



VIRGINIA

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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. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Noah P. Sullivan**; **Mark J. Vucci**.

Staff of the Virginia Register: **Karen Perrine**, Acting Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **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>).

January 2018 through January 2019

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 (Tuesday)	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September 17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 (Monday)	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 (Friday)	January 7, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board has WITHDRAWN the Notice of Intended Regulatory Action for **6VAC20-50, Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers**, which was published in [33:20 VA.R. 2181 May 29, 2017](#). The notice is being withdrawn as additional time is needed to review regulatory content.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

VA.R. Doc. No. R17-5020; Filed December 20, 2017, 2:52 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL 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 State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (Rev. E17) (amending 9VAC5-50-400).**

9VAC5-60. Hazardous Air Pollutant Sources (Rev. E17) (amending 9VAC5-60-60, 9VAC5-60-90).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Effective Date: February 21, 2018.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2017.

Article 5

Environmental Protection Agency Standards of Performance for New Stationary Sources (Rule 5-5)

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The

40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2016)~~ (2017) in effect July 1, ~~2016~~ 2017. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

Part II

Emission Standards

Article 1

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2016)~~ (2017) in effect July 1, ~~2016~~ 2017. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

Article 2

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The

40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2016)~~ (2017) in effect July 1, ~~2016~~ 2017. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

VA.R. Doc. No. R18-5328; Filed December 28, 2017, 8:48 a.m.

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-580. Underground Storage Tanks: Technical Standards and Corrective Action Requirements.**

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, email melissa.porterfield@deq.virginia.gov.

FORMS (9VAC25-580)

~~Notification for Underground Storage Tanks (USTs), Virginia DEQ Water Form 7530-2 (rev. 1/2003).~~

~~Notification Form, EPA Form 7530-1 (rev. 6/2015), 80 CFR 41670~~

[Notification for Underground Storage Tanks \(USTs\), Virginia DEQ Water Form 7530-3 \(rev. 1/2018\)](#)

[Notification for Underground Storage Tanks \(USTs\), Virginia DEQ Water Form 7530-3 instructions \(rev. 1/2018\)](#)

[Notification for Underground Storage Tanks Change of Ownership by Former Owner, Virginia DEQ Water Form 7530-3A \(rev. 4/2016\)](#)

[Notification for Underground Storage Tanks Change of Ownership by Former Owner, Virginia DEQ Water Form 7530-3A instructions \(rev. 4/2016\)](#)

[Notification for Underground Storage Tanks Multiple Facility Amendment by Currently Registered Owner, Virginia DEQ Water Form 7530-3B \(rev. 4/2016\)](#)

[Notification for Underground Storage Tanks Multiple Facility Amendment by Currently Registered Owner, Virginia DEQ Water Form 7530-3B instructions \(rev. 4/2016\)](#)

[Notification for Underground Storage Tanks \(USTs\) Change of Ownership for UST Facility, Virginia DEQ Water Form 7530-3C \(rev. 1/2018\)](#)

VA.R. Doc. No. R18-5236; Filed January 3, 2018, 8:15 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-60, 9VAC25-720-80, 9VAC25-720-90, 9VAC25-720-110).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e).

Effective Date: February 21, 2018.

Agency Contact: William Isenberg, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4228, or email william.isenberg@deq.virginia.gov.

Summary:

The amendments to the state's Water Quality Management Planning Regulation (9VAC25-720) include (i) adding one new total maximum daily load (TMDL) wasteload allocation in the James River Basin, 10 new TMDL wasteload allocations in the Roanoke River Basin, and one new TMDL wasteload allocation in the Tennessee-Big Sandy River Basin; (ii) revising three TMDL wasteload allocations in the Chesapeake Bay - Small Coastal - Eastern Shore River Basin; and (iii) changing a non-TMDL wasteload allocation within the Roanoke River Basin for an expansion of the South Hill wastewater treatment plant (VPDES Permit No. VA0069337).

Regulations

9VAC25-720-60. James River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
EDITOR'S NOTE: Rows numbered 1 through 160 in this TMDL table in subsection A of 9VAC25-720-60 are not amended; therefore, the text of those rows is not set out.							
<u>161.</u>	<u>Woods Creek</u>	<u>Bacteria TMDL Development and a Proactive Approach to Address the Benthic Impairment for Woods Creek, Rockbridge County and City of Lexington, Virginia</u>	<u>Rockbridge, City of Lexington</u>	<u>I35R</u>	<u>E.coli</u>	<u>3.97E+11</u>	<u>cfu/year</u>
Notes: ¹ The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria. ² GS means growing season.							

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-60 are not amended; therefore, the text of those subsections is not set out.

9VAC25-720-80. Roanoke River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
EDITOR'S NOTE: Rows numbered 1 through 108 in this TMDL table in subsection A of 9VAC25-720-80 are not amended; therefore, the text of those rows is not set out.							
<u>109.</u>	<u>Bluestone Creek</u>	<u>Benthic Total Maximum Daily Load (TMDL) Development for the Kits Creek Watershed</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L77R</u>	<u>E. coli</u>	<u>1.37E+11</u>	<u>cfu/year</u>
<u>110.</u>	<u>Little Bluestone Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L77R</u>	<u>E. coli</u>	<u>1.49E+12</u>	<u>cfu/year</u>
<u>111.</u>	<u>Upper Allen Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L78R</u>	<u>E. coli</u>	<u>2.25E+11</u>	<u>cfu/year</u>
<u>112.</u>	<u>Layton Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L78R</u>	<u>E. coli</u>	<u>1.94E+11</u>	<u>cfu/year</u>

<u>113.</u>	<u>Lower Allen Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L78R</u>	<u>E. coli</u>	<u>1.28E+12</u>	<u>cfu/year</u>
<u>114.</u>	<u>Kettles Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L78R</u>	<u>E. coli</u>	<u>5.63E+10</u>	<u>cfu/year</u>
<u>115.</u>	<u>Cotton Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L78R</u>	<u>E. coli</u>	<u>6.59E+10</u>	<u>cfu/year</u>
<u>116.</u>	<u>Smith Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L79R</u>	<u>E. coli</u>	<u>1.98E+11</u>	<u>cfu/year</u>
<u>117.</u>	<u>Lizard Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L81R</u>	<u>E. coli</u>	<u>9.67E+10</u>	<u>cfu/year</u>
<u>118.</u>	<u>Unnamed tributary to Allen Creek</u>	<u>Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds</u>	<u>Mecklenburg, Charlotte, Brunswick</u>	<u>L78R</u>	<u>E. coli</u>	<u>4.84E+09</u>	<u>cfu/year</u>

Notes:

¹The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

²WLAs from the Dan River TMDL report represent the WLA for the watershed, which may include North Carolina waters in addition to Virginia waters. Virginia permits will be issued in accordance with the Virginia water quality standard.

B. Non-TMDL wasteload allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAW-L04R	VA0072389	Oak Ridge Mobile Home Park	001	Falling Creek UT	0.32	BOD ₅	0.85	KG/D

Regulations

VAW-L04R	VA0025020	Roanoke City Regional Water Pollution Control Plant	001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	318	KG/D
						TKN, OCT-MAR	636	KG/D
			001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	416	KG/D
						TKN, OCT-MAR	832	KG/D
			001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	469	KG/D
						TKN, OCT-MAR	939	KG/D
VAW-L04R	VA0077895	Roanoke Moose Lodge	001	Mason Creek	7.79	BOD ₅ , JUN-SEP	0.24	KG/D
						TKN, JUN-SEP	0.09	KG/D
VAW-L07R	VA0020842	Bedford County School Board-Stewartsville Elementary School	001	Nat Branch, UT	0.59	BOD ₅	0.5	KG/D
VAW-L14R	VA0029254	Ferrum Water and Sewage Auth. - Ferrum Sewage Treatment Plant	001	Story Creek	9.78	BOD ₅	14.2	KG/D
VAW-L14R	VA0085952	Rocky Mount Town Sewage Treatment Plant	001	Pigg River	52	BOD ₅	133	KG/D
VAW-L14R	VA0076015	Ronile Incorporated	001	Pigg River	57.24	BOD ₅	14.8	KG/D
VAW-L21R	VA0063738	Bedford County School Board - Staunton River High School	001	Shoulder Run, UT	0.95	BOD ₅	1.8	KG/D
VAW-L21R	VA0020869	Bedford County School Board - Thaxton Elementary School	001	Wolf Creek, UT	0.35	BOD ₅	0.31	KG/D
VAW-L22R	VA0023515	Blue Ridge Regional Jail Auth. - Moneta Adult Detention Facility STP	001	Mattox Creek, UT	3.76	BOD ₅	1.66	KG/D

Regulations

VAW-L25R	VA0020851	Bedford County School Board - Otter River Elementary School	001	Big Otter River, UT	1.15	BOD ₅	0.4	KG/D
VAW-L26R	VA0022390	Bedford City - Sewage Treatment Plant	001	Little Otter River	14.36	BOD ₅	52.8	KG/D
VAW-L26R	VA0020818	Bedford County School Board - Body Camp Elementary	001	Wells Creek, UT	2.22	BOD ₅	0.4	KG/D
VAW-L27R	VA0020826	Bedford County School Board - New London Academy	001	Buffalo Creek, UT	0.67	BOD ₅	0.39	KG/D
VAC-L29R	VA0031194	Briarwood Village Mobile Home Park STP	001	Smith Branch, UT	2.82	BOD ₅	1.3	KG/D
VAC-L35R	VA0023965	Campbell Co Util & Serv Auth. - Rustburg	001	Mollys Creek	17.81	BOD ₅	8.13	KG/D
VAC-L39R	VA0084433	Drakes Branch WWTP	001	Twittys Creek	6.04	BOD ₅	6.4	KG/D
VAC-L39R	VA0024058	Keysville WWTP	001	Ash Camp Creek	7.63	CBOD ₅ , MAY-NOV	32.1	KG/D
						TKN, MAY-NOV	7.57	KG/D
AC-L39R	VA0050822	Westpoint Stevens Inc Drakes Branch	001	Twittys Creek	7.22	BOD ₅	6.31	KG/D
VAW-L43R	VA0022985	Stuart Town - Sewage Treatment Plant	001	South Mayo River	30.78	BOD ₅	63.5	KG/D
VAW-L54R	VA0069345	Henry Co Public Service Auth. - Lower Smith River STP	001	Smith River	19.4	BOD ₅	257	KG/D
VAW-L54R	VA0025305	Martinsville City Sewage Treatment Plant	001	Smith River	22.69	BOD ₅	681	KG/D
VAC-L60R	VA0060593	Danville City - Northside	001	Dan River	53.32	BOD ₅ , JUN-OCT	1907	KG/D
						TKN, JUN-OCT	1817	KG/D
VAC-L66R	VA0020524	Town of Chatham STP	001	Cherrystone Creek	2.49	CBOD ₅	64.8	KG/D
						TKN	38.9	KG/D

Regulations

VAC-L75L	VA0020168	Clarksville WWTP	001	Blue Creek/John H. Kerr Reservoir	0.1	BOD ₅	59.5	KG/D
VAC-L77R	VA0076881	Chase City Regional WWTP	001	Little Bluestone Creek	13.67	CBOD ₅ , MAY-NOV	29.5	KG/D
						TKN, MAY-NOV	9.5	KG/D
VAC-L78R	VA0026247	Boydton WWTP	001	Coleman Creek	3.79	CBOD ₅ , MAY-NOV	17.7	KG/D
						TKN, MAY-NOV	4.1	KG/D
VAC-L79R	VA0069337	South Hill WWTP	001	Flat Creek	8.95	CBOD ₅ , APR-NOV	60.6 113.5	KG/D
						TKN, APR-NOV	45	KG/D
						CBOD ₅ , DEC-MAR	204	KG/D
						TKN, DEC-MAR	56.8	KG/D

9VAC25-720-90. Tennessee-Big Sandy River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
EDITOR'S NOTE: Rows numbered 1 through 77 in this TMDL table in subsection A of 9VAC25-720-90 are not amended; therefore, the text of those rows is not set out.							
78.	<u>McClure River</u>	<u>Bacteria TMDL for McClure River Dickenson County, Virginia</u>	<u>Dickenson</u>	<u>Q11R</u>	<u>E. coli</u>	<u>4.56E+12</u>	<u>cfu/year</u>

Notes:

¹The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

EDITOR'S NOTE: Subsection B of 9VAC25-720-90 is not amended; therefore, the text of the subsection is not set out.

9VAC25-720-110. Chesapeake Bay -- Small Coastal -- Eastern Shore River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
1.	Parker Creek	Benthic Total Maximum Daily Load (TMDL) Development for Parker Creek, Virginia	Accomack	D03E	Total phosphorus	664.2	LB/YR

Regulations

2.	Pettit Branch	Benthic Total Maximum Daily Load (TMDL) Development for the Pettit Branch Watershed	Accomack	D02R	Total phosphorus	0.01	LB/D
3.	Mill Creek	Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, Virginia	Northampton	D06R	Organic carbon as TC	0.31	LB/D
4.	Mill Creek	Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, Virginia	Northampton	D06R	Nutrients as TN	0.10	LB/D
5.	Folly Creek	Total Maximum Daily Loads of Pathogens for Folly Creek in Accomack County, Virginia	Accomack	D03E	Total nitrogen	2.6	LBS/D
6.	Gargathy Creek	Total Maximum Daily Loads of Dissolved Oxygen and Pathogens for Gargathy Creek (Upper, Lower, and Riverine Portions) in Accomack County, Virginia	Accomack	D03E	Total nitrogen	1.9	LBS/D
7.	Assawoman Creek	Bacteria Total Maximum Daily Load (TMDL) Development for the Assawoman Creek Watershed	Accomack	D02	Fecal coliform	1.12E+09	MPN/day

Regulations

8.	Back River	Total Maximum Daily Loads of Bacteria for Back River in <u>York County and the Cities of Hampton, Poquoson, and Newport News, Virginia</u>	Hampton, Poquoson, York	C07	Fecal coliform	3.87E+14 <u>4.38E+14</u>	counts/year
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EDITOR'S NOTE: Rows numbered 9 through 109 in this TMDL table in subsection A of 9VAC25-720-110 are not amended; therefore, the text of those rows is not set out.

110.	Back Creek	Total Maximum Daily Loads of Bacteria for Poquoson River and Back Creek in the <u>City of Poquoson and in York County, Virginia</u>	York	C07	Fecal coliform	1.41E+13 <u>1.76E+13</u>	counts/year
111.	Poquoson River	Total Maximum Daily Loads of Bacteria for Poquoson River and Back Creek in the <u>City of Poquoson and in York County, Virginia</u>	Poquoson, York	C07	Fecal coliform	1.12E+14 <u>3.01E+14</u>	counts/year
112.	Free School Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Severn River	Gloucester	C06	Fecal coliform	N/A ²	MPN/day
113.	Heywood Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Severn River	Gloucester	C06	Fecal coliform	N/A ²	MPN/day

Regulations

114.	Northwest Branch Severn River	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Severn River	Gloucester	C06	Fecal coliform	N/A ²	MPN/day
115.	Thorntons Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Severn River	Gloucester	C06	Fecal coliform	N/A ²	MPN/day
116.	Vaughans Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Severn River	Gloucester	C06	Fecal coliform	N/A ²	MPN/day
117.	Greenbackville Harbor	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Chincoteague Bay	Accomack	D01	Fecal coliform	N/A ²	MPN/day
118.	Swan Gut Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Chincoteague Bay	Accomack	D01	Fecal coliform	N/A ²	MPN/day
119.	The Gulf, upper	Total Maximum Daily Load (TMDL) Report for	Northampton	C14	Fecal coliform	N/A ²	MPN/day

Regulations

		Shellfish Areas Listed Due to Bacterial Contamination - The Gulf					
120.	Pungoteague Creek (Warehouse Prong and Bull Run Creek)	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Pungoteague Creek	Accomack	C12	Fecal coliform	N/A ²	MPN/day
121.	Taylor Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Pungoteague Creek	Accomack	C12, C13	Fecal coliform	N/A ²	MPN/day
122.	Fox Mill Run	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Ware River	Gloucester	C05	Fecal coliform	N/A ²	MPN/day
123.	Ware River	Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination - Ware River	Gloucester	C05	Fecal coliform	N/A ²	MPN/day
124.	Wilson Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Areas	Gloucester	C05, C06	Fecal coliform	N/A ²	MPN/day

Regulations

		Listed Due to Bacterial Contamination - Ware River					
125.	Cockrell Creek	Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Contamination - Cockrell Creek	Northumberland	C01	Fecal coliform	1.49E+11	cfu/day
126.	Red Bank Creek, riverine	Bacteria TMDL Development in Red Bank Creek and Machipongo River, Virginia	Accomack, Northampton	D04R	E. coli	1.08E+8	cfu/yr
127.	Red Bank Creek, estuarine	Bacteria TMDL Development in Red Bank Creek and Machipongo River, Virginia	Accomack, Northampton	D04E	Enterococci	3.93E+6	cfu/yr
128.	Machipongo River, estuarine	Bacteria TMDL Development in Red Bank Creek and Machipongo River, Virginia	Accomack, Northampton	D04E	Enterococci	9.03E+6	cfu/yr
129.	Red Bank Creek, shellfish	Bacteria TMDL Development in Red Bank Creek and Machipongo River, Virginia	Accomack, Northampton	D04E	Fecal coliform	5.10E+11	counts/yr
130.	Machipongo River, shellfish	Bacteria TMDL Development in Red Bank Creek and Machipongo River, Virginia	Accomack, Northampton	D04E	Fecal coliform	2.04E+12	counts/yr

Regulations

Notes:

¹The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

²There were no point source dischargers in the modeled TMDL area.

³This WLA represents only the Virginia portion of the watershed.

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-110 are not amended; therefore, the text of those subsections is not set out.

V.A.R. Doc. No. R18-5316; Filed December 29, 2017, 7:55 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9VAC25-860. **General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Potable Water Treatment Plants (amending 9VAC25-860-10, 9VAC25-860-15, 9VAC25-860-20, 9VAC25-860-40 through 9VAC25-860-70).**

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

Small Business Impact Review Report of Findings: This final regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Effective Date: July 1, 2018.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email elleanore.daub@deq.virginia.gov.

Summary:

The regulatory action reissues the existing Virginia Pollutant Discharge Elimination System general permit that expires on June 30, 2018. The general permit contains

limitations and monitoring requirements for point source discharge of process wastewaters resulting from the production of potable water. This general permit regulation is being reissued so that these facilities may continue to discharge.

Substantive changes to the existing regulation include (i) removing the requirement to submit a groundwater monitoring plan with the registration if the plan has been previously submitted and approved; (ii) allowing for electronic submittals of registration statements; (iii) defining how to estimate discharge flow as "a technical evaluation of the sources contributing to the discharge"; (iv) removing the allowance for reduced monitoring for reverse osmosis plants; (v) requiring a corrective action plan when groundwater is contaminated; (vi) changing the requirement to conduct whole effluent toxicity testing from facilities with a one-time daily maximum flow of greater than or equal to 50,000 gallons per day to facilities with a daily maximum flow rate greater than or equal to 50,000 gallons per day over three consecutive monitoring periods; (vii) revising the "continuation of permit coverage" subsection so it is generic and not dependent on specific dates, which were removed but allowances for continuance of permit coverage are the same or can be implemented the same; (viii) eliminating the requirement for grab samples to occur within 15 minutes of commencement of the discharge when the discharge is continuous; (ix) eliminating the requirement that the daily inspection of the effluent and the facility must be done when the facility is discharging; and (x) clarifying throughout the regulation where the requirements apply to the process wastewater treatment or discharge versus the drinking water treatment.

CHAPTER 860

~~GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES)~~ GENERAL PERMIT FOR POTABLE WATER TREATMENT PLANTS

9VAC25-860-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9VAC25-31, the VPDES Permit Regulation, unless the

context clearly indicates otherwise, except that for the purposes of this chapter:

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

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

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

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

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

"Potable water treatment plant" means an establishment engaged in producing water for domestic, commercial, or industrial use as designated by North American Industry Classification System (NAICS) Code 221310 - Water Supply and Irrigation Systems, (Executive Office of the President, Office of Management and Budget, United States, 2017), Standard Industrial Classified (SIC) Code 4941 - Water Supply (Office of Management and Budget (OMB) SIC Manual, 1987), or others as approved by the board.

"Reverse osmosis" means a method of membrane treatment designed to remove salts and low-molecular weight solutes and remove all contaminants down to 0.0001 µm (microns) in size. Reverse osmosis methods apply pressure in excess of osmotic pressure to force water through a semi-permeable

membrane from a region of high salt concentration to a region of lower salt concentration.

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

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

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

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated [herein in this chapter], that regulation shall be as it exists and has been published as of July 1, ~~2012~~ 2017.

9VAC25-860-20. Purpose.

This general permit regulation governs the discharge of process wastewater from potable water treatment plants to surface waters.

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

This general VPDES permit will become effective on ~~December 24, 2013~~ July 1, 2018, and will expire on June 30, ~~2018~~ 2023. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-860-50.

9VAC25-860-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-860-60 and that registration statement is accepted by the board;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-860-70; and
4. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

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

Regulations

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;
3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30;
4. The discharge is not consistent with the assumptions and requirements of an approved TMDL;
5. The facility is subject to the requirements of 9VAC25-820-70 Part I G 1 (General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia - Requirement to Register); and
6. An owner applying for coverage under this general permit submits the results of representative whole effluent toxicity testing of the discharge, and the results demonstrate that there is a reasonable potential for toxicity.

C. Compliance with this general permit constitutes compliance [, for purposes of enforcement,] with [§§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of] the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. [~~Any owner that was authorized to discharge under the potable water treatment plant general permit issued in] 2008 [~~2013 and that submits a complete registration statement on or before] December 24, 2013 [~~June 30, 2018, is authorized to continue to discharge under the terms of the] 2008 [~~2013 general permit until such time as the board either Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to discharge until such time as the board either]~~]:
 - a. Issues coverage to the owner under this general permit; or
 - b. Notifies the owner that the discharge is not eligible for coverage under this general permit.~~~~~~

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

- a. Initiate enforcement action based upon the 2008 [~~2013] general permit [coverage that has been continued];~~
- b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by [~~administratively the~~] continued coverage under the terms of the 2008 [~~2013] general permit or be subject to enforcement action for discharging without a permit;~~
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-860-60. Registration statement.

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

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

2. Existing facilities.

- a. Any owner covered by an individual VPDES permit who is proposing to be covered by this general permit shall submit a complete registration statement at least 270 days prior to the expiration date of the individual VPDES permit.
- b. Any owner that was authorized to discharge under the [~~expiring or expired~~] general VPDES permit [~~that became effective on December 24,] 2008 [~~2013,] and who intends to continue coverage under this general permit shall submit a complete registration statement to the board [~~on or before] October 24, 2013 [May 1, 2018 at least 60 days prior to the expiration date of the existing permit or a later submittal established by the board]~~].~~~~
- c. Any owner of a potable water treatment plant not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement.

B. Late registration statements. Registration statements for existing owners covered under subdivision A 2 b of this section will be accepted after ~~December 24, 2013~~ [June 30, 2018 the expiration date of the permit], but authorization to discharge will not be retroactive. [~~Owners described in subdivision A 2 b of this section that submit registration statements after~~] ~~October 24, 2013~~ [May 1, 2018, are authorized to discharge under the provisions of 9VAC25-860-50 D if a complete registration statement is submitted on or before] ~~December 24, 2013~~ [June 30, 2018.]

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

1. Facility name and street address, owner name, mailing address, telephone number, and email address (if available);
2. Operator or other contact name, mailing address, telephone number, and email address (if available);
3. The nature of the business;
4. A USGS 7.5 minute topographic map or equivalent computer generated map showing the facility location extending to at least one mile beyond the property boundary and the location of the discharge ~~point(s)~~ points;
5. The receiving waters of the discharge;
6. The outfall number, latitude and longitude, the daily maximum actual or projected [process] wastewater flow rate (millions of gallons per day or gallons per day), typical volume, duration of discharges, and frequency of discharge;
7. The type of water treatment (e.g., conventional, microfiltration, ultrafiltration, nanofiltration, reverse osmosis, or a combination of these) and, if applicable, a description of any treatment type changes since the previous registration statement was submitted;
8. The number of any existing VPDES permit that authorizes discharges from the potable water treatment plant;
9. If the existing VPDES permit contains a groundwater monitoring plan requirement, a copy of the board-approved plan ~~should~~ shall be submitted unless the plan has been previously submitted and approved and remains unchanged. If a plan has been previously approved, cite the plan and date of approval;
10. Information regarding the lining of any settling basins or lagoons, whether such units are earthen lined, and if so, whether the linings have a permeability of no greater than 10^{-6} cm/sec;
11. The results of any whole effluent toxicity evaluation required by the ~~2008~~ 2013 potable water treatment plant general permit regulation, 9VAC25-860-50 A 3, or the

current individual permit, if not previously submitted to the department;

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

13. Information on chemicals used in the production of drinking water and process wastewater treatment, to include (i) a description of chemicals, (ii) a proposed or actual schedule and quantity of chemical usage ~~and, if applicable~~, (iii) a description of any chemical or chemical usage changes since the previous registration statement was submitted, and (iv) a description of which chemicals have no likelihood of entering the process wastewater;

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

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

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

17. The following certification:

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

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

E. The registration statement shall be delivered to the department's regional office where the industrial facility is located by either postal or electronic mail.

Regulations

9VAC25-860-70. General permit.

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

General Permit No.: VAG64

Effective Date: ~~December 24, 2013~~ July 1, 2018

Expiration Date: June 30, ~~2018~~ 2023

GENERAL PERMIT FOR POTABLE WATER
TREATMENT PLANTS

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

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

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I - Effluent Limitations ~~and~~, Monitoring Requirements, and Special Conditions, and Part II - Conditions Applicable ~~To~~ to All VPDES Permits, as set forth ~~herein~~ in this general permit.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. Facilities other than reverse osmosis or nanofiltration plants.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater from ~~outfall(s)~~ outfalls: _____

Such discharges shall be limited and monitored as specified below:

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

NL - No Limitation, monitoring requirement only

NA - Not applicable

⁽¹⁾ Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

⁽²⁾ Reported estimated flow is to be based on the technical evaluation of the sources contributing to the discharge.

⁽²⁾⁽³⁾ Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the minimum and maximum effluent limitations.

⁽²⁾⁽⁴⁾ Composite - For continuous discharges, five grab samples collected at hourly intervals. For batch discharges, five grab samples taken at evenly placed intervals until the discharge ceases, or until a minimum of five grab samples have been collected. For [~~continuous or~~] batch discharges, the first grab shall occur within 15 minutes of commencement of the discharge.

⁽⁴⁾⁽⁵⁾ Total residual chlorine limit shall only be applicable [~~to facilities that use chlorine in the treatment process~~ if chlorine is present in the process wastewater].

PART I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

2. Reverse osmosis and nanofiltration plants.

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

Such discharges shall be limited and monitored as specified below:

EFFLUENT CHARACTERISTICS	EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Minimum	Maximum	Frequency ⁽⁴⁾	Sample Type
Flow (MGD)	NL	NA	NL	1/ Month	Estimate ⁽¹⁾
pH (SU) ⁽²⁾	NA	6.0	9.0	1/ Month	Grab
Total Dissolved Solids (mg/l)	NA	NA	NL	1/ Month	Composite ⁽³⁾
Dissolved Oxygen (mg/l) ⁽⁴⁾	NA	4.0	NA	1/ Month	Grab

NL - No limitation, monitoring requirement only

NA - Not applicable

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

⁽¹⁾ Reported estimated flow is to be based on the technical evaluation of the sources contributing to the discharge.

⁽²⁾ Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the minimum and maximum effluent limitations.

⁽³⁾ Composite - For continuous discharges, five grab samples collected at hourly intervals. For batch discharges, five grab samples taken at evenly placed intervals until the discharge ceases or until a minimum of five grab samples have been collected. For [~~continuous or~~] batch discharges, the first grab shall occur within 15 minutes of commencement of the discharge.

⁽⁴⁾ Where the Water Quality Standards (9VAC25-260) establish alternate standards for dissolved oxygen in waters receiving the discharge, those standards shall be the minimum effluent limitations.

B. Special conditions.

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

2. No domestic sewage discharges are permitted under this general permit.

3. No chemicals used for water and process wastewater treatment, other than those listed on the owner's accepted registration statement, are allowed. Prior approval shall be obtained from the board before any changes are made to the ~~chemical(s)~~ chemicals, in order to assure protection of water quality and beneficial uses of the waters receiving the discharge. The owner shall indicate whether the chemical is likely to enter state waters through the process wastewater discharge.

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

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

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

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

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

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

(4) The level established by the board.

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

(1) Five hundred micrograms per liter;

(2) One milligram per liter for antimony;

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

(4) The level established by the board.

7. If a board-approved groundwater monitoring plan was submitted with the registration statement, the permittee shall continue to sample and report in accordance with the plan. The approved plan shall be an enforceable part of this permit. The board or the owner, with board approval, may evaluate the groundwater monitoring data and demonstrate that revisions to or the cessation of the groundwater monitoring are appropriate. If the department determines that monitoring indicates that groundwater is contaminated, the permittee shall submit a corrective action plan within 60 days of being notified by the regional office. The plan shall set forth the steps to ensure the contamination source is eliminated or that the contaminant plume is contained on the permittee's property. In addition, based on the extent of contamination, a risk analysis may be required. Once approved, this plan or analysis shall become an enforceable part of this permit.

8. Compliance reporting under Part I A.

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

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

b. Reporting.

(1) Monthly average. Compliance with the monthly average limitations and reporting requirements for the parameters listed in subdivision 8 a of this subsection shall be determined as follows: all concentration data below the QL listed above in subdivision 8 a shall be treated as zero. All concentration data equal to or above the QL listed in subdivision 8 a shall be treated as it is reported. An arithmetic average shall be calculated using all reported data for the month, including the defined zeros. This arithmetic average shall be reported on the

Discharge Monitoring Report (DMR) as calculated. If all data are below the QL, then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL, then report "<QL" for the quantity. Otherwise use the calculated concentration.

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

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

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

9. Operation and ~~Maintenance Manual Requirement~~ maintenance manual requirement.

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

b. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. Within 30 days of a request by the department, the current [~~O & M Manual~~ O&M manual] shall be submitted to the board for review and

approval. The permittee shall operate the [process wastewater] treatment works in accordance with the ~~O & M Manual~~ O&M manual. Noncompliance with the ~~O & M Manual~~ O&M manual shall be deemed a violation of the permit.

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

- (1) Techniques to be employed in the collection, preservation, and analysis of effluent samples;
- (2) Discussion of best management practices [~~, if applicable~~];
- (3) ~~Treatment~~ Process wastewater treatment system design, [~~treatment system~~] operation, routine preventive maintenance of units within the [process wastewater] treatment system, critical spare parts inventory and ~~record keeping~~ recordkeeping;
- (4) A plan for the management [~~and/or or~~] disposal of waste solids and residues, which includes a requirement to clean settling basins and lagoons (if present at the facility) in order to achieve effective treatment and a requirement that all solids shall be handled, stored, and disposed of so as to prevent a discharge to state waters; [~~and~~]
- (5) Procedures for measuring and recording the duration and volume of treated process wastewater discharged [~~;~~ and]
- (6) Location of the operational log for performing the daily inspections of the effluent. The log shall note any solids or sheens and if there is no discharge at time of inspection.]

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

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

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

Freshwater organisms are used where the salinity of the receiving water is less than 1.0‰ (parts per thousand). Where the salinity of the receiving water is greater than or equal to 1.0‰ but less than 5.0‰ either freshwater or saltwater organisms may be used. Saltwater organisms are used where the salinity is greater than or equal to 5.0‰. There shall be a minimum of 30 days between sets of tests, and test procedures shall follow ~~Title 40 of the Code of Federal Regulations, Part 136 (40 CFR Part 136)~~ 40 CFR Part 136, which references the EPA guidance manuals for WET testing.

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

c. The department will evaluate all representative data statistically to see if there is reasonable potential for toxicity in the facility discharge. If such reasonable potential exists and cannot be eliminated, the owner will be notified that ~~he~~ the owner must apply for an individual

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VPDES permit at next reissuance and a WET limit will be included in that individual permit. If the potential cause of the toxicity is eliminated during the five-year term of this general permit, the owner may conduct additional WET testing to demonstrate that there is no longer reasonable potential for toxicity and an individual permit will not be required at the next reissuance.

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

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

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

12. Notice of termination.

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

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

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

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

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

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

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

(2) Facility name and location;

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

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

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

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

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

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

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

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

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

PART II

CONDITIONS APPLICABLE TO ALL VPDES PERMITS.

A. Monitoring.

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

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

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will [~~insure~~ ensure] accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for

Noncommercial Environmental Laboratories, or IVAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The ~~individual(s)~~ individuals who performed the sampling or measurements;
- c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;
- d. The ~~individual(s)~~ individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

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

C. Reporting monitoring results.

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

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

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

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

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

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

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

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
- 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

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

- 1. A description of the nature and location of the discharge;
- 2. The cause of the discharge;
- 3. The date on which the discharge occurred;
- 4. The length of time that the discharge continued;
- 5. The volume of the discharge;

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6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I [~~2~~ 1 b]. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance.

[~~1~~] The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

[~~4~~ a] An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this ~~paragraph~~ subsection:

[~~a~~ (1)] Any unanticipated bypass; and

[~~b~~ (2)] Any upset that causes a discharge to surface waters.

[~~2~~ b] A written report shall be submitted within five days and shall contain:

[~~a~~ (1)] A description of the noncompliance and its cause;

[~~b~~ (2)] The period of noncompliance, including exact dates and times, and if the noncompliance has not been

corrected, the anticipated time it is expected to continue; and

[~~e~~ (3)] Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

[~~3~~ 2] The permittee shall report all instances of noncompliance not reported under Parts II I 1 [~~or 2~~], in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I [~~2~~ 1 b].

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

[3. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.]

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification

requirements [~~specified elsewhere in this permit under Part I B 6~~]; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit [~~application registration~~] process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, ~~etc~~ and other information. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a

duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under [~~Parts Part~~] II K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action [~~§ 2~~] for permit [coverage] termination, [~~revocation and reissuance, or modification;~~] or [for] denial of [a] permit coverage renewal [application].

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants ~~and with standards for sewage sludge~~

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~~use or disposal established under § 405(d) of the Clean Water Act~~ within the time provided in the regulations that establish these standards ~~or prohibitions or standards for sewage sludge use or disposal~~, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U), and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or

disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of [~~Parts~~ Part] II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects; if the board determines that it will meet the three conditions listed ~~above~~ in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of

claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the ~~cause(s)~~ causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part II I; and
- d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement preceding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, [including an authorized contractor acting as a representative of the administrator.] upon presentation of credentials and other documents as may be required by law, to:

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this [section subsection], the time for inspection shall be deemed reasonable during regular business hours, ~~and or~~ whenever the facility is discharging. Nothing contained [herein in this general permit] shall make an inspection unreasonable during an emergency.

X. Permit actions. ~~Permits Permit coverages~~ may be ~~modified, revoked and reissued, or~~ terminated for cause. The filing of a request by the permittee for a permit ~~modification, revocation and reissuance, or~~ [termination]; or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of [~~permits permit coverage~~]. [~~Permits are Permit coverage is~~] not transferable to any person except after notice to the department.

Coverage under this permit may be automatically transferred to a new permittee if:

- 1. The current permittee notifies the department ~~at least within~~ 30 days ~~in advance~~ of the [~~proposed~~] transfer of the title to the facility or property unless permission for a later date has been granted by the board;
- 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- 3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R17-5011; Filed December 28, 2017, 8:07 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-150).**

Statutory Authority: §§ 32.1-12, 32.1-127, and 32.1-162.12 of the Code of Virginia.

Effective Date: February 21, 2018.

Agency Contact: Domica Winstead, Policy Analyst, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233,

Regulations

telephone (804) 367-2157, FAX (804) 527-4502, or email domica.winstead@vdh.virginia.gov.

Summary:

Pursuant to Chapter 462 of the 2017 Acts of Assembly, the amendment provides that a nursing facility shall not restrict the rights of a nursing home resident's family to meet in the facility with the families of other residents of the facility.

12VAC5-371-150. Resident rights.

A. The nursing facility shall develop and implement policies and procedures that ensure resident's rights as defined in §§ 32.1-138 and 32.1-138.1 of the Code of Virginia.

B. The procedures shall:

1. Not restrict any right a resident has under law;
2. Provide staff training to implement resident's rights; and
3. Include grievance procedures.

C. The name and telephone number of the complaint coordinator of the OLC, the Adult Protective Services toll-free telephone number, and the toll-free telephone number for the State Ombudsman shall be conspicuously posted in a public place.

D. Copies of resident rights shall be given to residents upon admittance to the facility and made available to residents currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public.

E. The nursing facility shall have a plan to review resident rights with each resident annually, or with the responsible family member or responsible agent at least annually, and have a plan to advise each staff member at least annually.

F. The nursing facility shall certify, in writing, that it is in compliance with the provisions of §§ 32.1-138 and 32.1-138.1 of the Code of Virginia, relative to resident rights, as a condition of license issuance or renewal.

G. The nursing facility shall register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the facility is located pursuant to § 9.1-914 of the Code of Virginia.

H. Prior to admission, each nursing facility shall determine if a potential resident is a registered sex offender when the potential resident is anticipated to have a length of stay:

1. Greater than three days; or
2. In fact stays longer than three days.

I. The nursing facility shall not restrict the rights of a nursing home resident's family and resident's legal representative to meet in the facility with the families and legal representatives of other residents of the facility.

V.A.R. Doc. No. R18-5384; Filed December 28, 2017, 11:09 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-160).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: February 21, 2018.

Agency Contact: Domica Winstead, Policy Analyst, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email domica.winstead@vdh.virginia.gov.

Summary:

Pursuant to Chapter 85 of the 2016 Acts of Assembly, the amendments require nursing homes to provide a full refund of any unexpended patient funds on deposit with the facility following the discharge or death of a patient within 30 days of a written request for such funds by the discharged patient or the person administering the patient's estate in accordance with the Virginia Small Estate Act; the amendment excludes entrance-related fees paid to a continuing care provider.

12VAC5-371-160. Financial controls and resident funds.

A. All financial records, including resident funds, shall be kept according to generally accepted accounting principles (GAAP).

B. Each nursing facility shall maintain liability insurance coverage in a minimum of \$1 million and professional liability coverage in an amount at least equal to the recovery limit set forth in § 8.01-581.15 of the Code of Virginia to compensate residents or individuals for injuries and losses resulting from the negligent or criminal acts of the facility. Failure to maintain minimum insurance shall result in revocation of the facility's license.

C. Nursing facilities choosing to handle resident funds shall:

1. Comply with § 32.1-138 A 7 of the Code of Virginia regarding resident funds;
2. Purchase a surety bond or otherwise provide assurance for the security of all personal funds deposited with the facility; and
3. Provide for separate accounting for resident funds.

D. In the event the facility is sold, the nursing facility shall provide written verification that all resident funds have been transferred and shall obtain a signed receipt from the new owner. Upon receipt, the new owner shall provide an accounting of resident funds.

~~E. In the event of a resident's death or discharge with funds deposited with the facility, the nursing facility shall, within 30 days, give a final accounting of those funds to the individual administering the resident's estate and, if appropriate, refund any moneys due. Each nursing facility shall be required to provide a full refund of any unexpended patient funds on deposit with the facility following the discharge or death of a patient, other than entrance related fees, within 30 days of a written request for such funds by the discharged patient or, in the case of the death of a patient, the person administering the patient's estate in accordance with the Virginia Small Estate Act (§ 64.2-600 et seq. of the Code of Virginia).~~

VA.R. Doc. No. R18-5383; Filed December 28, 2017, 11:10 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-450).

Statutory Authority: §§ 32.1-12, 32.1-123, and 32.1-127 of the Code of Virginia.

Effective Date: February 21, 2018.

Agency Contact: Domica Winstead, Policy Analyst, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email domica.winstead@vdh.virginia.gov.

Summary:

Pursuant to Chapter 175 of the 2017 Acts of Assembly, the amendments require that hospitals providing psychiatric services establish a written protocol for the refusal to admit medically stable patients referred for psychiatric care that addresses (i) direct verbal communication between the on-call psychiatric physician and the referring physician and (ii) prohibits on-call physicians or other hospital staff from refusing a request for direct verbal communication by a referring physician.

12VAC5-410-450. Psychiatric service.

A. The psychiatric service shall be under the supervision of a physician, licensed by the Board of Medicine, who meets the qualifications of the medical staff bylaws.

B. Psychiatric units shall conform to the applicable licensure requirements pursuant to 12VAC35-105.

C. Every hospital that provides inpatient psychiatric services shall establish written policies for denial of admission of medically stable patients in its psychiatric unit. The policies shall include language that:

1. If a medically stable patient is referred to a hospital's psychiatric unit and denied admission, the referring physician may request direct verbal communication with the on-call physician at the referral hospital; and

2. Prohibits on-call physicians or other hospital staff from refusing a request from the referring physician for direct verbal communication.

VA.R. Doc. No. R18-5385; Filed December 28, 2017, 11:05 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-221, 12VAC30-70-281, 12VAC30-70-291, 12VAC30-70-351, 12VAC30-70-381).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30, 12VAC30-80-36, 12VAC30-80-180, 12VAC30-80-200).

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12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-44, 12VAC30-90-264).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: February 21, 2018.

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

Summary:

The amendments:

1. At 12VAC30-70-221 and 12VAC30-70-381, change the methodology for cost claims used to rebase weights to a methodology that uses per-diems and cost-to-charge ratios by cost center for the fee-for-service and managed care claims, effective July 1, 2016. In a similar fashion, each hospital's total costs by claim using this methodology is divided by the total charges for the hospital cost-to-charge ratio.

2. At 12VAC30-70-281 and 12VAC30-70-291, update the regulation to indicate that effective July 1, 2017, (i) the Department of Medical Assistance Services (DMAS) increases the formula for indirect medical education (IME) for freestanding children's hospitals with greater than 50% Medicaid utilization in 2009 as a substitute for disproportionate share hospital (DSH) payments to be identical to the formula used for Type One hospitals and (ii) supplemental payments shall be made for medical residency slots for primary care, high need specialties, and underserved areas to the following hospitals for the specified number of primary residencies: Sentara Norfolk General, Carilion Medical Center, Centra Lynchburg Hospital, Riverside Regional Medical Center, and Bon Secours St. Francis Medical Center.

3. At 12VAC30-70-351, reduce state fiscal year (FY) 2017 inflation by 50% for inpatient hospital operating rates, freestanding psychiatric hospitals, graduate medical expenses, and DSH. In FY 2018, the inflation adjustment is eliminated.

4. At 12VAC30-80-30, (i) eliminate subdivision A 1 related to limitations for emergency physician services; (ii) at subdivision A 17 b, include information regarding how supplemental payments are calculated for Children's Hospital of the King's Daughters effective July 1, 2015; and (iii) add a new subdivision A 19 regarding supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8 (Children's National Health System).

5. At 12VAC30-80-36 B 4 a, add language regarding the inflation adjustment to hospital costs, limiting the adjustment for inflation to 50% of inflation adjustment for state fiscal year 2017 and eliminating inflation in state fiscal year 2018.

6. At 12VAC30-80-180 and 12VAC30-80-200, limit the inflation to 50% of inflation for home health and outpatient rehabilitation agencies in fiscal year 2018.

7. At 12VAC30-90-44, update the price for each nursing facility peer group and other changes to peer groups.

8. At 12VAC30-90-264, convert the specialized care rate methodology to a fully prospective state fiscal year rate, effective July 1, 2016, consistent with the existing cost-based methodology by adding inflation to the per diem costs subject to existing ceilings for direct, indirect, and ancillary costs from the most recent settled cost report prior to the state fiscal year for which the rates are being established. DMAS shall use the state fiscal year inflation rate recently adopted for regular nursing facilities. Partial year inflation shall be applied to per diem costs if the provider fiscal year end is different than the state fiscal year. Ceilings shall also be maintained by state fiscal year.

The amendments conform the regulations to Chapter 665 of the 2015 Acts of Assembly, Chapter 780 of the 2016 Acts of Assembly, and Chapter 836 of the 2017 Acts of Assembly.

Article 2

Prospective (DRG-Based) Payment Methodology

12VAC30-70-221. General.

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12VAC30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.

2. As stipulated in 12VAC30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a

hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12VAC30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12VAC30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12VAC30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12VAC30-70-281, payments for direct medical education costs of nursing schools and paramedical programs shall be made on an allowable cost basis. For Type Two hospitals, payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of ~~full-time~~ full-time equivalent (FTE) interns and residents as reported on the cost report. Effective April 1, 2012, payment for direct GME for interns and residents for Type One hospitals shall be 100% of allowable costs.

7. As stipulated in 12VAC30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12VAC30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"AP-DRG" means all patient diagnosis related groups.

"APR-DRG" means all patient refined diagnosis related groups.

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" means the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" means the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid inpatient utilization rate in excess of 14%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subdivision 2 of this definition does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG" means diagnosis related groups.

"DRG cases" means ~~medical/surgical~~ medical or surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" or "Medicaid inpatient utilization rate" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage or Medicaid inpatient utilization rate includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This definition includes all paid Medicaid days and

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~~nonpaid/denied~~ nonpaid or denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits (with appropriate documentation). The definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income care, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. It does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth. Effective July 1, 2014, the definition for Medicaid utilization percentage or Medicaid inpatient utilization rate is defined in 12VAC30-70-301 C.

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric distinct part unit (DPU), divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. ~~The operating cost-to-charge ratio costs shall be calculated using data from cost reports from hospital fiscal years by multiplying the per diems and ancillary cost-to-charge ratios from each hospital's cost ending in the state fiscal year used as the base year to the corresponding days and ancillary charges by revenue code for each hospital's groupable cases.~~

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and includes (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care

hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ICD, as defined in 12VAC30-95-5. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A & B (12VAC30-50-95 through 12VAC30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" means when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as new cases. Similar diagnoses shall be defined as ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12VAC30-95-5.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12VAC30-95-5.

"Type One hospitals" means those hospitals that were state-owned teaching hospitals on January 1, 1996.

"Type Two hospitals" means all other hospitals.

"Uncompensated care costs" or "UCC" means unreimbursed costs incurred by hospitals from serving self-pay, charity, or Medicaid patients without regard to disproportionate share adjustment payments.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper. Effective October 1, 2014, "ungroupable cases" means cases assigned to DRG 955 (ungroupable) and DRG 956 (ungroupable) as determined by the APR-DRG grouper.

D. The all patient diagnosis related groups (AP-DRG) grouper shall be used in the DRG payment system. Effective October 1, 2014, DMAS shall replace the AP-DRG grouper with the all patient refined diagnosis related groups (APR-DRG) grouper for hospital inpatient reimbursement. The APR-DRG grouper will produce a DRG as well as a severity level ranging from 1 to 4. DMAS shall phase in the APR-DRG weights by blending in 50% of the full APR-DRG weights with 50% of fiscal year (FY) 2014 AP-DRG weights for each APR-DRG group and severity level in the first year. In the second year, the blend will be 75% of full APR-DRG weights and 25% of the FY 2014 AP-DRG weights. Full APR-DRG weights shall be used in the third year and succeeding years for each APR-DRG group and severity. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology	
Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports

Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file
Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

12VAC30-70-281. Payment for direct medical education costs of nursing schools, paramedical programs, and graduate medical education for interns and residents.

A. Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

1. Payments for these direct medical education costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.
2. Final payment for these direct medical education (DMedEd) costs shall be the sum of the fee-for-service DMedEd payment and the managed care DMedEd payment. Fee-for-service DMedEd payment is the ratio of Medicaid inpatient costs to total allowable costs, times total DMedEd costs. Managed care DMedEd payment is equal to the managed care days times the ratio of fee-for-service DMedEd payments to fee-for-service days.

B. Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis, subject to cost settlement as outlined in this subsection except that on or after April 1, 2012, payment for direct GME for interns and residents for Type One hospitals shall be 100% of allowable costs as outlined in subsection C of this section.

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1. The methodology provides for the determination of a hospital-specific base period per-resident amount to initially be calculated from cost reports with fiscal years ending in state fiscal year 1998 or as may be rebased in the future and provided to the public in an agency guidance document. The ~~per-resident~~ per-resident amount for new qualifying facilities shall be calculated from the most recently settled cost report. This per-resident amount shall be calculated by dividing a hospital's Medicaid allowable direct GME costs for the base period by its number of interns and residents in the base period yielding the base amount.

2. The base amount shall be updated annually by the moving average values in the Virginia-Specific Hospital Input Price Index as described in 12VAC30-70-351. The updated per-resident base amount will then be multiplied by the weighted number of full-time equivalent (FTE) interns and residents as reported on the annual cost report to determine the total Medicaid direct GME amount allowable for each year. Payments for direct GME costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end based on the actual number of FTEs reported in the cost reporting period. The total Medicaid direct GME allowable amount shall be allocated to inpatient and outpatient services based on Medicaid's share of costs under each part.

C. Effective April 1, 2012, Type One hospitals shall be reimbursed 100% of Medicaid allowable fee-for-service (FFS) and managed care organization (MCO) GME costs for interns and residents.

1. Type One hospitals shall submit annually separate FFS and MCO GME cost schedules, approved by the agency, using GME per diems and GME ratios of cost to charges (RCCs) from the Medicare and Medicaid cost reports and FFS and MCO days and charges. Type One hospitals shall provide information on managed care days and charges in a format similar to FFS.

2. Interim lump sum GME payments for interns and residents shall be made quarterly based on the total cost from the most recently audited cost report divided by four and will be final settled in the audited cost report for the fiscal year end in which the payments are made.

D. Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals.

E. Effective July 1, 2017, the Department of Medical Assistance Services (DMAS) shall make supplemental payments to the following hospitals for the specified number of primary care residencies: Sentara Norfolk General (two residencies), Carilion Medical Center (six residencies), Centra Lynchburg General Hospital (one residency), Riverside Regional Medical Center (two residencies), and Bon Secours St. Francis Medical Center (two residencies).

DMAS shall make supplemental payments to Carilion Medical Center for two psychiatric residencies. The supplemental payment for each residency shall be \$100,000 annually minus any Medicare residency payment for which the hospital is eligible. Supplemental payments shall be made for up to four years for each new qualifying resident. A hospital will be eligible for the supplemental payments as long as the hospital maintains the number of residency slots in total and by category. Payments shall be made quarterly following the same schedule for other medical education payments. Subsequent to the new award of a supplemental payment, the hospital must provide documentation annually by August 1, 2017, that it continues to meet the criteria for the supplemental payments and must report any changes during the year to the number of residents.

12VAC30-70-291. Payment for indirect medical education costs.

A. Hospitals shall be eligible to receive payments for indirect medical education (IME). Out-of-state cost reporting hospitals are eligible for this payment only if they have Virginia Medicaid utilization in the base year of at least 12% of total Medicaid days. These payments recognize the increased use of ancillary services associated with the educational process and the higher case-mix intensity of teaching hospitals. The payments for indirect medical education shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for IME shall be determined as follows:

1. Type One hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows (this formula also applies to Children's Hospital of the King's Daughters effective July 1, 2013):

$$\text{IME Percentage for Type One Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)] \times (\text{IME Factor})$$

An IME factor shall be calculated for each Type One hospital and shall equal a factor that, when used in the calculation of the IME percentage, shall cause the resulting IME payments to equal what the IME payments would be with an IME factor of one, plus an amount equal to the difference between operating payments using the adjustment factor specified in subdivision B 1 of 12VAC30-70-331 and operating payments using an adjustment factor of one in place of the adjustment factor specified in subdivision B 1 of 12VAC30-70-331.

2. Type Two hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows (excluding Children's Hospital of the King's Daughters):

$$\text{IME Percentage for Type Two Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)] \times 0.5695$$

In both equations, r is the ratio of full-time equivalent residents to staffed beds, excluding nursery beds. The IME payment shall be calculated each year using the most recent reliable data regarding the number of full-time equivalent residents and the number of staffed beds, excluding nursery beds.

C. An additional IME payment shall be made for inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers.

1. For Type Two hospitals, this payment shall be equal to the hospital's hospital specific operating rate per case, as determined in 12VAC30-70-311, times the hospital's HMO paid discharges times the hospital's IME percentage, as determined in subsection B of this section.

2. For Type One hospitals, this payment shall be equal to the hospital's hospital-specific operating rate per case, as determined in 12VAC30-70-311, times the hospital's HMO paid discharges times the hospital's IME percentage, as determined in subsection B of this section. Effective April 1, 2012, the operating rate per case used in the formula shall be revised to reflect an adjustment factor of one and case-mix adjusted by multiplying the operating rate per case in this subsection by the weight per case for FFS discharges that is determined during rebasing. This formula applies to Children's Hospital of the King's Daughters effective July 1, 2017.

D. An additional IME payment not to exceed \$200,000 in total shall be apportioned among Type Two hospitals, excluding freestanding children's hospitals, with Medicaid NICU utilization in excess of 50% as reported to the Department of Medical Assistance Services as of March 1, 2004. These payments shall be apportioned based on each eligible hospital's percentage of Medicaid NICU patient days relative to the total of these days among eligible hospitals as reported by March 1, 2004.

E. An additional IME payment not to exceed \$500,000 in total shall be apportioned among Type Two hospitals, excluding freestanding children's hospitals, with Medicaid NICU days in excess of 4,500 as reported to the Department of Medical Assistance Services as of March 1, 2005, that do not otherwise receive an additional IME payment under subsection D of this section. These payments shall be apportioned based on each eligible hospital's percentage of Medicaid NICU patient days relative to the total of these days among eligible hospitals as reported by March 1, 2003.

F. Effective July 1, 2013, ~~DMAS shall calculate an IME factor for Virginia freestanding children's hospitals with greater than 50% Medicaid utilization in 2009. Total total~~ payments for IME in combination with other payments for freestanding children's hospitals with greater than 50% Medicaid utilization in 2009 shall not exceed the federal uncompensated care cost limit to which disproportionate

share hospital payments are subject. Effective July 1, 2017, IME payments cannot exceed the federal uncompensated care cost limit to which disproportionate share hospital payments are subject, excluding third-party reimbursement for Medicaid eligible patients.

12VAC30-70-351. Updating rates for inflation.

A. Each July, the Virginia moving average values as compiled and published by Global Insight (or its successor), under contract with the department shall be used to update the base year standardized operating costs per case, as determined in 12VAC30-70-361, and the base year standardized operating costs per day, as determined in 12VAC30-70-371, to the midpoint of the upcoming state fiscal year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by Global Insight (or its successor), in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year.

B. The inflation adjustment for hospital operating rates, disproportionate share hospitals (DSH) payments, and graduate medical education payments shall be ~~0.0%~~ eliminated for fiscal year (FY) 2010. The elimination of the inflation adjustments shall not be applicable to rebasing in FY 2011.

C. In FY 2011, hospital operating rates shall be rebased; however the 2008 base year costs shall only be increased 2.58% for inflation. For FY 2011 there shall be no inflation adjustment for graduate medical education (GME) or freestanding psychiatric facility rates. The inflation adjustment shall be eliminated for hospital operating rates, GME payments, and freestanding psychiatric facility rates for FY 2012. The inflation adjustment shall be 2.6% for inpatient hospitals, including hospital operating rates, GME payments, DSH payments, and freestanding psychiatric facility rates for FY 2013, and 0.0% for the same facilities for FY 2014, FY 2015, and FY 2016. For FY 2017, the inflation adjustment for inpatient hospital operating rates, GME, DSH, and freestanding psychiatric hospitals shall be 50% of the adjustment calculated in subsection A of this section. In FY 2018, the inflation adjustment for inpatient hospital operating rates, GME, DSH, and freestanding psychiatric hospitals shall be eliminated for inpatient hospitals.

12VAC30-70-381. DRG relative weights and hospital case-mix indices.

A. For the purposes of calculating DRG relative weights and hospital case-mix indices, base year claims data for all groupable cases shall be used. Base year claims data for ungroupable cases and per diem cases shall not be used. In calculating the DRG relative weights, a transfer case shall be counted as a fraction of a case based on the ratio of its length

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of stay to the arithmetic mean length of stay for cases assigned to the same DRG as the transfer case.

B. Using the data elements identified in subsection E of 12VAC30-70-221, the following methodology shall be used to calculate the DRG relative weights:

1. The operating costs for each groupable case shall be calculated by multiplying the ~~hospital's total charges for the case by the hospital's operating cost to charge ratio, as defined in subsection C of 12VAC30-70-221~~ per diems and ancillary cost-to-charge ratios from each hospital's cost report ending in the state fiscal year used as the base year to the corresponding days and ancillary charges by revenue code for each hospital's groupable cases.

2. The standardized operating costs for each groupable case shall be calculated as follows:

a. The operating costs shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of operating costs. Hence, the nonlabor portion of operating costs shall constitute one minus the statewide average labor portion of operating costs times the operating costs.

b. The labor portion of operating costs shall be divided by the hospital's Medicare wage index, yielding the standardized labor portion of operating costs.

c. The standardized labor portion of operating costs shall be added to the nonlabor portion of operating costs, yielding the standardized operating costs.

3. The average standardized cost per DRG shall be calculated by dividing the standardized operating costs for all groupable cases in the DRG by the number of groupable cases classified in the DRG.

4. The average standardized cost per case shall be calculated by dividing the standardized operating costs for all groupable cases by the total number of groupable cases.

5. The average standardized cost per DRG shall be divided by the average standardized cost per case to determine the DRG relative weight.

C. Statistical outliers shall be eliminated from the calculation of the DRG relative weights. Within each DRG, cases shall be eliminated if (i) their standardized costs per case are outside of 3.0 standard deviations of the mean of the log distribution of the standardized costs per case and (ii) their standardized costs per day are outside of 3.0 standard deviations of the mean of the log distribution of the standardized costs per day. To eliminate a case, both conditions must be satisfied.

D. In calculating the DRG relative weights, a threshold of five cases shall be set as the minimum number of cases required to calculate a reasonable DRG relative weight. In those instances where there are five or fewer cases, the

department's Medicaid claims data shall be supplemented with Medicaid claims data from another state or other available sources. The DRG relative weights calculated according to this methodology will result in an average case weight that is different from the average case weight before the supplemental claims data was added. Therefore, the DRG relative weights shall be normalized by an adjustment factor so that the average case weight after the supplemental claims data were added is equal to the average case weight before the supplemental claims data were added.

E. The DRG relative weights shall be used to calculate a case-mix index for each hospital. The case-mix index for a hospital is calculated by summing, across all DRGs, the product of the number of groupable cases in each DRG and the relative weight for each DRG and dividing this amount by the total number of groupable cases occurring at the hospital.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public). ~~The following limitations shall apply to emergency physician services.~~

~~a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:~~

~~"All inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.~~

~~"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.~~

~~"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.~~

~~"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.~~

~~b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.~~

~~(1) DMAS shall reimburse at a reduced and all inclusive reimbursement rate for all physician services rendered in emergency departments that DMAS determines are nonemergency care.~~

~~(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.~~

~~(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:~~

~~(a) The initial treatment following a recent obvious injury.~~

~~(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.~~

~~(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.~~

~~(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.~~

~~(e) Services provided for acute vital sign changes as specified in the provider manual.~~

~~(f) Services provided for severe pain when combined with one or more of the other guidelines.~~

~~(4) Payment shall be determined based on ICD diagnosis codes and necessary supporting documentation. As used here, the term "ICD" is defined in 12VAC30-95-5.~~

~~(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD code designations, and the impact on recipients and providers. As used here, the term "ICD" is defined in 12VAC30-95-5.~~

2. Dentists' services.

3. Mental health services including: (i) community mental health services, (ii) services of a licensed clinical psychologist, (iii) mental health services provided by a physician, or (iv) peer support services.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html>.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10% or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all

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available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate ~~services/devices~~ services or devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain ~~services/durable~~ services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, ~~but not be~~

~~limited to~~, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. ~~Medical supplies and equipment~~ Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this ~~State Plan~~ chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. Effective January 3, 2012, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 181% of Medicare rates. Effective January 1, 2013, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 197% of Medicare rates. Effective April 8, 2014, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 201% of Medicare rates.

c. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

d. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

e. Payment will not be made to the extent that the payment would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this ~~State Plan chapter~~, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician

services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation described in the Medicare equivalent of the average commercial rate methodology (see 12VAC30-80-300), subject to the following reduction. Final payments shall be reduced on a prorated basis so that total payments for freestanding children's hospital physician services are \$400,000 less annually than would be calculated based on the formula in the previous sentence. Effective July 1, 2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made ~~quarterly no later than 90 days after the end of the quarter. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300 on the same schedule as Type I physicians.~~

18. Supplemental payments for services provided by physicians affiliated with ~~publicly funded medical schools in Tidewater~~ Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in ~~the State Plan this chapter~~, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with ~~publicly funded medical schools in Tidewater~~ Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with a ~~publicly funded medical school~~ Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual ~~agreements~~ arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective October 1, ~~2012~~ 2015, the supplemental payment amount ~~for services furnished by physicians affiliated with publicly funded medical schools in Tidewater~~ shall be the difference between the Medicaid payments otherwise made for physician services and ~~135%~~ 137% of Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

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19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than \$551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

~~19.~~ 20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision ~~19~~ 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision ~~19~~ 20 b (1) of this subsection for each qualifying clinic by

the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision ~~19~~ 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section ~~may will~~ be made ~~in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS~~ annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision ~~19~~ 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in ~~Attachment 4.19 B, Supplement 4~~ (12VAC30-80-190 B 2) in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

~~20.~~ 21. Personal assistance services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at <http://www.dmas.virginia.gov>.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12VAC30-80-36. Fee-for-service providers: outpatient hospitals.

A. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Enhanced ambulatory patient group" or "EAPG" means a defined group of outpatient procedures, encounters, or ancillary services that incorporates International Classification of Diseases (ICD) diagnosis codes, Current Procedural Terminology (CPT) codes, and Healthcare Common Procedure Coding System (HCPCS) codes.

"EAPG relative weight" means the expected average costs for each EAPG divided by the relative expected average costs for visits assigned to all EAPGs.

"Base year" means the state fiscal year for which data is used to establish the EAPG base rate. The base year will change when the EAPG payment system is rebased and recalibrated. In subsequent rebasings, DMAS shall notify affected providers of the base year to be used in this calculation.

"Cost" means the reported cost as described in 12VAC30-80-20 A and B.

"Cost-to-charge ratio" equals the hospital's total costs divided by the hospital's total charges. The cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Medicare wage index" means the Medicare wage index published annually in the Federal Register by the Centers for Medicare and Medicaid Services. The indices used in this section shall be those in effect in the base year.

B. Effective January 1, 2014, the prospective enhanced ambulatory patient group (EAPG) based payment system described in this subsection shall apply to reimbursement for outpatient hospital services (with the exception of laboratory services referred to the hospital but not associated with an outpatient hospital visit, which will be reimbursed according to the laboratory fee schedule).

1. The payments for outpatient hospital visits shall be determined on the basis of a hospital-specific base rate per visit multiplied by the relative weight of the EAPG (and the payment action) assigned for each of the services performed during a hospital visit.

2. The EAPG relative weights shall be the weights determined and published periodically by DMAS and shall be consistent with applicable Medicaid reimbursement limits and policies. The weights shall be updated at least every three years.

3. The statewide base rate shall be equal to the total costs described in this subdivision divided by the wage-adjusted sum of the EAPG weights for each facility. The wage-adjusted sum of the EAPG weights shall equal the sum of the EAPG weights multiplied by the labor percentage times the hospital's Medicare wage index plus the sum of the EAPG weights multiplied by the nonlabor percentage. The base rate shall be determined for outpatient hospital services at least every three years so that total expenditures will equal the following:

a. When using base years prior to January 1, 2014, for all services, excluding all laboratory services and emergency services described in subdivision 3 c of this subsection, a percentage of costs as reported in the available cost

reports for the base period for each type of hospital as defined in 12VAC30-70-221.

(1) Type One hospitals. Effective January 1, 2014, hospital outpatient operating reimbursement shall be calculated at 90.2% of cost, and capital reimbursement shall be at 86% of cost inflated to the rate year.

(2) Type Two hospitals. Effective January 1, 2014, hospital outpatient operating and capital reimbursement shall be calculated at 76% of cost inflated to the rate year.

When using base years after January 1, 2014, the percentages described in subdivision 3 a of this subsection shall be adjusted according to subdivision 3 c of this subsection.

b. Laboratory services, excluding laboratory services referred to the hospital but not associated with a hospital visit, are calculated at the fee schedule in effect for the rate year.

c. Services rendered in emergency departments determined to be nonemergencies as prescribed in 12VAC30-80-20 D 1 b shall be calculated at the nonemergency reduced rate reported in the base year for base years prior to January 1, 2014. For base years after January 1, 2014, the cost percentages in subdivision 3 a of this subsection shall be adjusted to reflect services paid at the nonemergency reduced rate in the last year prior to January 1, 2014.

4. Inflation adjustment to base year costs. Each July, the Virginia moving average values as compiled and published by Global Insight (or its successor), under contract with DMAS, shall be used to update the base year costs to the midpoint of the rate year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by Global Insight (or its successor) in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year. Inflation shall be applied to the costs identified in subdivision 3 a of this subsection. The inflation adjustment for state fiscal year 2017 shall be 50% of the full inflation adjustment calculated according to this section. There shall be no inflation adjustment for state fiscal year 2018.

5. Hospital-specific base rate. The hospital-specific base rate per case shall be adjusted for geographic variation. The hospital-specific base rate shall be equal to the labor portion of the statewide base rate multiplied by the hospital's Medicare wage index plus the nonlabor percentage of the statewide base rate. The labor percentage shall be determined at each rebasing based on the most recently reliable data. For rural hospitals, the hospital's

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Medicare wage index used to calculate the base rate shall be the Medicare wage index of the nearest metropolitan wage area or the effective Medicare wage index, whichever is higher. A base rate differential of 5.0% shall be established for freestanding Type Two children's hospitals. The base rate for non-cost-reporting hospitals shall be the average of the hospital-specific base rates of in-state Type Two hospitals.

6. The total payment shall represent the total allowable amount for a visit including ancillary services and capital.

7. The transition from cost-based reimbursement to EAPG reimbursement shall be transitioned over a four-year period. DMAS shall calculate a cost-based base rate at January 1, 2014, and at each rebasing during the transition.

a. Effective for dates of service on or after January 1, 2014, DMAS shall calculate the hospital-specific base rate as the sum of 75% of the cost-based base rate and 25% of the EAPG base rate.

b. Effective for dates of service on or after July 1, 2014, DMAS shall calculate the hospital-specific base rate as the sum of 50% of the cost-based base rate and 50% of the EAPG base rate.

c. Effective for dates of service on or after July 1, 2015, DMAS shall calculate the hospital-specific base rate as the sum of 25% of the cost-based base rate and 75% of the EAPG base rate.

d. Effective for dates of service on or after July 1, 2016, DMAS shall calculate the hospital-specific base rate as the EAPG base rate.

8. To maintain budget neutrality during the first six years of the transition to EAPG reimbursement, DMAS shall compare the total reimbursement of hospital claims based on the parameters in subdivision 3 of this subsection to EAPG reimbursement every six months based on the six months of claims ending three months prior to the potential adjustment. If the percentage difference between the reimbursement target in subdivision 3 of this subsection and EAPG reimbursement is greater than 1.0%, plus or minus, DMAS shall adjust the statewide base rate by the percentage difference the following July 1 or January 1. The first possible adjustment would be January 1, 2015, using reimbursement between January 1, 2014, and October 31, 2014.

C. The enhanced ambulatory patient group (EAPG) grouper version used for outpatient hospital services shall be determined by DMAS. Providers or provider representatives shall be given notice prior to implementing a new grouper.

D. The primary data sources used in the development of the EAPG payment methodology are the DMAS hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all

enrolled, cost-reporting general acute care hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals. The following table identifies key data elements that are used to develop the EAPG payment methodology. DMAS may supplement this data with similar data for Medicaid services furnished by managed care organizations if DMAS determines that it is reliable.

Data Elements for EAPG Payment Methodology	
Data Elements	Source
Total charges for each outpatient hospital visit	Claims history file
Number of groupable claims lines in each EAPG	Claims history file
Total number of groupable claim lines	Claims history file
Total charges for each outpatient hospital revenue line	Claims history file
Total number of EAPG assignments	Claims history file
Cost-to-charge ratio for each hospital	Cost report file
Medicare wage index for each hospital	Federal Register

12VAC30-80-180. Establishment of rate per visit for home health services.

A. Effective for dates of services on and after July 1, 1991, the Department of Medical Assistance Services (DMAS) shall reimburse home health agencies (HHAs) at a flat rate per visit for each type of service rendered by HHAs (i.e., nursing, physical therapy, occupational therapy, speech-language pathology services, and home health aide services.) In addition, supplies left in the home and extraordinary transportation costs will be paid at specific rates.

B. Effective for dates of services on and after July 1, 1993, DMAS shall establish a flat rate for each level of service for HHAs by peer group. There shall be three peer groups: (i) the Department of Health's HHAs, (ii) non-Department of Health HHAs whose operating office is located in the Virginia portion of the Washington DC-MD-VA metropolitan statistical area, and (iii) non-Department of Health HHAs whose operating office is located in the rest of Virginia. The use of the Health Care Financing Administration (HCFA) designation of urban metropolitan statistical areas (MSAs) shall be incorporated in determining the appropriate peer group for these classifications.

The Department of Health's agencies are being placed in a separate peer group due to their unique cost characteristics (only one consolidated cost report is filed for all Department of Health agencies).

C. Rates shall be calculated as follows:

1. Each home health agency shall be placed in its appropriate peer group.
2. Department of Health HHAs Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from its 1989 cost-settled Medicaid cost report. Non-Department of Health HHAs Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from the 1989 cost-settled Medicaid Cost Reports filed by freestanding HHAs. Costs shall be inflated to a common point in time (June 30, 1991) by using the percent of change in the moving average factor of the Data Resources Inc., (DRI), National Forecast Tables for the Home Health Agency Market Basket (as published quarterly).
3. To determine the flat rate per visit effective July 1, 1993, the following methodology shall be utilized:
 - a. The peer group HHAs per visit rates shall be ranked and weighted by the number of Medicaid visits per discipline to determine a median rate per visit for each peer group at July 1, 1991.
 - b. The HHA's peer group median rate per visit for each peer group at July 1, 1991, shall be the interim peer group rate for calculating the update through January 1, 1992. The interim peer group rate shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1992, and shall become the final interim peer group rate that shall be updated by 50% of the forecasted inflation to the end of December 31, 1993, to establish the final peer group rates. The lower of the final peer group rates or the Medicare upper limit at January 1, 1993, will be effective for payments from July 1, 1993, through December 1993.
 - c. Separate rates shall be provided for the initial assessment, follow-up, and comprehensive visits for skilled nursing and for the initial assessment and follow-up visits for physical therapy, occupational therapy, and speech therapy. The comprehensive rate shall be 200% of the follow-up rate, and the initial assessment rates shall be \$15 higher than the follow-up rates. The lower of the peer group median or Medicare upper limits shall be adjusted as appropriate to assure budget neutrality when the higher rates for the comprehensive and initial assessment visits are calculated.
4. The fee schedule shall be adjusted annually beginning July 1, 2010, based on the percent of change in the moving average of the National Forecast Tables for the Home Health Agency Market Basket published by Global Insight

(or its successor) for the second quarter of the calendar year in which the fiscal year begins. The report shall be the latest published report prior to the fiscal year. The method to calculate the annual update shall be:

- a. All subsequent year peer group rates shall be calculated utilizing the previous final peer group rate established on July 1.
- b. The annual July 1 update shall be compared to the Medicare upper limit per visit in effect on each January 1, and the HHAs shall receive the lower of the annual update or the Medicare upper limit per visit as the final peer group rate.

D. Effective July 1, 2009, the previous inflation increase effective January 1, 2009, shall be reduced by 50%.

E. Effective July 1, 2010, through June 30, 2016, there shall be no inflation adjustment for home health agencies. Effective July 1, 2017, through June 30, 2018, the annual fee schedule adjustment for inflation shall be reduced by 50%.

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

A. Rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

1. Effective for dates of service on and after July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities, excluding those operated by community services boards or state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on ~~CPT~~ Current Procedural Terminology (CPT) codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus \$371,800.

2. Effective for dates of service on and after October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities, excluding those operated by state agencies shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus \$371,800.

B. Reimbursement for rehabilitation agencies subject to the new fee schedule methodology.

1. Payments for the fiscal year ending or in progress on June 30, 2009, shall be settled for private rehabilitation agencies based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of June 30, 2009.

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2. Payments for the fiscal year ending or in progress on September 30, 2009, shall be settled for community services boards based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of September 30, 2009.

C. Beginning with state fiscal years beginning on or after July 1, 2010, rates shall be adjusted annually for inflation using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

D. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the nursing facility or any other available source, and provided further, that this subsection shall in no way diminish any obligation of the nursing facility to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Effective July 1, 2010, through June 30, 2016, there will be no inflation adjustment for outpatient rehabilitation facilities. Effective July 1, 2017, through June 30, 2018, outpatient rehabilitation facilities will receive a rate adjustment equal to 50% of inflation as calculated in subsection C of this section.

12VAC30-90-44. 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. Effective July 1, 2015, through June 30, 2016, the inflation adjustment for nursing facility operating rates shall be 0.0%.

5. Prices will be established for the peer groups described in this section 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~~ MSAs 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 Rural 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~~ MSAs, 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. For rebasings effective on or after July 1, 2020, the department shall move nursing facilities located in the former Danville Metropolitan Statistical Area to the Other MSAs peer group.

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. Effective July 1, 2017, the direct adjustment factor shall be 106.8% 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. Effective July 1, 2017, the indirect adjustment factor shall be 101.3% 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 year shall not have an adjusted price until the next rebasing.

11. Special circumstances.

a. Effective July 1, 2017, the department shall increase the direct and indirect operating rates under the nursing facility price based reimbursement methodology by 15% for nursing facilities where at least 80% of the resident population has one or more of the following diagnoses: quadriplegia, traumatic brain injury, multiple sclerosis, paraplegia, or cerebral palsy. In addition, a qualifying facility must have at least 90% Medicaid utilization and a nursing facility case-mix index of 1.15 or higher in fiscal year 2014.

b. Effective July 1, 2017, through June 30, 2020, nursing facilities located in the former Danville Metropolitan Statistical Area shall be paid the operating rates calculated for the Other MSAs peer group.

~~12.~~ 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.

~~13.~~ 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

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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.

4. Effective July 1, 2015, nursing facilities whose licensed bed capacity decreased by at least 30 beds after 2011 and whose occupancy increased from less than 70% in 2011 to more than 80% in 2013 shall be reimbursed the price-based operating rate rather than the transition operating rate.

C. Prospective capital rates shall be calculated in the following manner:

1. Fair rental value (FRV) 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.

Subpart XVII Specialized Care Services

12VAC30-90-264. Specialized care services.

Specialized care services provided in conformance with 12VAC30-60-40 E and H, 12VAC30-60-320, and 12VAC30-60-340 shall be reimbursed under the following methodology. The nursing facilities that provide adult specialized care for the categories of Ventilator Dependent Care, will be placed in one group for rate determination. The nursing facilities that provide pediatric specialized care in a dedicated pediatric unit

of eight beds or more will be placed in a second group for rate determination.

1. Routine operating cost. Routine operating cost shall be defined as in 12VAC30-90-271 and 12VAC30-90-272. To calculate the routine operating cost reimbursement rate, routine operating cost shall be converted to a per diem amount by dividing it by actual patient days. Effective July 1, 2016, the base year for routine operating cost shall be the most recently settled cost reports with a fiscal year ending in a calendar year for all specialized care facilities as of the end of the calendar year prior to the prospective rate year.

2. Allowable cost identification and cost reimbursement limitations. The provisions of Article 5 (12VAC30-90-50 et seq.) of Subpart II of Part II of this chapter and of Appendix III (12VAC30-90-290) of Part III of this chapter shall apply to specialized care cost and reimbursement.

3. Routine operating cost rates. Each facility shall be reimbursed a prospective rate for routine operating costs. This rate will be the lesser of the facility-specific prospective routine operating ceiling, or the facility-specific prospective routine operating cost per day plus an efficiency incentive. This efficiency incentive shall be calculated by the same method as in 12VAC30-90-41.

4. Facility-specific prospective routine operating ceiling. Each nursing facility's prospective routine operating ceiling shall be calculated as:

a. Statewide ceiling. The statewide routine operating ceiling shall be \$415 as of July 1, 2002. This routine operating ceiling amount shall be adjusted for inflation based on 12VAC30-90-41. Effective July 1, 2016, the routine operating ceiling shall be \$573.09 as of state fiscal year 2015 and shall be adjusted for inflation based on 12VAC-30-90-44 to the upcoming state fiscal year, the prospective rate year.

b. The portion of the statewide routine operating ceiling relating to nursing salaries (as determined by the 1994 audited cost report data, or 67.22%) will be wage adjusted using a normalized wage index. The normalized wage index shall be the wage index applicable to the individual provider's geographic location under Medicare rules of reimbursement for skilled nursing facilities, divided by the statewide average of such wage indices across the state. This normalization of wage indices shall be updated January 1, after each time the CMS publishes wage indices for skilled nursing facilities. Updated normalization shall be effective for fiscal years starting on and after the January 1 for which the normalization is calculated. Effective July 1, 2016, the normalized wage index for the federal fiscal year following the base year shall be applied to the state fiscal year ceiling.

5. Facility-specific prospective routine operating base cost per day. The facility-specific routine operating cost per day to be used in the calculation of the routine operating rate and the efficiency incentive shall be the actual routine cost per day from the most recent fiscal year's cost report, adjusted for inflation based on 12VAC30-90-41. Effective July 1, 2016, the routine operating base cost per day in subdivision 1 of this subsection shall be adjusted for inflation based on 12VAC30-90-44 to the upcoming state fiscal year, the prospective rate year.

6. Interim rates. Interim rates, for processing claims during the year, shall be calculated from the most recent settled cost report available at the time the interim rates must be set, except that failure to submit a cost report timely may result in adjustment to interim rates as provided elsewhere. Effective July 1, 2016, this subdivision is no longer applicable.

7. Ancillary costs. Specialized care ancillary costs will be paid on a pass-through basis for those Medicaid specialized care patients who do not have Medicare or any other sufficient third-party insurance coverage. Ancillary costs will be reimbursed as follows:

a. All covered ancillary services, except kinetic therapy devices, will be reimbursed for reasonable costs as defined in the current NHPS. Effective for specialized care days on or after January 15, 2007, reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be \$238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated based on 12VAC30-90-41. See 12VAC30-90-290 for the cost reimbursement limitations. Effective July 1, 2016, the ancillary ceiling of \$300.38 in state fiscal year 2015, inclusive of kinetic therapy devices, shall be adjusted for inflation to the prospective rate year based on 12VAC30-90-44.

b. Kinetic therapy devices will have a limit per day (based on 1994 audited cost report data inflated to the rate period). See 12VAC30-90-290 for the cost reimbursement limitations.

c. Kinetic therapy devices will be reimbursed only if a resident is being treated for wounds that meet the following wound care criteria. Residents receiving this wound care must require kinetic bed therapy (that is, low air loss mattresses, fluidized beds, ~~and/or rotating/turning beds~~ or rotating or turning beds) and require treatment for a grade (stage) IV decubitus, a large surgical wound that cannot be closed, or second to third degree burns covering more than 10% of the body.

8. Covered ancillary services are defined as follows: laboratory, X-ray, medical supplies (e.g., infusion pumps,

incontinence supplies), physical therapy, occupational therapy, speech therapy, inhalation therapy, IV therapy, enteral feedings, and kinetic therapy. The following are not specialized care ancillary services and are excluded from specialized care reimbursement: physician services, psychologist services, total parenteral nutrition (TPN), and drugs. These services must be separately billed to DMAS. An interim rate for the covered ancillary services will be determined (using data from the most recent settled cost report) by dividing allowable ancillary costs by the number of patient days for the same cost reporting period. The interim rate will be retroactively cost settled based on the specialized care nursing facility cost reporting period.

9. Capital costs. Effective July 1, ~~2001~~ 2016, capital cost reimbursement rate shall be based on subsection C of 12VAC30-90-44 in accordance with 12VAC30-90-35 ~~through, 12VAC30-90-36, and 12VAC30-90-37~~, except that the required occupancy percentage shall not be separately applied to specialized care. ~~Capital cost related to specialized care patients will be cost settled on the respective nursing facility's cost reporting period. In this cost settlement, the required occupancy percentage shall be applied to all the nursing facility's licensed nursing facility beds, inclusive of specialized care.~~ To determine the capital cost related to specialized care patients, the following calculation shall be applied.

a. Licensed beds, including specialized care beds, multiplied by days in the cost reporting period, shall equal available days.

b. The required occupancy days shall equal the required occupancy percentage multiplied by available days.

c. The required occupancy days minus actual resident days, including specialized care days, shall equal the shortfall of days. If the shortfall of days is negative, the shortfall of days shall be zero.

d. Actual resident days, not including specialized care days, plus the shortfall of days shall equal the minimum number of days to be used to calculate the capital cost per day.

10. Nurse aide training and competency evaluation programs ~~and competency evaluation programs~~ (NATCEP) costs. NATCEP costs will be paid on a pass-through basis in accordance with the current NHPS. Effective July 1, 2016, NATCEP costs shall be paid on a prospective basis in accordance with 12VAC30-90-170.

11. Pediatric routine operating cost rate. For pediatric specialized care in a distinct part pediatric specialized care unit, one routine operating cost ceiling will be developed. The routine operating cost ceiling will be \$418 as of July 1, 2002. Effective July 1, 2016, the pediatric routine operating cost ceiling shall be \$577.24.

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a. The statewide operating ceiling shall be adjusted for each nursing facility in the same manner as described in subdivision 4 of this section.

b. The final routine operating cost reimbursement rate shall be computed as described for other than pediatric units in subdivision 3 of this section.

12. Pediatric unit capital cost. Pediatric unit capital costs will be reimbursed in accordance with ~~the current NHPS subdivision 9 of this section~~, except that the occupancy requirement shall be 70% rather than the required occupancy percentage.

13. The cost reporting requirements of 12VAC30-90-70 and 12VAC30-90-80 shall apply to specialized care providers.

VA.R. Doc. No. R18-5178; Filed December 28, 2017, 2:43 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: 12VAC35-12. Public Participation Guidelines (amending 12VAC35-12-50; adding 12VAC35-12-45).

Statutory Authority: §§ 2.2-4007-02 and 37.2-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 21, 2018.

Effective Date: March 8, 2018.

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner and the Department of Behavioral Health and Developmental Services (DBHDS).

Purpose: This action is the result of a periodic review. No comments were received during the review. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of state regulations to protect the public health and safety. DBHDS is responsible for the direct care of individuals in its facilities and provides oversight for the state's publicly funded behavioral health and developmental services system. This regulatory action will align the regulation in three places with the Code of Virginia

and thus facilitate citizen involvement in the regulations of the state board and DBHDS.

Rationale for Using Fast-Track Rulemaking Process: No comments were received during the periodic review. Executive Order 17 (2014) allows state agencies to use a fast-track rulemaking process pursuant to § 2.2-4012.1 of the Code of Virginia to expedite regulatory changes that are expected to be noncontroversial. This regulatory action reflects opportunities for citizen input into the regulatory process, as already established in the Code of Virginia. Therefore, no controversy is anticipated.

Substance: The amendments:

- Adopt 12VAC35-12-45, in accordance with Chapter 599 of the 2017 Acts of Assembly, so that DBHDS shall notify affected providers (i) when new or final regulations are posted on the Virginia Regulatory Town Hall website and when public comment periods pursuant to the existing regulatory processes are established by Virginia law and (ii) each time there is an opportunity to comment on such changes under consideration, including specific comments regarding an appropriate timeframe for the implementation of such changes.
- Update 12VAC35-12-50 A, in accordance with § 2.2-4007.02 of the Code of Virginia, to state that DBHDS shall provide that persons wishing to submit data, views, and arguments related to a regulatory action shall be afforded the opportunity to be accompanied by and represented by counsel or another representative.
- Adopt 12VAC35-12-50 D, in accordance with Chapter 599 of the 2017 Acts of Assembly, to provide that DBHDS will post guidance document changes under development to the Regulatory Town Hall website for a 30-day public comment period.
- Adopt 12VAC35-12-50 E, in accordance with § 37.2-203 of the Code of Virginia, to provide that at least 30 days prior to the board's action to adopt, amend, or repeal any regulation regarding substance abuse services, the board shall present the proposed regulation to the Substance Abuse Services Council for the council's review and comment.

Issues: The primary advantage to the public and the Commonwealth is conformation of regulatory provisions regarding public participation to the existing requirements in state law. There are no disadvantages to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) proposes to incorporate several legislative mandates related to public participation in rulemaking into its regulations.

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

Estimated Economic Impact. One of the legislative mandates being incorporated into the regulation is Chapter 599 of the 2017 Acts of the Assembly.¹ Chapter 599 requires the Department of Behavioral Health and Developmental Services (DBHDS) to give direct notice to licensed providers 1) when a regulatory change relating to licensed providers is initiated, 2) when a final stage of such a regulatory change has been posted on Virginia Regulatory Town Hall (Town Hall), 3) and when a change to guidance documents related to licensure requirements is under consideration. The Chapter 599 also requires DBHDS to seek public comment for a period of 30 days on the proposed change to the guidance documents via the Town Hall.

DBHDS estimates that there would be approximately 10 notices a year that would need to be sent to approximately 1,200 licensed providers. DBHDS plans to utilize email for the required direct notifications and encourage providers to sign up with the Town Hall which can be set up to provide such automatic notifications. The Town Hall can easily accommodate a 30-day comment forum for proposed changes to guidance documents. Since direct notices will be sent electronically and public comments will be solicited in an electronic platform, these changes do not impose significant costs on DBHDS other than the staff time needed to draft the emails and to create a public comment forum on the Town Hall.

Another mandate being incorporated is the Chapter 795 of the 2012 Acts of the Assembly which amended the Code of Virginia § 2.2-4007.02.² Chapter 795 added the requirement that interested persons "be afforded an opportunity to be accompanied by and represented by counsel or other representative" while formulating a regulation. This change is also not expected to create a significant economic impact.

Finally, the Board proposes to incorporate the requirement that a proposed regulatory change regarding substance abuse services be presented to the Substance Abuse Services Council pursuant to Chapter 716 of the 2005 Acts of the Assembly.³ This change too is not expected to create a significant economic impact.

Even though no significant economic impact is expected from any of these proposed changes, the proposed changes are beneficial in that they will inform interested parties who read this regulation but not the statutes.

Businesses and Entities Affected. There are approximately 1,200 providers licensed by the Board. One of the proposed changes affects only the Substance Abuse Services Council.

Localities Particularly Affected. The proposed changes do not affect particular localities disproportionately.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant 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."

Costs and Other Effects. Most if not all of the providers are small providers. The proposed changes do not impose costs on them but will benefit them as explained above.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on non-small businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

¹ <http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0599>

² <http://lis.virginia.gov/cgi-bin/legp604.exe?121+ful+CHAP0795>

³ <http://lis.virginia.gov/cgi-bin/legp604.exe?051+ful+CHAP0716>

Agency's Response to Economic Impact Analysis: The Department of Behavioral Health and Developmental Services concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

Pursuant to Chapter 599 of the 2017 Acts of Assembly, amendments provide that the Department of Behavioral Health and Developmental Services (i) notify affected providers when new or final regulations are posted on the Virginia Regulatory Town Hall website and when public comment periods pursuant to the existing regulatory processes are established and each time there is an opportunity to comment on such changes, including

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specific comments regarding an appropriate timeframe for the implementation of such changes and (ii) post guidance document changes under development to the Town Hall website for a 30-day public comment period. Pursuant to § 2.2-4007.02 of the Code of Virginia, an amendment allows interested parties submitting data, views, or arguments during the formulation of a regulation the right to be accompanied by or represented by counsel or another representative. Pursuant to § 37.2-307 of the Code of Virginia, an amendment provides that at least 30 days prior to the board's action to adopt, amend, or repeal any regulation regarding substance abuse services, the board present the proposed regulation to the Substance Abuse Services Council for the council's review and comment.

12VAC35-12-45. Notification to licensed providers.

To providers licensed by the department, the department shall send the following information:

1. At or prior to the time a new regulation relating to licensed providers is posted to the Virginia Regulatory Town Hall, the department shall provide direct notice to licensed providers affected by the new regulatory change that such change has been initiated.

2. At the time that the final stage of a regulation is posted to the Virginia Regulatory Town Hall, the department shall provide direct notice to licensed providers affected by the regulatory change that such final stage has been posted.

Part III Public Participation Procedures

12VAC35-12-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. At the time any change to guidance documents related to licensure requirements is being developed, the agency shall provide direct notice to licensed providers affected by the change that such change has been initiated. The agency shall post the proposed change to the Virginia Regulatory Town Hall, to include a public comment forum for a period of 30 days. Such notice shall include a description of the change and provide contact information for the agency's designated contact person. If it is anticipated that the change shall have an impact on staffing or payment matters for the affected stakeholders, the direct notice to stakeholders shall note this fact and request specific comments regarding an appropriate timeframe for the implementation of such changes.

E. Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), present the proposed regulation to the Substance Abuse Services Council, established pursuant to § 2.2-2696 of the Code of Virginia, at least 30 days prior to the board's action for the council's review and comment.

E. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. G. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

V.A.R. Doc. No. R18-5177; Filed December 29, 2017, 5:05 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Fast-Track Regulation

Title of Regulation: 18VAC5-22. Board of Accountancy Regulations (amending 18VAC5-22-90).

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 21, 2018.

Effective Date: March 8, 2018.

Agency Contact: Rebekah E. Allen, Enforcement Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23223, telephone (804) 367-2006, FAX (804) 527-4207, or email rebekah.allen@boa.virginia.gov.

Basis: Section 54.1-4403 of the Code of Virginia grants authority to the Board of Accountancy to promulgate regulations, "in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system" and specifically references the board's power to establish continuing professional education (CPE) requirements as a condition for licensure. The board is the promulgating entity for regulations governing public accountancy

Purpose: The amendments simplify the regulatory burden on and reduce confusion for certified public accountants (CPAs) by having a single subsection addressing general CPE requirements and codify additional ways by which CPAs can earn CPE hours, which has been permitted by practice for several years in the board's guidance documents. Roughly 20% of CPAs have been found to have a CPE deficiency, due in part to confusion about which subsection of regulation applies to them, when in fact, since 2011, the CPE requirements for CPAs, regardless of the type of work they perform, have been the same, unless granted an exemption from the CPE requirements by the board. The board anticipates that by eliminating duplicative material, CPAs will have a better understanding of their CPE obligations, which in turn will allow them to achieve the minimum continuing education necessary to competently provide services to the public and to their employers. The board also believes that increased CPE compliance will occur if it codifies an additional way for CPAs to earn CPE hours.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because the amendments do not increase the CPE requirements of CPAs,

add an additional way by which CPAs can earn CPE hours that is already permitted in the board's guidance documents, and do not change the criteria by which a person is judged to be eligible for an exemption. The amendments are also supported by the Virginia Society of Certified Public Accountants.

Substance: The amendments combine the existing first two subsections of 18VAC5-22-90 into one subsection. Since 2011, the CPE requirements have been identical for CPAs regardless of where they work. Information that is contained in Board Policy #9 on how an exemption from CPE requirements is obtained and retained, which has been the board's practice for several years, is incorporated into regulation text. The amendments also include examination and certification as an additional way of earning CPE hours and codify information that is contained in Board Policy #4 on this subject, which also has been the board's practice for several years.

Issues: There are no primary disadvantages to the public. The primary advantages to the public are greater likelihood that CPAs are earning the CPE hours related to the services they are providing, which allows them to stay up-to-date with current technical standards, improves work product produced, and broadens the range of services they can competently provide. There are no primary disadvantages to the board or the Commonwealth. The primary advantages to the board and the Commonwealth are less staff time devoted to explaining the CPE requirements to CPAs by telephone and by email. There is no restraint on competition as a result of promulgating this regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Board of Accountancy (Board) proposes to amend its regulation to: 1) remove obsolete language, 2) specify that individuals who qualify for an exemption from having to complete continuing education must show evidence that they qualify to the Board and 3) allow licensees to receive up to 60 hours of continuing education credit during any three calendar-year period for passing examinations and obtaining certifications approved by the Board.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Current regulation includes provisions that expired in 2011 for individuals who have certified public accountants (CPA) licenses, who provided CPA services for their employers but did not provide services to the public, to complete fewer hours of continuing education. The Board now proposes to remove these provisions. Because CPA licensees are no longer allowed to take advantage of these provisions, no individuals are likely to be adversely affected by these proposed changes. To the

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extent that obsolete regulatory language can cause confusion for individuals reading that language, removing that language will likely provide the benefit of additional clarity.

Current regulation exempts individuals who are licensed by the Board but do not provide CPA services to the public or an employer from having to complete required continuing education hours. The Board proposes to clarify that individuals who claim this exemption must demonstrate to the Board that no CPA services were provided during the time for which the exemption is claimed. Because the Board would have already needed information from licensees to know whether they would need to complete continuing education, no entity is likely to incur additional costs on account of this proposed change. To the extent that this clarification eliminates confusion about the rules for claiming the exemption from continuing education, licensees will benefit.

Finally the Board proposes to allow licensees to receive up to 60 hours¹ of continuing education credit during any three-calendar-year period for passing examinations and obtaining certifications approved by the Board. No entity will be required to use this avenue to complete their continuing education hours, so no entity is likely to use this avenue if it increases their total continuing education costs. This proposed change will provide licensees with the benefit of additional flexibility in meeting the requirements to maintain their CPA licenses.

Businesses and Entities Affected. These proposed regulatory amendments will affect all individuals and firms licensed by the Board of Accountancy. Board staff reports that, as of September 30, 2017, there were 27,842 individuals who had CPA licenses issued by the Board and 1,179 CPA firm licenses issued by the Board.

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

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

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

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant 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."

Costs and Other Effects. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes. Individual and firm licensees will likely benefit from the additional avenue for obtaining continuing education credit proposed by the Board.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

¹Licensees must complete 120 hours of continuing education during any three calendar-year period.

Agency's Response to Economic Impact Analysis: The Virginia Board of Accountancy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments (i) combine existing continuing professional education (CPE) requirement provisions into a single subsection addressing general CPE requirements; (ii) clarify how a person requests an exemption from CPE requirements, as detailed under current board policy and practice; and (iii) provide an additional way for certified public accountants to earn CPE hours, as already permitted under board policy.

18VAC5-22-90. Continuing professional education.

A. If during the current calendar year a person ~~who~~ holds a Virginia license ~~provided services to the public and has not been granted an exemption by the board pursuant to subsection C of this section~~, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.

1. If the person also holds the license of another state and Virginia is not ~~the~~ his principal place of business ~~in which he provides services to the public~~, the ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.

2. Otherwise, the ethics course shall conform ~~with~~ to the requirements prescribed by the board.

~~B. If during the current calendar year a person who holds a Virginia license provided services to or on behalf of an employer and did not provide services to the public, he shall have obtained a minimum number of hours of continuing professional education determined as follows:~~

~~1. If the current calendar year is 2009 or 2010, the person shall have obtained at least 90 hours of continuing professional education during the three calendar year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 15 hours of continuing professional education, including an ethics course of at least two hours.~~

~~2. If the current calendar year is 2011 or later, the person shall have obtained at least 120 hours of continuing professional education during the three calendar year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.~~

~~The ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.~~

~~C. If during the current calendar year a person who holds a Virginia license provided services to the public or to or on behalf of an employer, has not been granted an exemption by the board pursuant to subsection C of this section, and did not hold a Virginia license or the license of another state during one or both of the two preceding calendar years, he shall determine whether he has complied with the requirements of subsection A ~~or B~~ of this section as follows:~~

~~1. If the person became licensed during the current calendar year, he shall be considered to have met the requirements of the subsection A of this section for the three-calendar-year period ending with the current calendar year.~~

~~2. If the person became licensed during the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection A of this section for the current calendar year, including an ethics course of at least two hours.~~

~~3. If the person became licensed during the calendar year prior to the preceding calendar year, he shall be considered to have met the requirements of the subsection for the~~

three-calendar-year period ending with the current calendar year if during the current calendar year and the preceding calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection A of this section for each of the years, including for each year an ethics course of at least two hours.

~~D. C.~~ If during the current calendar year a person who holds a Virginia license did not provide services to the public or to or on behalf of an employer and has demonstrated to the board that he does not provide those services, he is not required to have obtained continuing professional education during the three-calendar-year period ending with the current calendar year. Any person who holds a Virginia license to whom an exemption has been granted shall annually affirm and certify to the board his continued eligibility for the exemption in that he does not provide services to the public or to or on behalf of an employer. However, in order to begin providing those services:

1. He is required to have obtained at least 120 hours of continuing professional education prior to providing the services, including an ethics course of at least two hours.

2. The ethics course shall conform ~~with~~ to the requirements prescribed by the board for the calendar year in which the person begins providing the services.

Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the person has complied with the requirements of this subsection.

~~E. D.~~ If a person who has not held the license of any state applies for a Virginia license after the end of the calendar year in which he passes the CPA examination, he shall obtain continuing professional education prior to applying for the license, including an ethics course of at least two hours.

1. The required minimum number of hours of continuing professional education shall be 40, 80, or 120 depending on whether he applies for the Virginia license by the end of the first calendar year after the calendar year in which he passes the CPA examination, by the end of the second calendar year, or later.

2. The ethics course shall conform ~~with~~ to the requirements prescribed by the board for the calendar year in which the person applies for the license.

Continuing professional education obtained subsequent to passing the CPA examination but during the three calendar years prior to the calendar year in which the person applies for the license and from the start of that calendar year to when he applies for the license shall be considered in determining whether he has complied with this requirement.

~~F. E.~~ Continuing professional education acceptable to the board may be obtained through a variety of forums, provided

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there is a means of demonstrating that the education was obtained. ~~The following forums are acceptable~~ The acceptable forums are:

- ~~1. Attendance at Attending~~ seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the board;
2. Taking courses at an accredited institution for credit;
- ~~3. Self-study~~ Completing self-study courses, provided there is a method for determining that the person met the learning objectives;
4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials; ~~and~~
5. Writing material that is relevant to providing services to or on behalf of an employer or to the public that is formally reviewed by an independent party and that is published in a book, magazine, or similar publication ~~that is used by persons who provide services to the public or to or on behalf of an employer; and~~
6. Passing examinations and obtaining certifications that have been approved by the board.

Whether other forums are acceptable shall be determined by the board on a case-by-case basis.

~~G. F.~~ In determining whether a person has obtained the required number of hours of continuing professional education:

1. Repeat presentations shall not be considered.
2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar-year period.
3. One semester-hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter-hour of credit constitutes 10 hours of continuing professional education.
4. Credit for examination and certification shall be awarded for the calendar year in which the examination was passed and certification was received. If passage of the examination and certification occur in different calendar years, credit shall be awarded for the calendar year in which the examination was passed. The board shall determine how many hours are credited per certification.
5. No more than 60 hours from examination and certification shall be considered during each three-calendar-year period.

~~H. G.~~ Depending on the facts and circumstances, the board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.

VA.R. Doc. No. R18-5261; Filed January 2, 2018, 6:40 p.m.

BOARD OF DENTISTRY

Final Regulation

REGISTRAR'S NOTICE: The Board of Dentistry 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 Dentistry will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-40).**

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-30).

18VAC60-30. Regulations Governing the Practice of Dental Assistants (amending 18VAC60-30-30).

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

Effective Date: February 21, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

The amendments reduce renewal fees for the renewal year of 2018. The renewal fee for a dentist will be reduced from \$285 to \$142 and the renewal fee for a dental hygienist will be reduced from \$75 to \$37. Other license, registration, and permit renewal fees are also reduced by approximately 50%.

18VAC60-21-40. Required fees.

A. Application/registration fees.

1. Dental license by examination	\$400
2. Dental license by credentials	\$500
3. Dental restricted teaching license	\$285
4. Dental faculty license	\$400
5. Dental temporary resident's license	\$60

6. Restricted volunteer license	\$25
7. Volunteer exemption registration	\$10
8. Oral maxillofacial surgeon registration	\$175
9. Cosmetic procedures certification	\$225
10. Mobile clinic/portable operation	\$250
11. Conscious/moderate sedation permit	\$100
12. Deep sedation/general anesthesia permit	\$100
B. Renewal fees.	
1. Dental license - active	\$285
2. Dental license - inactive	\$145
3. Dental temporary resident's license	\$35
4. Restricted volunteer license	\$15
5. Oral maxillofacial surgeon registration	\$175
6. Cosmetic procedures certification	\$100
7. Conscious/moderate sedation permit	\$100
8. Deep sedation/general anesthesia permit	\$100
C. Late fees.	
1. Dental license - active	\$100
2. Dental license - inactive	\$50
3. Dental temporary resident's license	\$15
4. Oral maxillofacial surgeon registration	\$55
5. Cosmetic procedures certification	\$35
6. Conscious/moderate sedation permit	\$35
7. Deep sedation/general anesthesia permit	\$35
D. Reinstatement fees.	
1. Dental license - expired	\$500
2. Dental license - suspended	\$750
3. Dental license - revoked	\$1000
4. Oral maxillofacial surgeon registration	\$350
5. Cosmetic procedures certification	\$225

E. Document fees.	
1. Duplicate wall certificate	\$60
2. Duplicate license	\$20
3. License certification	\$35
F. Other fees.	
1. Returned check fee	\$35
2. Practice inspection fee	\$350
G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.	
H. For the renewal of licenses, registrations, certifications, and permits in 2016 <u>2018</u> , the following fees shall be in effect:	
1. Dentist - active	\$210 <u>\$142</u>
2. Dentist - inactive	\$105 <u>\$72</u>
3. Dental full-time faculty	\$210 <u>\$142</u>
4. Temporary resident	\$25 <u>\$17</u>
5. Dental restricted volunteer	\$10 <u>\$7</u>
6. Oral/maxillofacial surgeon registration	\$130 <u>\$87</u>
7. Cosmetic procedure certification	\$75 <u>\$50</u>
8. Conscious/moderate sedation certification	\$75 <u>\$50</u>
9. Deep sedation/general anesthesia	\$75 <u>\$50</u>
10. Mobile clinic/portable operation	\$110 <u>\$75</u>

18VAC60-25-30. Required fees.

A. Application fees.	
1. License by examination	\$175
2. License by credentials	\$275
3. License to teach dental hygiene pursuant to § 54.1-2725 of the Code	\$175
4. Temporary permit pursuant to § 54.1-2726 of the Code	\$175
3. <u>5.</u> Restricted volunteer license	\$25
4. <u>6.</u> Volunteer exemption registration	\$10
B. Renewal fees.	
1. Active license	\$75
2. Inactive license	\$40
3. License to teach dental hygiene pursuant to § 54.1-2725	\$75

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4. Temporary permit pursuant to § 54.1-2726	\$75
C. Late fees.	
1. Active license	\$25
2. Inactive license	\$15
3. License to teach dental hygiene pursuant to § 54.1-2725	\$25
4. Temporary permit pursuant to § 54.1-2726	\$25
D. Reinstatement fees.	
1. Expired license	\$200
2. Suspended license	\$400
3. Revoked license	\$500
E. Administrative fees.	
1. Duplicate wall certificate	\$60
2. Duplicate license	\$20
3. Certification of licensure	\$35
4. Returned check	\$35
F. No fee shall be refunded or applied for any purpose other than the purpose for which the fee was submitted.	
G. For the renewal of licenses in 2016 <u>2018</u> , the following fees shall be in effect:	
1. Dental hygienist - active	\$55 <u>\$37</u>
2. Dental hygienist - inactive	\$30 <u>\$20</u>
3. Dental hygienist restricted volunteer	\$10 <u>\$7</u>
18VAC60-30-30. Required fees.	
A. Initial registration fee.	\$100
B. Renewal fees.	
1. Dental assistant II registration - active	\$50
2. Dental assistant II registration - inactive	\$25
C. Late fees.	
1. Dental assistant II registration - active	\$20
2. Dental assistant II registration - inactive	\$10
D. Reinstatement fees.	
1. Expired registration	\$125
2. Suspended registration	\$250
3. Revoked registration	\$300
E. Administrative fees.	
1. Duplicate wall certificate	\$60

2. Duplicate registration	\$20
3. Registration verification	\$35
4. Returned check fee	\$35

F. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

G. For the renewal of a an active dental assistant II registration in ~~2016~~ 2018, the ~~fees~~ fee shall be ~~\$35~~ \$25. For the renewal of an inactive dental assistant II registration in 2018, the fee shall be \$13.

VA.R. Doc. No. R18-5359; Filed December 22, 2017, 10:13 a.m.

BOARD OF PHARMACY Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: February 21, 2018.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments add 11 compounds into Schedule I of the Drug Control Act as recommended by the Virginia Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. The compounds added by this regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)-1-pentanone (other names: N,N-Dimethylpentylone, Dipentylone);

2. 4-chloro-alpha-Pyrrolidinovalerophenone (other name: 4-chloro-alpha-PVP);
3. 4-methyl-alpha-Pyrrolidinoheptiophenone (other name: MPHP);
4. 4-fluoro-alpha-Pyrrolidinoheptiophenone (other name: 4-fluoro-PV8);
5. 1-(4-methoxyphenyl)-2-(pyrrolidin-1-yl)octan-1-one (other name: 4-methoxy-PV9);
6. 4-allyloxy-3,5-dimethoxyphenethylamine (other name: Allylescaline);
7. 4-methyl-alpha-ethylaminopentiophenone; and
8. N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: para-fluoroisobutyryl fentanyl).

The placement of drugs listed in this subsection shall remain in effect until August 22, 2018, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 6-ethyl-6-nor-lysergic acid diethylamide (other name: ETH-LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;
2. 6-allyl-6-nor-lysergic acid diethylamide (other name: AL-LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;
3. Synthetic opioids:
 - a. N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide (other name: beta-hydroxythiofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;
 - b. N-(2-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other names: 2-fluorofentanyl, ortho-fluorofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation; and
 - c. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2-propanamide (other name: Acryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and

ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;

4. Cannabimimetic agents:

- a. 1-pentyl-N-(phenylmethyl)-1H-indole-3-carboxamide (other name: SDB-006), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and
- b. Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate (other name: FUB-PB-22), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

5. Benzodiazepine: flubromazepam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 13, 2018, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 4-Bromo-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (25B-NBOH), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
2. Methyl N-[1-(cyclohexylmethyl)-1H-indole-3-carbonyl]valinate (MMB-CHMICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
3. N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (Tetrahydrofuran fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until February 18, 2019, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and

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salts of isomers is possible within the specific chemical designation.

2. 5-methoxy-N-ethyl-N-isopropyltryptamine (5-MeO-EIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. 4-hydroxy-N,N-diisopropyltryptamine (4-OH-DIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. (N-methyl aminopropyl)-2,3-dihydrobenzofuran (MAPDB), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 3,4-tetramethylene-alpha-pyrrolidinovalerophenone (TH-PVP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. 4-chloro-alpha-methylamino-valerophenone (4-chloropentedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. Synthetic opioids:

a. 2-methoxy-N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-acetamide (Methoxyacetyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide (Cyclopropyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

8. Cannabimimetic agent: N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide (5-fluoro-ADB-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until June 12, 2019, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 2-(methylamino)-2-phenyl-cyclohexanone (other name: Deschloroketamine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 2-methyl-1-(4-(methylthio)phenyl)-2-morpholinopropiophenone (other name: MMMP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Alpha-ethylaminohexanophenone (other name: N-ethylhexedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. N-ethyl-1-(3-methoxyphenyl)cyclohexylamine (other name: 3-methoxy-PCE), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 4-fluoro-alpha-pyrrolidinohexiophenone (other name: 4-fluoro-alpha-PHP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. N-ethyl-1,2-diphenylethylamine (other name: Ephedrine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. Synthetic opioids:

a. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-1,3-benzodioxole-5-carboxamide (other name: Benzodioxole fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide (other name: U-49900), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. 2-(2,4-dichlorophenyl)-N-[2-(dimethylamino)cyclohexyl]-N-methylacetamide (other name: U-48800),

its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

8. Central nervous system stimulants:

a. Methyl 2-(4-fluorophenyl)-2-(2-piperidinyl)acetate (other name: 4-fluoromethylphenidate), including its salts, isomers, and salts of isomers.

b. Isopropyl-2-phenyl-2-(2-piperidinyl)acetate (other name: Isopropylphenidate), including its salts, isomers, and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until August 21, 2019, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R18-5350; Filed December 22, 2017, 10:19 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER SEVENTY-FOUR (2017)

Declaration of a State of Emergency for the Commonwealth of Virginia in Support of Increased Heating Fuel Demands

Importance of the Issue

On December 29, 2017, I declared a state of emergency to exist for the Commonwealth of Virginia in support of the increased demand for heating oil due to severe cold weather and to prevent resource shortages in other States and Territories. I therefore directed that appropriate assistance be rendered by agencies of state government to respond to the needs of affected states and the potential public safety issues in the Commonwealth presented by this issue. This executive order memorializes that order and shall also provide expedited movement of power company personnel in transit to the Port of Virginia to support hurricane recovery efforts in Puerto Rico.

The health and general welfare of the citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of this incident constitute a disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on December 29, 2017, whereby I am proclaiming that a state of emergency exists, and I am directing that appropriate assistance be rendered by agencies of both state and local governments to alleviate any impediments to the transport of relief supplies or utility restoration support.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following protective and restoration measures:

A. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary registration, or license exemptions to all carriers transporting essential emergency relief supplies, including food, water, livestock or poultry, feed or other critical supplies for livestock or poultry, heating oil, motor fuels, or propane, or providing restoration of utilities (including but not limited to electricity, gas, phone, water, wastewater, and cable) to, through, or from any area of the Commonwealth in order to

support the disaster response and recovery, regardless of their point of origin or destination.

In addition, carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

B. This Emergency Declaration implements limited relief from the provisions of 49 CFR 390-399. Accordingly, the State Coordinator of Emergency Management recognizes the exemption for hours of service by any carrier when transporting essential relief supplies, passengers, property, livestock, poultry, equipment, food, feed for livestock or poultry, fuel, construction materials, and other critical supplies to, through, or from any portion of the Commonwealth for purpose of providing direct relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3.

C. The regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19VAC30-20-40(B) of the "Motor Carrier Safety Regulations," shall remain in effect for 15 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety and Homeland Security in consultation with the Secretary of Transportation, whichever is earlier.

D. The implementation and discontinuance of the provisions authorized in paragraphs A through C above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this order as set forth in § 2.2-104 of the Code of Virginia.

Effective Date of this Executive Order

This Executive Order was effective December 29, 2017, and shall remain in full force and effect until January 13, 2018, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 3rd day of January, 2018.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER SEVENTY-FIVE (2017)

Continuing Qualified Energy Conservation Bonds

Importance of the Issue

The Commonwealth of Virginia endeavors to facilitate the use of all available tools for projects that reduce energy consumption and encourage energy efficiency and conservation in the public and private sectors. Federal Qualified Energy Conservation Bonds ("QECBs") are significant tools that can be used by the state and local governments, as well as the private sector, to lower the cost of financing energy efficiency, conservation, and renewable generation projects. QECBs are tax credits or direct pay bonds that may be issued by states, political subdivisions, and entities empowered to issue bonds on behalf of such entities, including eligible issuers in conduit financing issues for one or more qualified conservation purpose(s).

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Sections 2.2-103 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue allocating the Original Locality Suballocations, minus the amounts that have been previously utilized, and further allocate any additional re-allocations of QECBs received by the Commonwealth from the Federal Government ("Federal Re-Allocations") as set forth herein.

Initiative

The Director of the Division of Energy of the Department of Mines, Minerals and Energy will act as the QECB Allocation Director, and work in conjunction with the Executive Director of the Virginia Small Business Financing Authority. The QECB Allocation Director will establish a process to develop a green community program and to consider such programs, with other eligible QECB uses and programs, in determining the allocation and reallocation of any unallocated amounts or waived amounts as described to applicants.

The QECB Allocation Director is further directed to issue a Request for Proposal (RFP) to select a firm or firms for the administration of the green community program within 60 days of issuance of this Executive Order. No bonds issued under allocations provided by this Executive Order will be state supported debt without prior approval of the General Assembly.

The Originally Awarded localities will have nine months from the issuance of this Executive Order to provide the QECB Allocation Director with written notice of intent to utilize their Original Locality Suballocation and provide documentation acceptable to the QECB Allocation Director identifying a specific project or projects for which the Original Locality Suballocation will be used. Further, they will have twelve months from the issuance of this Executive Order to utilize their Original Locality Suballocation and

provide documentation to the QECB Allocation Director evidencing such use. If no notice is given or no use evidenced within either of the prescribed time periods, the unused Original Locality Suballocation will be deemed waived and returned to the QECB Allocation Director for reallocation to other qualifying projects. Any additional Federal Re-Allocations received shall also be reallocated by the QECB Allocation Director to other qualifying projects including the green community program established pursuant to this Order.

Originally Awarded Localities may also waive their Original, Locality Suballocation at any time within the twelve month period after the issuance of this Executive Order. The QECB Allocation Director is directed to establish, within 120 days of the issuance of this Executive Order, policies and procedures for the reallocation of any waived Original Locality Suballocation or subsequent allocations to eligible QECB uses and programs.

Suballocation

The QECB Allocation from the federal government to Virginia is \$80,600,000. The Original Locality Suballocations, minus the amounts used as of the issuance of this Executive Order, are as follows:

Originally Awarded Locality	Population	Percentage	Original Suballocation	Used	Remaining Suballocation
Fairfax	1,004,151	13.04%	\$10,512,656	--	\$10,512,656
Virginia Beach City	435,004	5.65%	\$4,554,143	--	\$4,554,143
Prince William County	359,588	4.67%	\$3,764,598	--	\$3,764,598
Chesterfield County	299,022	3.88%	\$3,130,521	--	\$3,130,521
Henrico	289,460	3.76%	\$3,030,414	--	\$3,030,414
Loudoun	277,346	3.60%	\$2,903,590	--	\$2,903,590
Norfolk City	235,982	3.07%	\$2,470,542	\$2,470,542	\$0
Chesapeake City	218,830	2.84%	\$2,290,975	--	\$2,290,975
Arlington County	203,909	2.65%	\$2,134,764	--	\$2,134,764
Richmond City	199,991	2.60%	\$2,093,745	--	\$2,093,745
Newport News City	180,810	2.35%	\$1,892,936	--	\$1,892,936
Hampton City	146,466	1.90%	\$1,533,382	--	\$1,533,382

1. Each Locality utilizing a suballocation of QECBs shall ensure compliance with the 70% Use Requirement or the Green Community Program Use Requirement, pursuant to Section 54D(e)(4) of the Internal Revenue Code, and upon issuance of any QECBs will provide a copy of IRS form 8038 to the QECB Allocation Director.

2. The Determination of compliance with the procedures and requirements set forth in this Executive Order or in the additional guidance, including any filings to be made and the timing and substance, will be subject to the sole discretion of the Allocation Director.

Effective Date of the Executive Order

This Executive Order amends Executive Order Thirty-Six (2014). It shall be effective upon its signing and shall remain in full force and effect until December 31, 2019, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of January, 2018.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER SEVENTY-SIX (2017)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Severe Winter Weather

Importance of the Issue

On this date, January 3, 2018, I am declaring a state of emergency to exist for the Commonwealth of Virginia based on the forecast for significant snowfall and a prolonged period of sub-freezing temperatures to affect portions of the state beginning today.

The health and general welfare of the citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of this situation constitute a disaster wherein human life and public and private property are, or are likely to be, imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on this date, January 3, 2018, whereby I am proclaiming that a state of emergency exists, and I am directing that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the winter storm, alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities, so as to return impacted areas to prevent conditions as much as possible.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this

threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following protective and restoration measures:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to local governments and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

C. I am directing that appropriate assistance, including temporary assignments of nonessential state employees to the Adjunct Emergency Workforce, be rendered by agencies of state government to respond to this situation.

D. I am directing that the Virginia National Guard and the Virginia Defense Force be called forth to state active duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police (in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security) may find necessary. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments.

E. Evacuation of areas threatened or stricken by effects of the winter storm, as appropriate. Pursuant to § 44-146.17(1) of the Code of Virginia, I reserve the right to direct and compel the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the VEOC, acting on behalf of the State Coordinator of Emergency Management, shall determine. I authorize the control of ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State

Coordinator of Emergency Management and the VEOC, shall determine. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

F. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

G. This Emergency Declaration implements limited relief from the provisions 49 CFR § 390.23 and § 395.3 for purpose of providing direct relief or assistance as a result of this disaster.

H. Authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, license, or hours of service exemptions to all carriers transporting essential emergency relief supplies to, through, and from any area of the Commonwealth. This Declaration is also intended to satisfy the Federal commercial motor vehicle requirements of 49 CFR § 390.23, which provides any motor carrier or driver operating a commercial motor vehicle emergency relief from Parts 390-399 of the Federal Motor Carrier Safety Regulations (Title 49, CFR). The exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the initial declaration of emergency, whichever is less.

Implementation and discontinuance of the transportation related provisions authorized above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this order as set forth in § 2.2-104 of the Code of Virginia.

I. Authorization of the Commissioner of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in regulation 2VAC5-425 et seq., and to prescribe a vapor pressure limit the Commissioner deems reasonable. The temporary waiver shall remain in effect until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.

J. Authorization of appropriate oversight boards, commissions, and agencies to waive and/or ease building code restrictions, permitting requirements, and to allow for

emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. All appropriate executive branch agencies are to exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this disaster event.

K. I hereby authorize the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirements or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of events related to this situation.

L. Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

M. Authorization of a maximum of \$550,000 in state sum sufficient funds for state and local governments mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act. This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, an amount estimated at \$250,000 is authorized for the Department of Military Affairs for the state's portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

N. Authorization of an amount estimated at \$500,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

O. Implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. § 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

P. During this declared emergency, any person who holds a license, certificate, or other permit issued by any U.S. territory, state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during a disaster, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from

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such service as set forth in Code of Virginia § 44-146.23(C). Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(a) and (f) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective January 3, 2018, and shall remain in full force and effect until March 3, 2018 unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 3rd day of January, 2018.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-321, Regulation of the Harvest and Purchase of Wild Ginseng**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated December 5, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The provisions of this regulation ensure the long-term survival and sustainability of ginseng in the Commonwealth. The Endangered Plant and Insect Species Act requires that individuals or companies purchasing ginseng in Virginia for the purpose of reselling must first obtain a Ginseng License from VDACS. The cost of this license is \$10. Currently, there are 83 entities licensed as ginseng dealers. The requirements of this regulation have addressed U.S. Fish and Wildlife Service concerns that export of ginseng to other countries may be detrimental to the continued survivability of ginseng, thus allowing for the continued export of wild ginseng from Virginia to other countries. The prohibition of this export activity would have a significant impact on ginseng dealers and exporters. It is estimated that the annual value of wild ginseng exported from Virginia is approximately \$1.5 million.

The agency has not received any complaints or comments from licensees, the public, or small businesses concerning any negative economic impacts as a result of this regulation. This regulation does not duplicate or conflict with any federal or state law or regulation. The agency determined that no changes have occurred since this regulation became effective in August 2013 that necessitate amending the regulation.

Contact Information: Debra Martin, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email debra.martin@vdacs.virginia.gov.

CHARITABLE GAMING BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Charitable Gaming Board conducted a small business impact review of **11VAC15-40, Charitable Gaming Regulations**, and determined that this regulation should be retained in its current form. The Charitable Gaming Board is publishing its report of findings dated December 8, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency determined requirements established in the Charitable Gaming Regulations are not unnecessarily burdensome and provide an important means of ensuring the proper conduct, controls, reporting, and recordkeeping for licensees who conduct charitable gaming activities. The regulation also provides a means of ensuring charitable gaming activities are conducted in a manner consistent with the purpose for which they are permitted in the charitable gaming statutes. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses.

Charitable Gaming Regulations (11VAC15-40) do not appear to overlap, duplicate, or conflict with any federal or state law or regulation. The regulation was last amended in November 2016. The agency has determined that no change in the affected industry has occurred since the regulation was last amended that would necessitate the amendment or repeal of this regulation.

Contact Information: Michael Menefee, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Endless Caverns Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) Permit by Rule - Rockingham County

Endless Caverns Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Rockingham County, Virginia pursuant to 9VAC15-60. The project is located on a 243-acre parcel off Craney Island Road in Rockingham County. The project will have a rated capacity of up to 31.5 megawatts alternating current.

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

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on December 28, 2017. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

General Notices/Errata

Director's Order Number Two Hundred (17)

Virginia Lottery's "Print 'n Play Playback" Final Rules for Operation (This Director's Order becomes effective on January 7, 2018, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number Two Hundred One (17)

Certain Virginia Game: Game Number Correction. 20X the Money (86 2017) is amended as follows in order to correct the game number: in all occurrences of game number "1781" the game number becomes "1864" (effective December 20, 2017)

Director's Order Number Two Hundred Two (17)

Virginia Lottery's "Thank A Teacher Art Contest" Final Rules for Operation (This Director's Order becomes effective on January 2, 2018, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number Two Hundred Three (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack Classic" Final Rules for Game Operation (effective January 7, 2018)

Director's Order Number Two Hundred Four (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Bulls Eye Bingo" Final Rules for Game Operation (effective January 7, 2018)

Director's Order Number Two Hundred Five (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Horoscope Crossword" Final Rules for Game Operation (effective January 7, 2018)

Director's Order Number Two Hundred Six (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Money Bag Crossword" Final Rules for Game Operation (effective January 7, 2018)

Director's Order Number Two Hundred Seven (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Rockin' Bingo" Final Rules for Game Operation (effective January 7, 2018)

Director's Order Number Two Hundred Eight (17)

Certain Virginia Print 'n Play Games: End of Games. The following games will end on January 6, 2018:

Virginia Lottery's Print 'n Play Bonus Bingo (188 2017)

Virginia Lottery's Print 'n Play Blackjack (142 2017)

Virginia Lottery's Print 'n Play Daily Crossword (143 2017)

Virginia Lottery's Print 'n Play Smokin' Hot Crossword (150 2017)

Virginia Lottery's Print 'n Play Hot N' Spicy Bingo (147 2017)

(effective January 6, 2018)

Director's Order Number Two Hundred Ten (17)

Virginia Lottery's Scratch Game 1808 "Cash Multiplier Crossword" Final Rules for Game Operation (effective December 21, 2017)

Director's Order Number Two Hundred Eleven (17)

Virginia Lottery's Scratch Game 1821 "Winning Hand" Final Rules for Game Operation (effective December 21, 2017)

Director's Order Number Two Hundred Twelve (17)

Certain Virginia Promotion; Game Number Corrections. eXTRA Chances Scratcher Promotion (169 17) is amended as follows in order to correct certain game numbers. In all occurrences:

\$20 Super cash Frenzy game number 1870 is corrected to read 1874

30x the Cash Party game number 1875 is corrected to read 1888

Jewel 7's Playbook game number 1869 is corrected to read 1872

\$1 Hot 7's game number 1852 is corrected to read 1882

\$2 Red Hot 7's game number 1853 is corrected to read 1883

\$5 Sizzling Hot 7's game number 1854 is corrected to read 1884

\$10 Blazing Hot 7's game number 1855 is corrected to read 1885

(This Director's Order is effective nunc pro tunc to November 1, 2017, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Two Hundred Thirteen (17)

Certain Virginia Game: Draw Date/Time Change. The Virginia's New Year's Millionaire Raffle (182 2017) draw date/time is changed to the afternoon of December 29, 2017, from 10:00 a.m., January 1, 2018. (effective December 28, 2017)

STATE WATER CONTROL BOARD

Proposed Enforcement Action for the Kinder Morgan Operating L.P. "C" Elizabeth River Terminals LLC

An enforcement action has been proposed for the Kinder Morgan Operating L.P. "C" Elizabeth River Terminals LLC

facility for violations of the State Water Control Law in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from January 22, 2018, to February 20, 2018.

Proposed Consent Special Order for McCarthy Building Companies Inc.

An enforcement action has been proposed for McCarthy Building Companies Inc. for violations at the Essex Solar Center in Essex County, Virginia. The State Water Control Board proposes to issue a special order by consent to McCarthy Building Companies Inc. to address noncompliance with the State Water Control Law and Regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from January 22, 2018, to February 23, 2018.

Proposed Consent Special Order for TruGreen Limited Partnership

An enforcement action has been proposed for TruGreen Limited Partnership for Incident Report No. 2017-S-2594, which occurred near Galax in Grayson County, Virginia. The State Water Control Board proposes to issue a special order by consent to TruGreen Limited Partnership to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355A Deadmore Street, Abingdon, VA 24210, from January 23, 2018, through February 21, 2018.

Proposed Consent Special Order for Woodfin Heating Inc.

An enforcement action has been proposed for Woodfin Heating Inc. for alleged violations that occurred at Interstate 95 on the ramp of Exit 69 near Commerce Road in Richmond, Virginia. The State Water Control Board proposes to issue a consent special order to Woodfin Heating Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or

online at www.deq.virginia.gov. Cynthia Akers will accept comments by email at cynthia.akers@deq.virginia.gov, FAX at (804) 698-4187, or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from January 22, 2018, to February 21, 2018.

Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt six new total maximum daily load (TMDL) wasteload allocations.

Public comment period: January 22, 2018, to February 21, 2018.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning Regulation for the Potomac-Shenandoah River Basin (9VAC25-720-50 A). Statutory authority for promulgating these amendments can be found in subdivision 10 of § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend 1) that the board approve the two TMDL reports as the plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, 2) that the board authorize inclusion of the two TMDL reports in the appropriate Water Quality Management Plan, and 3) that the board adopt six new TMDL wasteload allocations (WLAs) as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 14 and § 2.2-4006 B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL WLAs can receive State Water Control Board approval prior to EPA approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. The two TMDL reports in this public notice have been reviewed by EPA for required TMDL elements, however, remain in draft form awaiting State Water Control

General Notices/Errata

Board approval. The draft reports can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

Affected waterbodies and localities for the six new TMDL wasteload allocations:

Potomac-Shenandoah River Basin (9VAC25-720-50 A):

1. "Sediment TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia"

The Accotink Creek TMDL, located in the City of Fairfax and Fairfax County, proposes sediment reductions for the Upper Accotink Creek, Lower Accotink Creek, and Long Branch watersheds and provides sediment wasteload allocations of 2,338 tons/year, 3,073 tons/year, and 936 tons/year.

2. "Chloride TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia"

The Accotink Creek TMDL, located in the City of Fairfax and Fairfax County, proposes chloride TMDLs for the Upper Accotink Creek, Lower Accotink Creek, and Long Branch watersheds and provides chloride wasteload allocations of 5,444,279 lbs/year, 3,723,479 lbs/year, and 873,049 lbs/year.

How to comment: The DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports are available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>, and by contacting the DEQ representative named below for any report. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Will Isenberg, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4228, FAX (804) 698-4032, or email william.isenberg@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.