unless otherwise noted, the requirements of this chapter shall become effective for the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers not required to file a report because its total written premium is below the threshold that subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

B. The requirements of 14VAC5-270-80 D shall become effective for audits of the year beginning January 1, 2010, and thereafter.

C. The requirements of 14VAC5-270-144 shall become effective on January 1, 2010. An insurer or group of insurers that is not required to have independent Audit Committee members or only a majority of independent Audit Committee members (as opposed to a supermajority) because the total direct written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

D. The requirements of 14VAC5-270-145 are to become effective January 1, 2016. If an insurer or group of insurers that is exempt from the 14VAC5-270-145 requirements no longer qualifies for that exemption, it shall have one year after the year the threshold is exceeded to comply with the requirements of this chapter.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name 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 (14VAC5-270)

~~Affidavit for Exemption From Filing Audited Financial Reports, SCCBOI 16.~~

~~[Audited Financial Statements Exemption Affidavit Year Ended December 31, 2014, R03 \(eff. 10/2014\)](#)~~

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-270)

~~AICPA Professional Standards, Volume 1, June 1, 2007, American Institute of Certified Public Accountants.~~

~~AICPA Professional Standards, Volume 2, June 1, 2007, American Institute of Certified Public Accountants.~~

~~AICPA Professional Standards, Volume 1, as of June 1, 2015, American Institute of Certified Public Accountants, New York, New York 10036-8775, <http://www.aicpa.org>~~

~~AICPA Professional Standards, Volume 2, as of June 1, 2015, American Institute of Certified Public Accountants, New York, New York 10036-8775, <http://www.aicpa.org>~~

VA.R. Doc. No. R16-4479; Filed December 8, 2015, 3:11 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-22).**

18VAC85-40. Regulations Governing the Practice of Respiratory Therapists (amending 18VAC85-40-35).

18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-35).

18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-26).

18VAC85-101. Regulations Governing the Practice of Radiologic Technology (amending 18VAC85-101-25).

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-35).

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-35).

18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-30).

18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (amending 18VAC85-140-40).

18VAC85-150. Regulations Governing the Practice of Behavior Analysis (amending 18VAC85-150-40).

18VAC85-160. Regulations Governing the Registration of Surgical Assistants and Surgical Technologists (amending 18VAC85-160-40).

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

Effective Date: January 27, 2016.

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.

Summary:

The amendments provide for a one-time fee reduction applicable to the next renewal cycle in 2016 or 2017 for licenses and registrations of professions regulated by the Board of Medicine.

18VAC85-20-22. Required fees.

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be \$302, and the fee for licensure in chiropractic shall be \$277.

D. The fee for a temporary authorization to practice medicine pursuant to § 54.1-2927 B (i) and (ii) of the Code of Virginia shall be \$25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18VAC85-20-210 shall be \$55. The annual renewal fee shall be \$35. For renewal of a limited professorial or fellow license in ~~2014~~ 2016, the fee shall be \$30. An additional fee for late renewal of licensure shall be \$15.

F. The application fee for a limited license to interns and residents pursuant to 18VAC85-20-220 shall be \$55. The annual renewal fee shall be \$35. For renewal of a limited license to interns and residents in ~~2014~~ 2016, the fee shall be \$30. An additional fee for late renewal of licensure shall be \$15.

G. The fee for a duplicate wall certificate shall be \$15; the fee for a duplicate license shall be ~~\$5~~ \$5.00.

Regulations

H. The fee for biennial renewal shall be \$337 for licensure in medicine, osteopathic medicine, and podiatry and \$312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$115 for licensure in medicine, osteopathic medicine, and podiatry and \$105 for licensure in chiropractic. For renewal of licensure in ~~2014~~ 2016, the fee shall be ~~\$293~~ \$270 for licensure in medicine, osteopathic medicine, and podiatry and ~~\$271~~ \$250 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to § 54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be \$2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be \$497 for licensure in medicine, osteopathic medicine, and podiatry (\$382 for reinstatement application in addition to the late fee of \$115) and \$472 for licensure in chiropractic (\$367 for reinstatement application in addition to the late fee of \$105). The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure shall be \$10, and the fee for certification of grades to another jurisdiction by the board shall be \$25. Fees shall be due and payable upon submitting a request for verification or certification to the board.

L. The fee for biennial renewal of an inactive license shall be \$168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$55 for each renewal cycle. For renewal of an inactive license in ~~2014~~ 2016, the fee shall be ~~\$145~~ \$135.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$75, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$25 for each renewal cycle. For renewal of a restricted volunteer license in ~~2014~~ 2016, the fee shall be \$65.

N. The fee for a returned check shall be \$35.

18VAC85-40-35. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be \$130.
2. The biennial fee for renewal of active licensure shall be \$135 and for renewal of inactive licensure shall be \$70, payable in each odd-numbered year in the license holder's birth month. For ~~2015~~ 2017, the fee for renewal of an active license shall be ~~\$115~~ \$108, and the fee for renewal of an inactive license shall be ~~\$60~~ \$54.
3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.

4. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia, which has lapsed for a period of two years or more, shall be \$180 and must be submitted with an application for licensure reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

6. The fee for a duplicate license shall be ~~\$5~~ \$5.00, and the fee for a duplicate wall certificate shall be \$15.

7. The fee for a returned check shall be \$35.

8. The fee for a letter of good standing/verification to another jurisdiction shall be \$10; the fee for certification of grades to another jurisdiction shall be \$25.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

18VAC85-50-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The initial application fee for a license, payable at the time application is filed, shall be \$130.

2. The biennial fee for renewal of an active license shall be \$135 and for renewal of an inactive license shall be \$70, payable in each odd-numbered year in the birth month of the licensee. For ~~2015~~ 2017, the fee for renewal of an active license shall be ~~\$115~~ \$108, and the fee for renewal of an inactive license shall be ~~\$60~~ \$54.

3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.

4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of § 54.1-2951.3 of the Code of Virginia.

5. The fee for review and approval of a new protocol submitted following initial licensure shall be \$15.

6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

7. The fee for a duplicate license shall be ~~\$5~~ \$5.00, and the fee for a duplicate wall certificate shall be \$15.

8. The fee for a returned check shall be \$35.

9. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.

10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be \$130; for the occupational therapy assistant, it shall be \$70.

2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be \$180; for the occupational therapy assistant, it shall be \$90.

3. The fee for active license renewal for an occupational therapist shall be \$135; for an occupational therapy assistant, it shall be \$70. The fees for inactive license renewal shall be \$70 for an occupational therapist and \$35 for an occupational therapy assistant. Renewals shall be due in the birth month of the licensee in each even-numbered year. For ~~2014~~ 2016, the fee for renewal of an active license as an occupational therapist shall be ~~\$115~~ \$108; for an occupational therapy assistant, it shall be ~~\$60~~ \$54. For renewal of an inactive license in ~~2014~~ 2016, the fees shall be ~~\$60~~ \$54 for an occupational therapist and ~~\$30~~ \$28 for an occupational therapy assistant.

4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50 for an occupational therapist and \$30 for an occupational therapy assistant.

5. The fee for a letter of good standing or verification to another state for a license shall be \$10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

7. The fee for a returned check shall be \$35.

8. The fee for a duplicate license shall be ~~\$5~~ \$5.00, and the fee for a duplicate wall certificate shall be \$15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-101-25. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial licensure fees.

1. The application fee for radiologic technologist or radiologist assistant licensure shall be \$130.

2. The application fee for the radiologic technologist-limited licensure shall be \$90.

3. All examination fees shall be determined by and made payable as designated by the board.

C. Licensure renewal and reinstatement for a radiologic technologist or a radiologist assistant.

1. The fee for active license renewal for a radiologic technologist shall be \$135, and the fee for inactive license renewal shall be \$70. For ~~2015~~ 2017, the fees for renewal shall be ~~\$115~~ \$108 for an active license as a radiologic

technologist and ~~\$60~~ \$54 for an inactive license. If a radiologist assistant holds a current license as a radiologic technologist, the renewal fee shall be \$50. If a radiologist assistant does not hold a current license as a radiologic technologist, the renewal fee shall be \$150. For renewal of a radiologist assistant license in ~~2015~~ 2017, the fee shall be \$40 for a radiologist assistant with a current license as a radiologic technologist and ~~\$130~~ \$120 for a radiologist assistant without a current license as a radiologic technologist.

2. An additional fee of \$50 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a radiologic technologist or a radiologist assistant license that has lapsed for a period of two years or more shall be \$180 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

D. Licensure renewal and reinstatement for a radiologic technologist-limited.

1. The fee for active license renewal shall be \$70, and the fee for inactive license renewal shall be \$35. For ~~2015~~ 2017, the fees for renewal shall be ~~\$60~~ \$54 for an active license as a radiologic technologist and ~~\$30~~ \$28 for an inactive license.

2. An additional fee of \$25 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be \$120 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

E. Other fees.

1. The application fee for a traineeship as a radiologic technologist or a radiologic technologist-limited shall be \$25.

2. The fee for a letter of good standing or verification to another state for licensure shall be \$10; the fee for certification of scores to another jurisdiction shall be \$25.

3. The fee for a returned check shall be \$35.

4. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.

18VAC85-110-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as an acupuncturist shall be \$130.

2. The fee for biennial active license renewal shall be \$135; the fee for biennial inactive license renewal shall be

Regulations

\$70. For ~~2015~~ 2017, the fee for renewal of an active license shall be ~~\$115~~ \$108, and the fee for renewal of an inactive license shall be ~~\$60~~ \$54.

3. The additional fee for processing a late renewal within one renewal cycle shall be \$50.
4. The fee for reinstatement of a license which has expired for two or more years shall be \$180.
5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be \$10.
6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The fee for a duplicate wall certificate shall be \$15.
8. The fee for a duplicate renewal license shall be ~~\$5~~ \$5.00.
9. The fee for a returned check shall be \$35.
10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

18VAC85-120-35. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. The following fees have been adopted by the board:

1. The application fee shall be \$130.
2. The fee for renewal of licensure shall be \$135 and shall be due in the licensee's birth month, in each odd-numbered year.
3. A fee of \$50 for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.
4. The fee for reinstatement of a license that has expired for two or more years shall be \$180 and shall be submitted with an application for reinstatement.
5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
6. The fee for a duplicate renewal license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.
7. The fee for a returned check shall be \$35.
8. The fee for a letter of verification to another jurisdiction shall be \$10.
9. The fee for an inactive license shall be \$70, and the fee for a late renewal shall be \$25.
10. For ~~2015~~ 2017, the fee for renewal of an active license shall be ~~\$115~~ \$108, and the fee for renewal of an inactive license shall be ~~\$60~~ \$54.

18VAC85-130-30. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as a midwife shall be \$277.

2. The fee for biennial active license renewal shall be \$312; the additional fee for late renewal of an active license within one renewal cycle shall be \$105.

3. The fee for biennial inactive license renewal shall be \$168; the additional fee for late renewal of an inactive license within one renewal cycle shall be \$55.
4. The fee for reinstatement of a license that has expired for a period of two years or more shall be \$367 in addition to the late fee. The fee shall be submitted with an application for licensure reinstatement.
5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be \$10.
6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied shall be \$2,000.
7. The fee for a duplicate wall certificate shall be \$15.
8. The fee for a duplicate renewal license shall be ~~\$5~~ \$5.00.
9. The fee for a returned check shall be \$35.
10. For ~~2015~~ 2017, the fee for renewal of an active license shall be ~~\$270~~ \$250, and the fee for renewal of an inactive license shall be ~~\$140~~ \$125.

18VAC85-140-40. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be \$130.
2. The biennial fee for renewal of active licensure shall be \$135 and for renewal of inactive licensure shall be \$70, payable in each odd-numbered year in the license holder's birth month. For 2017, the renewal fee for an active license shall be \$108, and the renewal fee for an inactive license shall be \$54.
3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.
4. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be \$180 and must be submitted with an application for licensure reinstatement.
5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
6. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.
7. The fee for a returned check shall be \$35.
8. The fee for a letter of good standing or verification to another jurisdiction shall be \$10.

18VAC85-150-40. Fees.

A. The following fees have been established by the board:

1. The initial fee for the behavior analyst license shall be \$130; for the assistant behavior analyst license, it shall be \$70.

2. The fee for reinstatement of the behavior analyst license that has been lapsed for two years or more shall be \$180; for the assistant behavior analyst license, it shall be \$90.

3. The fee for active license renewal for a behavior analyst shall be \$135; for ~~any~~ an assistant behavior analyst, it shall be \$70. The fees for inactive license renewal shall be \$70 for a behavior analyst and \$35 for an assistant behavior analyst. Renewals shall be due in the birth month of the licensee in each odd-numbered year. For 2017, the renewal of an active license as a behavior analyst shall be \$108, and the renewal fee for an inactive license shall be \$54; the renewal fee for an active license as an assistant behavior analyst shall be \$54, and the renewal fee for an inactive license shall be \$28.

4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50 for a behavior analyst and \$30 for an assistant behavior analyst.

5. The fee for a letter of good standing or verification to another state for a license shall be \$10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

7. The fee for a returned check shall be \$35.

8. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-160-40. Fees.

A. The following fees have been established by the board:

1. The fee for registration as a surgical assistant or surgical technologist shall be \$75.

2. The fee for renewal of registration shall be \$70. Renewals shall be due in the birth month of the registrant in each even-numbered year. For 2016, the renewal fee shall be \$54.

3. The additional fee for processing a late renewal application within one renewal cycle shall be \$25.

4. The fee for a returned check shall be \$35.

B. Unless otherwise provided, fees established by the board are not refundable.

VA.R. Doc. No. R16-4583; Filed December 8, 2015, 8:51 a.m.

BOARD OF PHARMACY

Emergency Regulation

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-321; adding 18VAC110-20-215).

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

Effective Dates: December 7, 2015, through June 6, 2017.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

In response to the meningitis outbreak resulting from contaminated compounded drugs from the New England Compounding Center in 2012, which sickened 751 people and killed 64 people, including five Virginians, Congress passed the Drug Quality and Security Act in the fall of 2013. The Act creates the new licensing category under § 503B of the Federal Food, Drug, and Cosmetic Act of outsourcing facilities. These entities are large-scale sterile compounding facilities that provide compounded drugs predominantly to hospitals, physician offices, or medical clinics for administration to patients. Due to the risk associated with compounding sterile drugs on a large scale, these facilities are required under federal law to compound in compliance with current good manufacturing practices, similar to a pharmaceutical manufacturer.

The Board of Pharmacy sought legislative authority in 2015 to facilitate the implementation of the Drug Quality and Security Act by creating a new licensing category of and oversight for outsourcing facilities and nonresident outsourcing facilities. As of July 1, 2015, state law recognizes "outsourcing facilities," but regulations are necessary to provide for permits and oversight. There are approximately 50 outsourcing facilities currently registered with the Federal Drug Administration and likely more will register in the next year. Without a provision for the Board of Pharmacy to license these facilities, these entities will likely not be able to ship into the Commonwealth. This has the potential to negatively impact access to critically needed compounded drugs. Unlike outsourcing facilities that may legally compound sterile drugs for office administration, pharmacies under federal law may only compound human drugs pursuant to patient-specific prescriptions. Emergency regulations are promulgated to allow permitting of in-state facilities and registration of nonresident outsourcing facilities.

Section 54.1-3307 of the Code of Virginia directs the Board of Pharmacy to regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or disposal of drugs and devices. It further states the board shall also control the character and standard of all drugs, cosmetics, and devices within the Commonwealth; investigate all complaints as to the quality and strength of all drugs, cosmetics, and devices; and take such action as may be necessary to prevent the manufacturing, dispensing, selling, distributing, processing, compounding, and disposal of such drugs, cosmetics, and devices that do not conform to the requirements of law.

Regulations

In compliance with the second enactment clause of Chapter 300 of the 2015 Acts of the Assembly, the Board of Pharmacy is promulgating emergency regulations to implement the requirement of law that facilities engaged in the compounding of sterile drugs and registered with the U.S. Secretary of Health and Human Services as outsourcing facilities must hold a permit to compound or ship compounded drugs into Virginia. The emergency regulations set fees for approval of applications and renewal of permits and registration. Requirements for pharmacies that are or are not applicable to outsourcing facilities are specified, and requirements for pharmacist supervision, recordkeeping, and renewal are also established. Finally, the regulations specify that if a compounding pharmacy shares physical space with an outsourcing facility, the more stringent standards of good manufacturing practices are applicable. Regulations promulgated by the board will ensure that outsourcing facilities located in the state or shipping drugs into Virginia have oversight that will protect public health and safety.

18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
<u>8. Outsourcing facility permit</u>	<u>\$270</u>
8-9. <u>9. Nonresident pharmacy registration</u>	\$270
<u>10. Nonresident outsourcing facility registration</u>	<u>\$270</u>
9-11. <u>11. Controlled substances registrations</u>	\$90
10-12. <u>12. Innovative program approval.</u>	\$250

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

11-13. <u>13. Approval of a pharmacy technician training program</u>	\$150
12-14. <u>14. Approval of a continuing education program</u>	\$100
13-15. <u>15. Approval of a repackaging training program</u>	\$50

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	\$90
2. Pharmacist inactive license – due no later than December 31	\$45
3. Pharmacy technician registration – due no later than December 31	\$25
4. Pharmacy permit – due no later than April 30	\$270
5. Physician permit to practice pharmacy – due no later than February 28	\$270
6. Medical equipment supplier permit – due no later than February 28	\$180
7. Humane society permit – due no later than February 28	\$20
<u>8. Outsourcing facility permit – due no later than April 30</u>	<u>\$270</u>
8-9. <u>9. Nonresident pharmacy registration – due no later than the date of initial registration</u>	\$270
<u>10. Nonresident outsourcing facility registration – due no later than the date of initial registration</u>	<u>\$270</u>
9-11. <u>11. Controlled substances registrations – due no later than February 28</u>	\$90
10-12. <u>12. Innovative program continued approval based on board order not to exceed \$200 per approval period.</u>	
11-13. <u>13. Approval of a pharmacy technician training program</u>	\$75 every two years
12-14. <u>14. Approval of a repackaging training program</u>	\$30 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$30	c. Medical equipment supplier permit	\$210
2. Pharmacist inactive license	\$15	d. Humane society permit	\$30
3. Pharmacy technician registration	\$10	<u>e. Outsourcing facility permit</u>	<u>\$240</u>
4. Pharmacy permit	\$90	e. <u>f. Nonresident pharmacy</u>	\$115
5. Physician permit to practice pharmacy	\$90	<u>g. Nonresident outsourcing facility registration</u>	<u>\$240</u>
6. Medical equipment supplier permit	\$60	f. <u>h. Controlled substances registration</u>	\$180
7. Humane society permit	\$5	g. <u>i. Approval of a pharmacy technician training program</u>	\$75
<u>8. Outsourcing facility permit</u>	<u>\$90</u>	h. <u>j. Approval of a repackaging training program</u>	\$50
8. <u>9. Nonresident pharmacy registration</u>	\$90		
<u>10. Nonresident outsourcing facility registration</u>	<u>\$90</u>		
9. <u>11. Controlled substances registrations</u>	\$30		
10. <u>12. Approval of a pharmacy technician training program</u>	\$15		
11. <u>13. Approval of a repackaging training program</u>	\$10		

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	\$50
2. Change of ownership for any facility	\$50
3. Inspection for remodeling or change of location for any facility	\$150
4. Reinspection of any facility	\$150
5. Board-required inspection for a robotic pharmacy system	\$150
6. Board-required inspection of an innovative program location	\$150
7. Change of pharmacist responsible for an approved innovative program	\$25

H. Miscellaneous fees.

1. Duplicate wall certificate	\$25
2. Returned check	\$35
3. Duplicate license or registration	\$10
4. Verification of licensure or registration	\$25

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	\$210
2. Pharmacist license after revocation or suspension	\$500
3. Pharmacy technician registration	\$35
4. Pharmacy technician registration after revocation or suspension	\$125
5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:	
a. Pharmacy permit	\$240
b. Physician permit to practice pharmacy	\$240

18VAC110-20-215. Outsourcing facilities.

A. Any facility in the Commonwealth engaged in the sterile compounding of drugs or devices to be dispensed without a prescription for a specific patient shall obtain a permit as an outsourcing facility from the board in accordance with § 54.1-3434.05 of the Code of Virginia. Any outsourcing facility located outside of the Commonwealth that delivers in any manner Schedule II through VI drugs or devices into the Commonwealth without a prescription for a specific patient shall be registered with the board in accordance with § 54.1-3434.5 of the Code of Virginia.

B. In order to obtain or renew a permit or registration, outsourcing facilities shall submit to the board (i) documentation that the facility is registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act and

Regulations

(ii) a copy of a current inspection report consistent with § 54.1-3434.05 or 54.1-3434.5 of the Code of Virginia. Outsourcing facilities that fail to demonstrate that the facility is registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act or submit a copy of a current inspection report consistent with § 54.1-3434.05 or 54.1-3434.5 of the Code of Virginia shall not meet the requirements for an initial permit or registration or for renewal of a permit or registration.

C. An outsourcing facility shall comply with all provisions of this chapter relating to a pharmacy in Parts IV (18VAC110-20-110 et seq.) and VI (18VAC110-20-240 et seq.), with the following exceptions:

1. Subsections D and E of 18VAC110-20-190, relating to dispensed prescriptions.
2. Subsection A of 18VAC110-20-200, relating to prescriptions awaiting delivery.
3. Subsections B and C of 18VAC110-20-240, relating to prescriptions and chart orders.
4. Section 18VAC110-20-250, relating to automated data processing prescription records.
5. Subsections C, D, E, and F of 18VAC110-20-270, relating to preparation and dispensing of prescriptions.

D. In addition to applicable requirements for pharmacies, outsourcing facilities shall comply with the following:

1. Pharmacist supervision. At all times, such facilities shall be under the supervision of a PIC who routinely practices at the location designated on the permit application. A pharmacist shall be present at all times when the facility is open for business.

2. Records.

a. All records, including the receipt and disposition of drugs or devices, shall be maintained by the facility for a period of five years and shall be available to the board upon request.

b. Compounding records shall include identification and strength of the drugs and shall provide the ingredients, expiration dates, and the source of such ingredients. Records shall also include the national drug code number of the source drug or bulk active ingredient, if available; the strength of the active ingredient per unit; the dosage form and route of administration; the package description; the number of individual units produced; the national drug code number of the final product, if assigned, or lot number; and an appropriately assigned expiration date or beyond-use date.

c. Outsourcing facilities shall maintain quality control records to include stability and sterility testing for determining beyond-use dating.

E. No outsourcing facility may distribute or dispense any drug to any person pursuant to a prescription unless it also maintains a current active pharmacy permit. The pharmacy

shall comply with all state and federal laws, regulations, and requirements, except it shall compound in compliance with current good manufacturing practices under § 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 USC § 351(a)(2)(B)).

Part VIII

Labeling and Packaging Standards for Prescriptions

18VAC110-20-321. Compounding.

A. The compounding of both sterile and nonsterile drug products by a pharmacy that does not share the same physical space with an outsourcing facility shall be performed in accordance with USP-NF compounding standards and § 54.1-3410.2 of the Code of Virginia.

B. The compounding of sterile drug products by an outsourcing facility or by a pharmacy sharing the same physical space with an outsourcing facility shall be performed in accordance with current good manufacturing practices under § 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 USC § 351(a)(2)(B)).

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 (18VAC110-20)

[Application for Registration as a Pharmacy Intern \(rev. 8/07\)](#)

[Affidavit of Practical Experience, Pharmacy Intern \(rev. 8/07\)](#)

[Application for Licensure as a Pharmacist by Examination \(rev. 11/09\)](#)

[Instructions for Reinstating or Reactivating a Pharmacist License \(rev. 3/11\)](#)

[Application for Approval of a Continuing Education Program \(rev. 8/07\)](#)

[Application for Approval of ACPE Pharmacy School Course\(s\) for Continuing Education Credit \(rev. 6/09\)](#)

[Application for License to Dispense Drugs \(rev. 8/07\)](#)

~~[Application for a Pharmacy Permit \(rev. 6/10\)](#)~~

~~[Application for a Nonresident Pharmacy Registration \(rev. 7/08\)](#)~~

[Application for a Pharmacy Permit \(rev. 12/2015\)](#)

[Application for a Non-Resident Pharmacy Registration \(rev. 12/2015\)](#)

[Application for a Non-Resident Outsourcing Facility Registration \(12/2015\)](#)

[Application for an Outsourcing Facility Permit \(12/2015\)](#)

[Application for a Permit as a Medical Equipment Supplier \(rev. 3/09\)](#)

[Application for a Controlled Substances Registration Certificate \(rev. 4/09\)](#)

[Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy \(rev. 8/07\).](#)

[Closing of a Pharmacy \(rev. 8/07\)](#)

[Application for Approval of an Innovative \(Pilot\) Program \(rev. 8/07\)](#)

[Pharmacy Technician Registration Instructions and Application \(rev. 3/09\)](#)

[Instructions for Reinstating a Pharmacy Technician Registration \(rev. 3/11\)](#)

[Application for Approval of a Pharmacy Technician Training Program \(rev. 8/07\)](#)

[Application for Registration for Volunteer Practice \(rev. 8/07\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 8/08\)](#)

[Application for Reinstatement of Registration as a Pharmacy Intern \(eff. 9/07\)](#)

[Affidavit for Limited-Use Pharmacy Technician \(rev. 8/07\)](#)

[Limited-Use Pharmacy Technician Registration Instructions and Application \(rev. 7/08\)](#)

[Registration for a Pharmacy to be a Collection Site for Donated Drugs \(eff. 4/09\)](#)

[Application for Approval of Repackaging Training Program \(eff. 12/10\)](#)

VA.R. Doc. No. R16-4528; Filed December 7, 2015, 11:23 a.m.

Emergency Regulation

Title of Regulation: **18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-15, 18VAC110-30-20, 18VAC110-30-30, 18VAC110-30-50 through 18VAC110-30-90; adding 18VAC110-30-21).**

Statutory Authority: §§ 54.1-2400 and 54.1-3304.1 of the Code of Virginia.

Effective Dates: December 7, 2015, through June 6, 2017.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 527-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law requires that a regulation be effective in 280 days or less from its enactment. Chapter 117 of the 2015 Acts of the Assembly, which requires practitioners of the healing arts to dispense controlled substances in permitted facilities, contains such a clause.

The Board of Pharmacy currently licenses individual physicians to sell controlled substances to their own patients and already has regulations for security, recordkeeping, storage, and other requirements relating to the facility from which physicians licensed to sell drugs dispense. Oversight of physicians selling drugs was relatively simple when the number of physicians was approximately 100, but the total is now over 550 and continues to increase. The increase is due to an increasingly larger supply of drugs on the market repackaged specifically for physicians to sell, an increase in the number of urgent care centers that dispense drugs when treating patients, and an increase in drugs available to treat popular dermatological issues.

The practice of physicians selling drugs is analogous to pharmacies dispensing drugs. In regulating the practice of pharmacy, the board licenses both pharmacists and pharmacies. This level of oversight for both the individuals and the facility works well, and this emergency action seeks to mirror this level of oversight for physicians selling drugs. With a facility permit, which is similar to a pharmacy permit, the board can hold the permit holder responsible and accountable for the stock of drugs. Clearer regulation and accountability will foster public protection in assuring the safety and integrity of prescription drugs. Additionally, during inspections of facilities where multiple licensed physicians sell drugs, it is reasonable to hold the facility responsible for possible violations and not an individual physician. This proposed process is also analogous to the inspection process currently used for pharmacies.

This emergency regulation implements Chapter 117 and includes (i) setting fees for approval of applications, renewal of permits, and reinstatement of lapsed permits; (ii) establishing requirements for inspections and physical standards for the facility; and (iii) requiring notification to the board through the facility permit rather than the individual licensee. The only change in physical requirements is specificity about the availability of hot and cold water, which must be within 20 feet of the selling and storage area and not located within an examination room or restroom.

18VAC110-30-15. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. ~~Fee for initial license for a practitioner of the healing arts to sell controlled substances~~ Initial application fees.

1. ~~The application fee for initial licensure shall be \$240~~ License for practitioner of the healing arts to sell controlled substance: \$180.

2. ~~The application fee for reinstatement of a license that has been revoked or suspended indefinitely shall be \$500~~ Permit for facility in which practitioners of the healing arts sell controlled substance: \$240.

Regulations

~~C. Renewal of license for a practitioner of the healing arts to sell controlled substances Annual renewal fees.~~

~~1. The annual fee for renewal of an active license shall be \$90. For the annual renewal due on December 31, 2009, the fee shall be \$50 License for practitioner of the healing arts to sell controlled substance: \$90.~~

~~2. The late fee for renewal of a license within one year after the expiration date is \$30 in addition to the annual renewal fee Permit for facility in which practitioners of the healing arts sell controlled substance: \$240.~~

~~3. The fee for reinstatement of a license expired for more than one year shall be \$210.~~

~~D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date.~~

~~1. License for practitioner of the healing arts to sell controlled substance: \$30.~~

~~2. Permit for facility in which practitioners of the healing arts sell controlled substance: \$40.~~

~~E. Reinstatement fees. Any person or entity attempting to renew a license or permit more than one year after the expiration date shall submit an application for reinstatement with any required fees.~~

~~1. License for practitioner of the healing arts to sell controlled substances: \$150.~~

~~2. Permit for facility in which practitioner of the healing arts to sell controlled substances: \$240.~~

~~3. Application fee for reinstatement of a license or permit that has been revoked or suspended indefinitely: \$500.~~

~~F. Facilities in which only one practitioner of the healing arts is licensed by the board to sell controlled substances shall be exempt from fees associated with obtaining and renewing a facility permit.~~

~~D. G. The fee for reinspection of any facility shall be \$150.~~

~~E. H. The fee for a returned check shall be \$35.~~

Part II

Licensure Requirements

18VAC110-30-20. Application for licensure.

A. Prior to engaging in the sale of controlled substances, a practitioner shall make application on a form provided by the board and be issued a license. After (insert six months from effective date of the regulation), the practitioner shall engage in such sale from a location that has been issued a facility permit.

B. In order to be eligible for a license to sell controlled substances, a practitioner shall possess a current, active license to practice medicine, osteopathic medicine, or podiatry issued by the Virginia Board of Medicine. Any disciplinary action taken by the Board of Medicine against the practitioner's license to practice shall constitute grounds for

the board to deny, restrict, or place terms on the license to sell.

~~C. For good cause shown, the board may issue a limited-use license, when the scope, degree or type of services provided to the patient is of a limited nature. The license to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:~~

~~1. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion must accompany the application. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice; and~~

~~2. The issuance and continuation of such license shall be subject to continuing compliance with the conditions set forth by the board.~~

18VAC110-30-21. Application for facility permit.

A. After (insert six months from effective date of the regulation), any location at which practitioners of the healing arts sell controlled substances shall have a permit issued by the board in accordance with § 54.1-3304.1 of the Code of Virginia. A licensed practitioner shall make application for the facility permit on a form provided by the board.

B. For good cause shown, the board may issue a limited-use facility permit when the scope, degree, or type of services provided to the patient is of a limited nature. The permit to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of this chapter may be waived.

1. The limited-use facility permit application shall list the regulatory requirements for which a waiver is requested, if any, and a brief explanation as to why each requirement should not apply to that practice.

2. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion shall accompany the application.

3. The issuance and continuation of a limited-use facility permit shall be subject to continuing compliance with the conditions set forth by the board.

C. The executive director may grant a waiver of the security system when storing and selling multiple strengths and formulations of no more than five different topical Schedule VI drugs intended for cosmetic use.

18VAC110-30-30. Renewal of license or permit.

A. A license or facility permit so issued shall be valid until December 31 of the year of issue. Renewal of the license shall be made on or before December 31 of each year.

B. If a practitioner fails to renew his license or facility permit to sell within the Commonwealth by the renewal date, he must pay the renewal fee plus the late fee. He may renew

his license or facility permit by payment of these fees for one year from the date of expiration.

C. Failure to renew the license or facility permit to sell within one year following expiration shall cause the license or permit to lapse. The selling of controlled substances with a lapsed license or permit shall be illegal and may subject the practitioner to disciplinary action by the board. To reinstate a lapsed license or permit, a practitioner shall submit an application for reinstatement and pay the reinstatement fee, plus the reinspection fee if a reinspection is required as set forth in subsection D of this section. Reinstatement is at the discretion of the board and may be granted by the executive director on the board's behalf provided no grounds exist to deny said reinstatement.

D. Prior to reinstatement of a license facility permit that has been lapsed for more than one year, a reinspection of the storage and selling area shall be conducted ~~unless another practitioner at the same location has held an active license to sell controlled substances during that period.~~ A practitioner seeking reinstatement of a facility permit shall not stock drugs until approved by the board or its authorized agent.

E. The selling of controlled substances without a current, active license or facility permit is unlawful and shall constitute grounds for disciplinary action by the board.

18VAC110-30-50. Licensees ceasing to sell controlled substances; inventory required prior to disposal.

A. Any licensee who intends to cease selling controlled substances shall notify the board 10 days prior to cessation and surrender his license, and his license will be placed on expired status. If no other practitioner of the healing arts licensed to sell controlled substances intends to sell controlled substances from the same location, the practitioner shall also surrender the facility permit, and the permit will be placed on expired status.

B. Any Schedule II through V controlled substances shall be inventoried and may be disposed of by transferring the controlled substance stock to another licensee or other person authorized by law to possess such drugs or by destruction as set forth in this chapter.

C. The licensee or other responsible person shall inform the board of the name and address of the licensee to whom the controlled substances are transferred.

D. A licensee who has surrendered his license or facility permit pursuant to this section may request that it be made current again at any time within the same renewal year without having to pay an additional fee, provided the licensee is selling from the same location or from another location that has been inspected and approved by the board.

Part III

Inspection Requirements, Standards, and Security for Storage Areas; Disposal of Controlled Substances

18VAC110-30-70. ~~Maintenance of a common stock of controlled substances~~ Practitioner in charge in a permitted facility.

~~Any two or more licensees who elect to maintain a common stock of~~ A facility with a permit for practitioners of the healing arts to sell controlled substances ~~for dispensing~~ shall:

1. Designate a licensee practitioner with a license to sell controlled substances who shall be the primary person responsible for the stock, the required inventory, the records of receipt and destruction, safeguards against diversion and compliance with this chapter;
2. Report to the board the name of the licensee and the location of the controlled substance stock on a form provided by the board;
3. Upon a change in the licensee so designated, an inventory of all Schedule II through V controlled substances shall be conducted in the manner set forth in § 54.1-3404 of the Drug Control Act of the Code of Virginia and such change shall immediately be reported to the board; and
4. Nothing shall relieve the other individual licensees who sell controlled substances at the location of the responsibility for the requirements set forth in this chapter.

18VAC110-30-80. Inspection and notice required.

A. The area designated for the storage and selling of controlled substances shall be inspected by an agent of the board prior to the issuance of the first license to sell controlled substances from that site. Inspection prior to issuance of subsequent licenses at the same location shall be conducted at the discretion of the board.

B. Applications for ~~licenses which~~ facility permits that indicate a requested inspection date, or requests ~~which that~~ are received after the application is filed, shall be honored provided a 14-day notice to the board is allowed prior to the requested inspection date.

C. Requested inspection dates ~~which that~~ do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

D. At the time of the inspection, the controlled substance selling and storage area shall comply with 18VAC110-30-90, 18VAC110-30-100, 18VAC110-30-110, 18VAC110-30-120, and 18VAC110-30-130.

E. If an applicant substantially fails to meet the requirements for issuance of a license facility permit and a reinspection is required, or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18VAC110-30-15 prior to a reinspection being conducted.

Regulations

F. No ~~license~~ facility permit shall be issued to sell controlled substances until adequate safeguards against diversion have been provided for the controlled substance storage and selling area and approved by the the inspector or board staff.

G. The licensee shall notify the board of any substantive changes to the approved selling and storage area including moving the location of the area, making structural changes to the area, or making changes to the alarm system for the area prior to the changes being made and pay a reinspection fee. An inspection shall be conducted prior to approval of the new or altered selling and storage area.

18VAC110-30-90. Physical standards.

Physical standards for the controlled substance selling and storage area:

1. The building in which the controlled substances selling and storage area is located shall be constructed of permanent and secure materials. Trailers and other movable facilities shall not be permitted;
2. There shall be an enclosed area of not less than 40 square feet that is designated as the controlled substances selling and storage area, which shall be used exclusively for storage, preparation, and dispensing. Records related to the sale of controlled substances may be maintained outside the selling and storage area with access limited to the licensee and those persons authorized to assist in the area. The work space used in preparation of the drugs shall be contained within the enclosed area. A controlled substance selling and storage area inspected and approved prior to November 3, 1993, shall not be required to meet the size requirement of this chapter;
3. Controlled substances maintained for ultimate sale shall be maintained separately from any other controlled substances maintained for other purposes. Controlled substances maintained for other purposes such as administration or samples may be stored within the selling and storage area provided they are clearly separated from the stock maintained for sale;
4. The selling and storage area, work counter space and equipment in the area shall be maintained in a clean and orderly manner;
5. A sink with hot and cold running water shall be available within ~~the immediate vicinity~~ 20 feet of the selling and storage area and not located within an examination room or restroom; and
6. The entire area described in this chapter shall be well lighted and ventilated; the proper storage temperature shall be maintained to meet official specifications for controlled substance storage.

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 (18VAC110-30)

~~Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts (rev. 8/07).~~

[Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts \(rev. 12/2015\)](#)

[Application for a Facility Permit for Practitioner\(s\) of the Healing Arts to Sell Controlled Substances \(rev. 12/2015\)](#)

V.A.R. Doc. No. R16-4532; Filed December 7, 2015, 11:22 a.m.

BOARD OF PSYCHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board of Psychology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Psychology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-30).**

18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (amending 18VAC125-30-20).

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Effective Date: January 27, 2016.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

The amendments provide for a one-time fee reduction applicable to the 2016 renewal cycle for clinical psychologist, applied psychologist, school psychologist, and school psychologist-limited licensees and sex offender treatment provider certificate holders.

18VAC125-20-30. Fees required by the board.

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists- limited
1. Registration of residency (per residency request)	\$50	--
2. Add or change supervisor	\$25	--
3. Application processing and initial licensure	\$200	\$85
4. Annual renewal of active license	\$140	\$70
5. Annual renewal of inactive license	\$70	\$35
6. Late renewal	\$50	\$25
7. Verification of license to another jurisdiction	\$25	\$25
8. Duplicate license	\$5	\$5
9. Additional or replacement wall certificate	\$15	\$15
10. Returned check	\$35	\$35
11. Reinstatement of a lapsed license	\$270	\$125
12. Reinstatement following revocation or suspension	\$500	\$500

B. Fees shall be made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. Between April 30, ~~2014~~ 2016, and June 30, ~~2014~~ 2016, the following renewal fees shall be in effect:

1. For an active license as a clinical, applied, or school psychologist, it shall be ~~\$95~~ \$84. For an inactive license as a clinical, applied, or school psychologist, it shall be ~~\$45~~ \$42.
2. For an active license as a school psychologist-limited, it shall be ~~\$45~~ \$42. For an inactive license as a school psychologist-limited, it shall be ~~\$23~~ \$21.

18VAC125-30-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of sex offender treatment providers:

Registration of supervision	\$50
Add or change supervisor	\$25
Application processing and initial certification fee	\$90
Certification renewal	\$75
Duplicate certificate	\$5
Late renewal	\$25
Reinstatement of an expired certificate	\$125
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time reduction in fee for renewal on June 30, 2014 <u>2016</u>	\$52 <u>\$45</u>

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the Board of Psychology. All fees are nonrefundable.

VA.R. Doc. No. R16-4553; Filed December 2, 2015, 9:37 a.m.

**TITLE 20. PUBLIC UTILITIES AND
TELECOMMUNICATIONS**

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-20, 20VAC5-315-30, 20VAC5-315-40, 20VAC5-315-70).

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

Effective Date: December 28, 2015.

Agency Contact: Armando J. deLeón, Utilities Engineer, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218,

Regulations

telephone (804) 371-9392, FAX (804) 371-9350, or email armando.deleon@scc.virginia.gov.

Summary:

Pursuant to Chapters 431 and 432 of the 2015 Acts of Assembly, § 56-594 of the Code of Virginia was amended to, among other things, increase the maximum generating capacity of an electrical generating facility owned or operated by an electric utility's nonresidential customer that may be eligible for participation in the utility's net energy metering program and specify that new net metering facilities may not exceed the customer's expected annual energy consumption based on 12 months of billing history. The amendments to the rules (i) increase the capacity limit for participation by nonresidential customers in the net energy metering program; (ii) eliminate the authorization for electric utilities to allow a higher capacity limit for nonresidential customers than that set forth in the statute; (iii) require that new net metering facilities may not exceed the customer's expected annual energy consumption based on 12 months of billing history; (iv) require any eligible customer-generator seeking to participate in net energy metering to notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility; and (v) clarify requirements regarding the customer-generator's obligation to bear the costs of equipment required for the interconnection to the supplier's electric distribution system.

Changes from the proposed regulation include new language to make clear that a customer seeking to add capacity to a generator must file a new application with the distribution company; a modification to the Interconnection Form to be provided by customer-generators to their electric distribution company to properly align with the process set forth in the statute; and several changes to the rules to ensure consistency in language and verb tense.

AT RICHMOND, NOVEMBER 24, 2015

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2015-00057

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ADOPTING REGULATIONS

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Existing Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Code of Virginia, establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth of Virginia. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net

metering customers, electric distribution companies, and energy service providers.

On June 5, 2015, the Commission entered an Order Establishing Proceeding ("Order") to consider revisions to the Existing Rules to reflect statutory changes enacted by Chapters 431 and 432 of the 2015 Acts of Assembly, which amended § 56-594 of the Code of Virginia to: (1) increase the capacity limit for participation by nonresidential customers in the net energy metering program from 500 kilowatts to one megawatt, for facilities placed into service after July 1, 2015; (2) eliminate the authorization for electric utilities to allow a higher capacity limit for nonresidential customers than that set forth in the statute; (3) require that the capacity of any generating facility installed after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous twelve months of billing history or an annualized calculation of billing history if twelve months of billing history is not available; (4) require any eligible customer-generator seeking to participate in net energy metering to notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility; and (5) clarify requirements regarding the customer-generator's obligation to bear the costs of equipment required for the interconnection to the supplier's electric distribution system.

The Commission appended to its Order proposed amendments ("Proposed Rules") revising the Existing Rules, which were prepared by the Staff of the Commission to reflect the revisions mandated by Chapters 431 and 432.

Notice of the proceeding and the Proposed Rules were published in the Virginia Register of Regulations on June 29, 2015. Additionally, each Virginia electric distribution company was directed to serve a copy of the Order upon each of their respective net metering customers. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before July 31, 2015.

Appalachian Power Company, Kentucky Utilities ("KU"), Virginia Electric and Power Company ("Virginia Power"), the Virginia Electric Cooperatives ("Cooperatives"),¹ Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"), Solar Services, Inc., the Sierra Club ("Sierra Club"), Joy Loving, Timothy Carr, Thomas Crockett, Joseph Schill, Carollyn Ogelsby, Charles Bier, Timothy Dolan, Mr. and Mrs. Edwin Craun, Mark Hanson, Mark Howard, Sue Krantz, Richard Good, William Marsh, Monica Rokicki, J. Daryl Byler, Jeanne Kirby, Walter Barry, Douglass McCallum, John M. Roberts, Odile Heisel, Brendan Breen, John Wray, Douglass Jones, Bryan Hantman and Mark Laity-Snyder filed comments. No one requested a hearing on the Proposed Rules.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the regulations attached hereto as Appendix A ("Revised Rules") should be adopted as final rules. To the extent parties have requested changes to the Proposed Rules that go beyond the scope of

the modifications required by Chapters 431 and 432, we will not expand the scope of this proceeding to consider issues beyond those required to implement the amendments to § 56-594 of the Code of Virginia. In addition, some commenters have objected to the requirements set forth in Chapters 431 and 432 or the language used in the statute. These matters are beyond the Commission's jurisdiction to remedy and will not be addressed herein.

Virginia Power notes that the Proposed Rules limit the capacity of a customer-owned generation facility, but do so in terms of kilowatt hours rather than kilowatts. While we recognize the concern of Virginia Power, the Proposed Rules correspond with the express direction of the General Assembly in Chapters 431 and 432. Similarly, we will decline to make the modification requested by Joy Loving, Timothy Carr, Thomas Crockett, and Joseph Schill, who note that the rated capacity of a generator is not necessarily the same as the output of the generator. The statute specifically directs the Commission to limit participation based on the capacity of the generator.

KU requests additional clarification regarding the Proposed Rules' applicability to customers adding capacity to an existing generator. We have revised the rules to make clear that a customer seeking to add capacity to a generator must file a new application with the distribution company. KU also requests that the rules require an additional application if the customer replaces a significant portion of the generator. If this replacement results in an increase in capacity, the rules will require a new application; if the capacity is not increased, no new application is required.

Carollyn Ogelsby, Joy Loving, Timothy Carr, Thomas Crockett, Charles Bier, Timothy Dolan, Mr. and Mrs. Edwin Craun, Mark Hanson, and Mark Howard all request that the capacity calculated by the distribution company allow for accommodation of future needs or future conversion of non-renewable customer-owned generation to renewable. Under the Revised Rules, any such conversion or modification would result in an increase in capacity, and thus a new application.

The Sierra Club, MDV-SEIA, Joy Loving and Thomas Schill request additional clarification regarding calculation of capacity based on a customer's previous twelve months of usage. We do not believe that additional clarification is necessary. The statute describes the requirement discussed by the Sierra Club as "based on usage during the previous 12 month period," which will be determined by the distribution company using existing methodologies for estimating usage. If a customer disagrees with the calculation, they can pursue an informal complaint with the Commission.

Several commenters request changes in the approval process and application form to be submitted to the distribution company by the customer. The Cooperatives note that there is a problem in the order of approval in 20 VAC 5-315-30 (A)(1) and (A)(2). There are two steps to the approval

process, but only one form is provided in the rules. We agree that there are two steps in the process under the rules. First, the customer must notify the utility of the generation to be interconnected, including the proposed unit's generating capacity. Second, the customer must verify that all requirements for interconnection have been met. The Revised Rules modify the form to properly align with the process set forth in the statute.

MDV-SEIA requests that the rules be modified to make clear that a distribution company may only reject the application if the customer fails to meet the requirements set forth in the statute. We do not believe this clarification is necessary. If a customer believes an application has been denied improperly, the customer may pursue an informal complaint with the Commission.

We will deny additional requests for changes to the rules regarding notification and approval. The Revised Rules clearly define a two-step process for interconnection of new customer-owned generation, and clearly delineate the notification required by each party, all consistent with the requirements set forth in the statute.

Virginia Power requests that the Commission eliminate the requirement in 20 VAC 5-315-40 for multiple signatures, requiring only one signature for certification and allowing the form to be automated electronically. We disagree with Virginia Power. The rules currently require multiple signatures for the safety of the customer and distribution company before the facility is interconnected. The Commission is unaware of any customer seeking a more streamlined process. Virginia Power also requests that the rules require that all equipment must meet Underwriters Laboratories and The Institute of Electrical and Electronics Engineers standards. This is already provided for in 20 VAC 5-315-70, and thus no further modification of the rules is necessary.

The Cooperatives and KU each request several changes to 20 VAC 5-315-40 (A)(7) to ensure consistency in language and verb tense. We agree, and have modified the Revised Rules to address these concerns.

Timothy Carr, Richard Good, and the Sierra Club each request additional clarification regarding the costs the generator must pay the utility for installation. We clarify that the costs in question are equipment and labor costs for work needed to interconnect with the distribution company. These costs are already addressed in the rules, and thus no modification is needed at this time.

Virginia Power requests that the Commission modify 20 VAC 5-315-70 to make clear that in addition to other costs noted in the rules, the customer-generator will be responsible for: (1) additional tests related to the interconnection; and (2) the costs of interconnection. We do not believe that additional clarification is necessary, as the costs to be paid by the customer are already defined by the rules.

Regulations

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Net Energy Metering, as shown in Appendix A to this Order, are hereby adopted and are effective as of December 28, 2015.

(2) A copy of this Order with Appendix A including the Regulations Governing Net Energy Metering shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before January 12, 2016, each utility in the Commonwealth subject to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia shall file with the Clerk of the Commission, in this docket, one (1) original document containing any revised tariff provisions necessary to implement the regulations adopted herein, and shall also file a copy of the document containing the revised tariff provisions with the Commission's Division of Energy Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: <http://www.scc.virginia.gov/case>.

(4) This docket shall remain open to receive the filings from electric utilities pursuant to Ordering Paragraph (3).

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all electric distribution companies licensed in Virginia as shown on Appendix B, hereto; and a copy shall be sent to the Commission's Office of General Counsel and Division of Energy Regulation.

¹ The filing entitled "Comments of the Virginia Electric Cooperatives" was submitted jointly on behalf of: A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, as well as the Virginia, Maryland & Delaware Association of Electric Cooperatives.

20VAC5-315-20. Definitions.

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

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the production and sale of plants and animals, products collected from plants and animals, or plant and animal services that are useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters of one utility that are

located at separate but contiguous sites and that may be aggregated into one account. This account shall be served under the appropriate tariff.

"Agricultural renewable fuel generator" or "agricultural renewable fuel generating facility" means one or more electrical generators that:

1. Use as their sole energy source solar power, wind power, or aerobic or anaerobic digester gas;
2. The agricultural net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on land owned or controlled by the agricultural business;
4. Are connected to the agricultural net metering customer's wiring on the agricultural net metering customer's side of the agricultural net metering customer's interconnection with the distributor;
5. Are interconnected and operated in parallel with an electric company's distribution facilities; and
6. Are used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular agricultural net metering customer or a net metering customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the agricultural net metering customer's or net metering customer's bills.

"Billing period credit" means, for a nontime-of-use agricultural net metering customer or a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the agricultural net metering customer's agricultural renewable fuel generator or generators or by the net metering customer's renewable fuel generator or generators in excess of the electricity supplied to the customer over the billing period. For time-of-use agricultural net metering customers or time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric distribution company" means the entity that owns and/or operates the distribution facilities delivering electricity to the premises of an agricultural net metering customer or a net metering customer.

"Energy service provider (supplier)" means the entity providing electricity supply service, either tariffed or competitive service, to an agricultural net metering customer or a net metering customer.

"Excess generation" means the amount of electrical energy generated in excess of the electrical energy consumed by the agricultural net metering customer or net metering customer over the course of the net metering period. For time-of-use agricultural net metering customers or net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" or "generating facility" means an electrical generating facility consisting of one or more renewable fuel generators or one or more agricultural renewable fuel generators that meet the criteria under the definition of "net metering customer" and "agricultural net metering customer," respectively.

"Net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 20 kilowatts for residential customers and not more than ~~500 kilowatts~~ one megawatt for nonresidential customers ~~unless the electric distribution company has chosen a higher capacity limit for nonresidential customers in its net metering tariff.~~ The generating facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the final interconnection of an agricultural net metering customer or a net metering customer's generating facility consisting of one or more agricultural renewable fuel generators or one or more renewable fuel generators, respectively, with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to an agricultural net metering customer operating an agricultural renewable fuel generating facility or a net metering customer operating a renewable fuel generating facility and measuring the difference, over the net metering period, between the electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, county, town, authority, or other political subdivision of the Commonwealth.

"Renewable Energy Certificate" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy by a generator.

"Renewable fuel generator" or "renewable fuel generating facility" means one or more electrical generators that:

1. Use renewable energy, as defined by § 56-576 of the Code of Virginia, as their total fuel source;
2. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on the net metering customer's premises and connected to the net metering customer's wiring on the net metering customer's side of its interconnection with the distributor;
4. Are interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's distribution facilities; and
5. Are intended primarily to offset all or part of the net metering customer's own electricity requirements. The capacity of any generating facility installed [on or] after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Time-of-use customer" means an agricultural net metering customer or net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

20VAC5-315-30. Company notification.

A. A prospective agricultural net metering customer or a prospective net metering customer (hereinafter referred to as "customer") shall submit a completed commission-approved notification form to the electric distribution company and, if different from the electric distribution company, to the energy service provider, according to the time limits in this subsection. If the prospective customer has contracted with another person to own or operate, or both, the generator or generators, then the notice will include detailed, current, and accurate contract information for the owner or operator, or both, including without limitation, the name and title of one or more individuals responsible for the interconnection and operation of the generator or generators, a telephone number, a physical street address other than a post office box, a fax number, and an email address for each such person.

1. A ~~prospective residential customer proposing to install an electrical generating facility with an alternating current capacity of 25 kilowatts or less shall submit the notification form at least 30 days prior to the date the prospective customer intends to interconnect the generating~~

Regulations

~~facility to the electric distribution company's distribution facilities. All equipment necessary to complete the interconnection of the generating facility shall have been installed prior to submitting the notification form shall notify its supplier and receive approval to interconnect prior to installation [of or adding capacity to] an electrical generating facility.~~ The electric distribution company shall have 30 days from the date of notification to determine whether the requirements contained in 20VAC5-315-40 have been met. The date of notification shall be considered to be the third day following the mailing of the notification form by the prospective customer.

2. A ~~prospective nonresidential customer proposing to install an electrical generating facility with an alternating current capacity greater than 25 kilowatts shall submit the notification form at least 60 days prior to the date the prospective customer intends to interconnect the generating facility to the electric distribution company's distribution facilities. All equipment necessary to complete the interconnection of the generating facility shall have been installed prior to submitting the notification form. The prospective customer should contact its electric distribution company prior to making financial commitments shall~~ notify its supplier and receive approval to interconnect prior to installation [of or adding capacity to] an electrical generating facility. The electric distribution company shall have 60 days from the date of notification to determine whether the requirements contained in 20VAC5-315-40 have been met. The date of notification shall be considered to be the third day following the mailing of the notification form by the prospective customer.

B. ~~Thirty-one days after the date of notification for a generating facility with an alternating current capacity of 25 kilowatts or less residential customer, and 61 days after the date of notification for a generating facility with an alternating current capacity greater than 25 kilowatts nonresidential customer,~~ the prospective customer may interconnect and begin operation of the generating facility unless the electric distribution company or the energy service provider requests a waiver of this requirement under the provisions of 20VAC5-315-80 prior to the 31st or 61st day, respectively. In cases where the electric distribution company or energy service provider requests a waiver, a copy of the request for waiver must be mailed simultaneously by the requesting party to the prospective customer and to the commission's Division of Energy Regulation.

C. The electric distribution company shall file with the commission's Division of Energy Regulation a copy of each completed notification form within 30 days of final interconnection.

20VAC5-315-40. Conditions of interconnection.

A. A prospective customer may begin operation of the generating facility on an interconnected basis when:

1. The customer has properly notified both the electric distribution company and energy service provider (in accordance with 20VAC5-315-30) of the customer's intent to interconnect.

2. If required by the electric distribution company's tariff, the customer has installed a lockable, electric distribution company accessible, load breaking manual disconnect switch at each of the facility's generators.

3. ~~[In cases where a]~~ The licensed electrician [who] installs the customer's generator or generators [~~the licensed electrician has certified~~ certifies], by signing the commission-approved notification form, that any required manual disconnect switch or switches [~~have been~~ are being] installed properly and that the generator or generators have been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code. If the customer or licensed Virginia Class A or B general contractor installs the customer's generator or generators, the signed final electrical inspection can be used in lieu of the licensed electrician's certification.

4. The vendor [~~has certified~~ certifies], by signing the commission-approved notification form, that the generator or generators being installed are in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003.

5. In the case of static inverter-connected generators with an alternating current capacity in excess of 10 kilowatts, the customer has had the inverter settings inspected by the electric distribution company. The electric distribution company may impose a fee on the customer of no more than \$50 for each generator that requires this inspection.

6. In the case of nonstatic inverter-connected generators, the customer has interconnected according to the electric distribution company's interconnection guidelines and the electric distribution company has inspected all protective equipment settings. The electric distribution company may impose a fee on the customer of no more than \$50 for each generator that requires this inspection.

7. ~~In the case of a customer's electrical generating facility having an alternating current capacity greater than 25 kilowatts,~~ the The following requirements shall be met before interconnection may occur:

a. Electric distribution facilities and customer impact limitations. A customer's generator shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the electric distribution company's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the generator on the performance of the electric distribution system, unless the customer

reimburses the electric distribution company for its cost [~~to modify any facilities needed~~] to accommodate the interconnection, including [~~any the~~] reasonable [~~costs cost~~] of equipment required for the interconnection.

b. Secondary, service, and service entrance limitations. The capacity of the generators at any one service location shall be less than the capacity of the electric distribution company-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the customer reimburses the electric distribution company for ~~its cost to modify any facilities needed~~ [all the] reasonable [~~costs cost~~] of equipment required [~~to accommodate for~~] the interconnection.

c. Transformer loading limitations. A customer's generator shall not have the ability to overload the electric distribution company's transformer, or any transformer winding, beyond manufacturer or nameplate ratings, unless the customer reimburses the electric distribution company for ~~its cost to modify any facilities needed~~ [all the] reasonable [~~costs cost~~] of equipment required [~~to accommodate for~~] the interconnection.

d. Integration with electric distribution company facilities grounding. The grounding scheme of each generator shall comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the electric distribution company. If requested by a prospective customer, the electric distribution company shall assist the prospective customer in selecting a grounding scheme that coordinates with its distribution system.

e. Balance limitation. The generator or generators shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the electric distribution company transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the customer reimburses the electric distribution company for ~~its cost to modify any facilities needed~~ [all the] reasonable [~~costs cost~~] of equipment required [~~to accommodate for~~] the interconnection.

B. A prospective customer shall not be allowed to interconnect a generator if doing so will cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within that customer's electric distribution company's Virginia service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year. In any case where a prospective customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within that electric distribution company's service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year, the electric distribution company shall, at the time it

becomes aware of the fact, send written notification to the prospective customer and to the commission's Division of Energy Regulation that the interconnection is not allowed. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to § 56-594 D of the Code of Virginia.

C. Neither the electric distribution company nor the energy service provider shall impose any charges upon a customer for any interconnection requirements specified by this chapter, except as provided under subdivisions A 5, 6, and 7 of this section, [~~and~~] 20VAC5-315-50 [, and 20VAC5-315-70] as related to additional metering.

D. A customer shall immediately notify the electric distribution company of any changes in the ownership of, operational responsibility for, or contact information for any of the customer's generators.

20VAC5-315-70. Additional controls and tests.

~~Except as provided in 20VAC5-315-40 A 5 and 6 and 20VAC5-315-50 as related to additional metering, no customer shall be required to pay for additional metering, testing or controls in order to interconnect with the electric distribution company or energy service provider. However, this chapter shall not preclude a customer, an electric distribution company or an energy service provider from installing additional controls or meters, or from conducting additional tests. The expenses associated with these additional meters, tests or equipment shall be borne by the party desiring the additional meters, tests or equipment. [~~A net metering customer's~~ An eligible customer-generator's] electrical generating system, and each electrical generating system of an [eligible] agricultural [~~net metering customer~~ customer-generator], shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this chapter, and to insure public safety, power quality, and reliability of the supplier's electric distribution system, [~~a net metering customer~~ an eligible customer-generator] or [eligible] agricultural [~~net metering customer~~ customer-generator] whose electrical generating system meets those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the supplier's electric distribution system, including costs, if any, to (i) install additional controls and (ii) perform additional tests.~~

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.

Regulations

FORMS (20VAC5-315)

~~Net Metering Interconnection Notification, Form NMIN
(rev. 7/14)~~

[Agricultural Net Metering or Net Metering Interconnection
Notification, Form NMIN \(eff. 12/2015\)](#)

VA.R. Doc. No. R15-4412; Filed December 4, 2015, 4:31 p.m.

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision - Revision B15

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 (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: The regulation of the board affected by this action is Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations, Article 51 of 9VAC5-40 (Existing Stationary Sources), Revision B15.

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](#) December 28, 2015, to January 27, 2016.

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: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since 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 above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision consists of adding new requirements for the case-by-case determination of reasonably available control technology (RACT) needed in order to meet the EPA 0.075 parts per million (ppm) National Ambient Air Quality Standard (NAAQS) for ozone. On March 6, 2015 (80 FR 12264), EPA amended subpart X to 40 CFR Part 51, which covers the implementation of the 2008 eight-hour ozone standard. The Northern Virginia Ozone

Nonattainment Area, which corresponds to the Northern Virginia Volatile Organic Compound (VOC) and Nitrogen Oxides (NOX) Emissions Control Areas and which is part of the Ozone Transport Region (OTR), must meet the RACT requirements of 40 CFR 51.1116. This section of the EPA rule specifies dates by when RACT must be implemented in the OTR. The state regulations must be consistent with the federal regulations in order for the state to implement RACT.

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, and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

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

BOARD FOR CONTRACTORS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Contractors conducted a small business impact review of **18VAC50-22, Board for Contractors Regulations**, and determined that this regulation should be retained in its current form. The Board for Contractors is publishing its report of findings dated December 1, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

General Notices/Errata

Sections 54.1-201.5 and 54.1-1102 of the Code of Virginia mandate the Board for Contractors to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The regulation does not have an adverse economic impact on small businesses. Rather, the regulation allows businesses that meet specific minimum competencies to become Virginia licensed contractors. No relevant complaints or comments were received. The regulation is clearly written and is easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2011, which resulted in no changes to the current regulations. The board discussed the regulation and, for the reasons stated, determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

FAIR HOUSING BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Fair Housing Board conducted a small business impact review of **18VAC62-10, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Fair Housing Board is publishing its report of findings dated December 2, 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. The most recent periodic review of the regulation occurred in 2012. On December 2, 2015, the board discussed the regulation and, for the reasons stated, determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Christine Martine, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email fairhousing@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Fair Housing Board conducted a small business impact review of **18VAC62-20, Fair Housing Board Certification Regulations**, and determined that this regulation should be retained in its current form. The Fair Housing Board is publishing its report of findings dated December 2, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Fair Housing Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Fair Housing Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a fair housing certificate. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2012. The board discussed the regulation and, for the reasons stated, determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Christine Martine, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email fairhousing@dpor.virginia.gov.

DEPARTMENT OF HEALTH

January 2016 - Drinking Water State Revolving Funds

The Virginia Department of Health (VDH) is pleased to announce several opportunities for funding drinking water infrastructure. All applications may be submitted year round; however, VDH will conduct one round of evaluations for requests submitted by the deadlines. Applications postmarked/received after the due date will be considered for funding in the following round. Funding is made possible by the Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Grant Fund (WSAG) Program (if funds are available). The FY 2017 DWSRF

Intended Use Plan will be developed using input on these issues.

(1) Public Comments and Set-Aside Suggestions Invited (Submission deadline April 1, 2016). To identify ways to improve the Program, VDH seeks meaningful input from the public, the waterworks industry, or other interested parties. Anyone may make comments or recommendations to support or revise the Program. Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water. VDH will consider all comments and suggestions submitted by April 1, 2016.

(2) Construction and refinance fund requests (Application deadline April 1, 2016). Owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, and the availability of matching funds. Readiness to proceed with construction is a key element. An instruction packet and construction project schedule are included. VDH anticipates a funding level of \$25 million.

(3) 1452(k) Source Water Protection Initiatives (Application deadline April 1, 2016). This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to community and nonprofit noncommunity waterworks to acquire land/conservation easements and to community waterworks, only to establish local voluntary incentive-based protection measures.

(4) Planning and Design Grants (Application deadlines April 1, 2016 and September 1, 2016). Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to \$50,000 per project for small, financially stressed, community waterworks serving fewer than 10,000 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds. There are two application deadlines for planning grant application submittals: April 1, 2016 and September 1, 2016. VDH intends to conduct two rounds of evaluations and offers.

The VDH's DWSRF Program Design Manual describes the features of the above opportunities for funding. After receiving public input, VDH will develop a draft intended use plan (IUP) for public review and comment. When developed, the draft IUP will describe specific details for use of the

funds. A public meeting is planned and written comments will be accepted before submittal of a final version to the U.S. Environmental Protection Agency for approval.

Applications, set-aside suggestion forms, Program Design Manuals, and information materials are available on the VDH website at <http://www.vdh.virginia.gov/odw/financial/dwfundingprogramdetails.htm>. This information can also be obtained from and comments can be sent to Steven Pelli, PE, FCAP Director, by calling (804) 864-7500, faxing (804) 864-7521, or writing to Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219.

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.

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/cumulatab.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

MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-290. Marking of Leased Oyster Planting Ground.**

Publication: 32:7 VA.R. 1138-1139 November 30, 2015.

Correction to Final Regulation:

Page 1138, 4VAC20-290-15, insert as the first sentence of the section before "Active work areas":

General Notices/Errata

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

VA.R. Doc. No.R16-4515; Filed December 16, 2015, 9:36 a.m.

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22VAC40-210. Permanency Services - Prevention, Foster Care, Adoption and Independent Living.

Publication: 32:7 VA.R. 1293-1312 November 30, 2015.

Correction to Proposed Regulation:

Page 1302, 22VAC40-201-40, column 1, replace subsection ~~E. F.~~ with the following:

~~E. F.~~ When a child is to be placed in a home in the local department is considering placement of a child in a foster or adoptive home approved by another local department's jurisdiction department within Virginia, the local department intending to place the child shall ~~notify the local department that approved the home that the home is being considered for the child's placement.~~ The local department consult with the approving local department about the placement of the child and shall also verify that the home is still approved ~~and shall consult with the approving local department about placement of the child.~~

VA.R. Doc. No.R13-3751; Filed December 8, 2015, 2:25 p.m.